

**The State of Economic, Social and
Cultural Rights in Sri Lanka:
A Joint Civil Society Shadow Report to
the United Nations Committee on
Economic Social and Cultural Rights**

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Introduction

Context

01. Coming two years after a political transition from post-war authoritarianism, this Shadow Report to the United Nations Committee on Economic Social and Cultural Rights is framed in the backdrop of two concurrent processes of ‘transformation’ currently underway in Sri Lanka. The first is the process of constitutional reform initiated by the Government that was elected on the platform of restoring democratic, inclusive and accountable governance. The second is the transitional justice process whose contours continue to be shaped by the interplay of domestic and international political dynamics.
02. This year also marks **forty years since President J.R. Jayawardene initiated the open economy reforms**, almost twinned to which was the second republican constitution that also firmly entrenched the executive presidency as well as the majoritarian character of the State. Soon thereafter, in 1980, came the massive crackdown on trade unions and, in July 1983, the pogrom against Tamils. If the former forced a violent repudiation and redrawing of the social contract between state and society, especially organised labour, the latter firmly entrenched violence as a defining feature of the new social contract, especially between the State and minority communities.

Sri Lanka’s political economic landscape

03. **Sri Lanka’s economic geography, a legacy of post-1977 liberalisation policies and the war**, has its epicenter in the Western Province and was bolstered by extraction from the inner peripheries, such as the plantations. With the exception of the two-year (1988-90) Southern Insurrection and periodic suicide bomb attacks, the war was contained largely in the Northern and Eastern outer peripheries. Almost throughout all of the war years, the Sri Lankan economy continued to grow steadily, remittances from migrants escaped the war and rural joblessness added to the economy.
04. The legacy of decades of economic liberalisation and the war has shaped a state-society contract characterised by **serious deficits in political and economic democratisation, power sharing, inclusion, and accountability**. Alongside the political marginalisation and exclusion of minorities, and ethnicisation of political economic relations, **also entrenched is economic precariousness due to inadequate levels of investment in health, education and social protection**, attacks on permanent jobs and burgeoning informalisation. In the North and East especially these add to many harms from the war that are yet to addressed, including killings, disappearances, displacement, sexual violence and post-war militarisation.

Constitutional Reforms and Transitional Justice

05. Hundreds of submissions to the Public Representations Committee on Constitutional Reforms (PRC) on the one hand and thousands of submissions to the Consultation Task Force on Reconciliation Mechanisms (CTF) on the other, sought a fundamental redrawing of the social

contract between the State and its citizens. Taken together and read expansively, **the reports of the PRC and the CTF reflect an aspiration for political, civil, social and economic justice**. Both reports also stress the importance of a state that is committed to equality, equity, inclusion, democratic participation and accountability. Yet, it is the Government's near identical response to both reports—consigning them to a 'display only' shelf or in the case of the CTF virtually disowning it domestically—that defines this moment and sets the stage for the critique offered in this report.

06. The **far-reaching proposals of the PRC call for the recognition of a raft of economic and social rights**—especially with regard to education, food, health, housing, social security, labour—coupled with protection from forced evictions as well as an expansive equality and non-discrimination clause, which are also reflected in the report of the Fundamental Rights Sub-Committee of the Constitutional Assembly. This assumes great significance in the context of the major concerns raised in this report: Entrenched poverty and widening inequality; weakening social protection; precarious wages and employment; union busting; declining investment in education and health; worsening food insecurity and malnutrition; large-scale evictions and land grabs, and exclusion or discrimination on grounds of disability, gender and sexual orientation, economic status, ethnicity, caste, etc.
07. The **transitional justice agenda has all but sidelined the question of economic or distributive justice** and the structural as well as gendered violence inherent in economic relations—be it before, during or after the war. The critique from the Malayaha Makkal or Up-Country People regarding the exclusion of their experiences from the scope of transitional justice hinges precisely on this point¹. As discussed in this report, the **high levels of economic insecurity and precariousness in the post-war North and East also stem from post-war policies** that focused on debt-driven physical infrastructure, and the militarisation and financialisation of development through the aggressive pursuit of micro-credit measures. The result has been indebtedness², lack of decent work, poor social security, and militarisation of land and economic relations—all of which affect women in very particular ways and cannot be divorced from questions of post-war justice and accountability.

Current economic and social policy—Key concerns

08. There are **serious concerns about the current Government's moves to slash public expenditure**, especially on health and education in 2017. Moreover, the push for privatization and the plans to initiate sweeping reforms in critical areas, such as social security, land and labour guided by the World Bank and the International Monetary Fund's austerity mind-set, raises many serious concerns. Whilst food producers—farmers and fishers—battle dispossession, massive tax concessions and holidays are being given to foreign investors for large and medium-scale projects; for example, to build the Colombo Port City or establish commercial farms for export. Even as a **highly regressive tax system and spiraling cost of**

¹ Submission by the Malayaha Makkal (Up-Country People) to the Consultation Task Force on Reconciliation Mechanisms (2016).

² In reality, almost seven years after the war, there have not been substantial levels of private sector investments in the North and East, at least not at levels enough to provide decent jobs and secure livelihoods for people struggling to survive. Parallel to that, the State pushed the people to take up micro-credit and self-employment schemes for day-to-day survival. However, a large population in the North and the East are mired in indebtedness and other forms of dispossession due to their severe exposure to credit, and are struggling to survive. Women were the main targets of such microcredit schemes, underlining gendered patterns of suffering central to such political economic arrangements.

living squeezes the poor and near poor, the Government is prioritising ‘reforms’ of the Samurdhi programme that will almost certainly see reduced net transfers and more debt-oriented schemes.

09. Sri Lanka’s much vaunted middle-income status and **impressive aggregates of human development, in areas such as health and education, in fact hide much more than they reveal**. About 40 percent of the population lives on less than 225 rupees per person per day,³ multidimensional poverty measures classify an additional 1.9 million people as poor⁴ and almost 70% of the labour force is in the informal sector, with low wages and no social security⁵. Add to this a crisis in nutrition in many parts of the country, very low levels of investment (relative to GDP) in public health and education, and a weakened social protection system—all of which are exacerbated by gendered, ethnicised, caste and class-based deprivation as well as exclusions.
10. **Decades of inequitable political economic development have generated a landscape with many and expanding pockets of marginality and precariousness**. This is evident in places as far apart and diverse as Monaragala, Batticaloa, Puttalam and Mullaitivu, which have entrenched pockets of poverty. Moreover, as discussed in this report, communities ranging from Colombo’s urban poor and the Up-Country plantation community to the Veddas and manpower (contract) workers in manufacturing, services and agriculture, as well as fishers and/or farmers fighting for their land in Panama, Kepapulau, Mullikulam, Vallikamam, Kalpitiya and Uma Oya, all suffer forms multiple and shared forms of deprivation and exclusion. All of the above underlines that Sri Lanka’s commitments under the ICESCR assume an urgency and significance today that they have perhaps never had before.

Enforcing economic and social rights in Sri Lanka

11. Sri Lanka’s Constitution includes a chapter spelling out the directive principles of state policy, which call, amongst others, for the:
- Pursuit of a social order with social, economic and political justice (art. 27 2 [b] and [f])
 - Realisation “by all citizens of an adequate standard of living for themselves and their families, including adequate food, clothing and housing, the continuous improvement of living conditions and the full enjoyment of leisure and social and cultural opportunities” (art. 27 2 [c])
 - “Equitable distribution among all citizens of the material resources of the community and the social product, so as best to subserve the common good” (art. 27 2 [e])
12. The **directive principles however “do not confer or impose legal rights or obligations and are not enforceable in any court or tribunal”** (art. 29). The fundamental rights chapter of the

³ The World Bank (2016, February 16), *Poverty has Fallen in Sri Lanka but Fiscal, Growth, and Inclusion Challenges Need to Be Tackled to Sustain Progress*. Retrieved from The World Bank: <http://www.worldbank.org/en/news/press-release/2016/02/16/poverty-has-fallen-sri-lanka-but-fiscal-growth-and-inclusion-challenges-need-to-be-tackled-to-sustain-progress>

⁴ The Centre for Poverty Analysis (2017, January 08), *Magic ‘line’ that makes us rich or poor*. Retrieved from The Sunday Times: <http://www.sundaytimes.lk/170108/business-times/magic-line-that-makes-us-rich-or-poor-222743.html>.

⁵ Gunasekara, V. (2015), *Unpacking the Middle: A Class-based Analysis of the Labour Market in Sri Lanka*, *Southern Voices Post-MDG International Development Goals, Occasional Paper Series*, Vol. 22, Dhaka: Southern Voices.

Constitution does not recognise economic and social rights. However, the Court has considered several cases pertaining to economic and social rights concerns in the light of the general equality and non-discrimination provisions in the Constitution.

13. The mandate of the Human Rights Commission of Sri Lanka (HRCSL), in terms of its ability to investigate complaints of rights violations, is restricted to the rights spelt out in the fundamental rights chapter of the Constitution. **The HRCSL cannot therefore investigate complaints of economic and social rights violations.**

14. Redress for economic and social rights violations is limited but has to be seen in the context of the **significant weaknesses in the enforcement of the rule of law and accountability for human rights violations.** Whilst the change of Presidency in January 2015 did result in a drawdown in the generalised atmosphere of threats and intimidation faced by human rights defenders, significant challenges still remain. As outlined in the report, activists working on labour and land issues, especially in the context of military occupation, face surveillance, intimidation or threats, including arrest/detention for or restrictions on their activities.

Article 1—Rights of Indigenous Peoples: The Veddas

01. There is **no official census of the total population of the Veddas in Sri Lanka**, indicating the lack of the State's commitment to protect and foster the identity of the community. They are concentrated in Uva province but are also resident in smaller numbers in Trincomalee and Batticaloa districts.

Land Rights

02. The identity of the Veddas is inextricably linked to the forests and the land, which is integral to the social, livelihood and spiritual life of the community.⁶ **The state regulation of land, forest and agriculture has had an adverse impact on the Veddas.** The designation of large tracts of land as national parks and sanctuaries has led to the Veddas losing access to hunting grounds, *chena* (shifting) cultivation⁷ and to forest produce that is central to their food as well as other material and the spiritual needs of the community.
03. The exclusion of the Veddas from the Maduru Oya national park had especially serious consequences, which have been mitigated to a very limited extent by an agreement reached with the State in 2011 to permit collection of honey and fishing.⁸ **But conflicts continue as the Veddas seek accommodation of their traditional ways of living.**
04. **After the end of war, the Vedda community lost more lands to the State.** For instance, part of the land the State had provided the community in Vakarai for cultivation is now claimed by the Forest Department.⁹

Exclusion from governance

05. Owing to the small population of the Veddas, state officials are able to sideline them without any consultation or hearing.¹⁰ **The unilateral declaration of areas as forest or as reserved for other purposes has resulted in repeated displacement and resettlement** of the community, which has significantly undermined their own identity. The state does not

⁶ The Veddas live in groups confined to forestlands in certain parts of the hill country, Eastern and North Central provinces of Sri Lanka. They used to live in abundance in the Sabaragamuwa and Central Provinces but many of them have assimilated into the Sinhala or Tamil culture. See Punchihewa, A., & Silva P.D. (2011), *Socio-Anthropological Research on Vedda Community in Sri Lanka*, Colombo: University of Colombo, pp. 10-13.

⁷ A type of rotating slash and burn agriculture.

⁸ Sriyananda, S. (2013, April 14th), Environmental Conservation in Sri Lanka Hurts Indigenous Livelihoods, *Global Press Journal*. Retrieved from: <https://globalpressjournal.com/asia/sri-lanka/environmental-conservation-in-sri-lanka-hurts-indigenous-livelihoods/>

⁹ Submissions by the Vedda Community from Vakarai and Chenkaladi District Secretariat Divisions. In some instances, the village officers who ought to maintain good contacts with the Vedda community demean their identity and rituals, and intimidate them.

¹⁰ Ibid.

recognise or take measures to preserve the Vedhi language, traditions and the indigenous medicine practiced by the Veddas.¹¹

06. The Veddas have been **excluded from participation in decision-making processes and have been denied a hearing in developing policies and plans that affect them**. This exclusion coupled with development that has been alienating in nature has left the community struggling to cope with changes and has left the Veddas economically deprived as well as socially and politically isolated.¹²
07. This has further isolated the community and led, on the one hand, to a closed community setup of the Veddas and, on the other, to an increasing tendency to change their surnames and conceal their identity as Veddas.¹³ This further inhibits the community from exercising their cultural rights and participating in the public realm along with their identity.
08. Although education is made compulsory for every child until the age of sixteen, **around 20 percent of the children in the Vedda community do not attend school**. This is indicative of their exclusion from the ‘formal’ setup and the State’s neglect of the Vedda way of life and learning.¹⁴ **Almost 60 percent of the girls and 15 percent of the boys are married before they attain the age of 18,**¹⁵ which also hinders access to education, especially for the girls. The continued failure to change this situation through a comprehensive engagement with the Vedda community is indicative of the larger failure on the part of the State to ensure inclusion and protection of the community’s broader interests.

Questions

1. What steps have been or will be taken by the Government to ensure the protection and nurturing of the Vedda identity and way of life whilst ensuring it does not undermine the rights and interests of sections of the community, especially women and girls?

Recommendations

1. Sign and ratify ILO Convention 169 on indigenous peoples and formulate—in consultation with the Vedda community—a time-bound plan of action to ensure adherence to the convention and realisation of rights in the UN Declaration of the Rights of Indigenous Peoples, including to ensure due recognition and protection of and access to the traditional forest habitats of the Veddas.
2. Take concrete legal and administrative measures to ensure recognition of the distinct identity of the Vedda community in law and policy, including their separate enumeration in the census.
3. Establish an independent authority in full consultation with and participation of the community to guide and co-ordinate law and policy with a view to safeguard the interests of the Vedda community.

¹¹ Only 3 percent of the Vedda community follows their traditional religion. Folk songs sung by the Veddas are sung now only as a means of earning an income. Their indigenous medicine is learnt and followed by a significant proportion within the community. With no recognition, all of these practices are on the verge of extinction. See Punchihewa, A., (n1) 185-190.

¹² Some young girls engage in sex work due to economic deprivation. See Punchihewa, A., (n1) 319.

¹³ Punchihewa, A., (n1) 267

¹⁴ Even though the school dropout rate is high, many children are willing to undergo training in cultural skills; however, they do not have the necessary avenues laid out.

¹⁵ See Punchihewa, A., (n1) 55.

Article 2.2—Non-discrimination

Persons with disabilities

01. **Sri Lanka ratified the Convention on the Right of Persons with Disabilities (CRPD) in 2016, but there is as yet no enabling legislation to incorporate the provisions of the Convention into domestic law and policy.** Whilst the Constitution allows special measures to advance the rights of persons with disabilities (PwDs) and the Protection of the Rights of Persons with Disabilities Act prohibits discrimination against PwDs, overall, the legal, policy and administrative provisions and mechanisms concerning the rights of PwDs are either lacking in a strong rights-based orientation and/or are poorly implemented.¹⁶
02. **Whilst there are clear norms on accessibility,¹⁷ many buildings and spaces, including those that are public, remain largely inaccessible.** Public transportation is especially inaccessible and disability rights activists have reported incidences of persons being charged extra to mount a wheel chair. Programmes in mass media, even when state run, are seldom presented in a manner that can be accessed by PwDs. **Even the ability to independently exercise the basic right to vote is often denied to persons with disabilities as ballot papers or boxes may not be designed to be accessible.**
03. **A key lacuna is the absence of mechanisms to coordinate and independently monitor implementation of measures** to safeguard the rights of PwDs, especially services and programmes across the whole of government. There are also **serious gaps in inter-ministerial/departmental coordination** when it comes to committing to resources and interventions in areas such as education, health services, community-based rehabilitation, social welfare and protection for PwDs both at central and devolved levels of government.^{18,19}
04. **The lack of reliable data on the extent and nature of disabilities as well the gender, and health, education, and economic status of PwDs is a serious problem.** Women with disabilities face systemic and multiple-discrimination based on gender and disabilities, which is gravely overlooked with no significant, focused policy interventions to address their needs.²⁰

¹⁶ Many disability rights activists are of the view that the State's approach towards PwDs remains paternalist and charity-oriented.

¹⁷ National Policy of 2003, Accessibility Regulations of 2006 and 2009, National Human Rights Action Plan 2011-2015 and the National Action Plan 2014 are some of the existing policies on accessibility.

¹⁸ For example, the provision of rehabilitation equipment and devices to PwDs is limited to persons with low income. Moreover, these devices do not meet the requirements of PwDs.

¹⁹ 'Self-help groups' are created comprising of PwDs and their families to equip the stakeholders with skills and knowledge. Currently, 492 officers conduct training in accordance with the WHO manual and the national policy on disability. See Law and Society Trust (2016), *Response to Request for Information from the Special Rapporteur on the Rights of Persons with Disabilities in Sri Lanka*, p.8.

²⁰ The twin-track approach stated in General Comment 3, Women and girls with Disabilities CRPD/C/GC/3 (2016) is required in the long run to rectify the unequal state of affairs. However, lack of political will and the systemic discrimination towards women that is perpetuated by patriarchal norms and behaviours pose greater challenges.

See Samararatne, D. W., & Soldatic, K. (2014), *Rural Disabled Women's Social Inclusion in Post-Armed Conflict Sri Lanka*, Kensington, N.S.W.: UNSW Australia; Social Scientists' Association Sri Lanka. Also see General Comment 3 of 2016.

05. Data from the Department of Census and Statistics suggests that **70.93 percent of PwDs are not economically active outside the household. Lack of physical accessibility, and communication and social barriers restrict the economic participation of the PwDs.**²¹ The employment ratio of PwDs is 41.1 percent, with an immediately visible difference between the employment of males (61.6 percent) and females (24.4 percent).²² However, this does not reveal information about the sectors, nature or designation of employment, and the extent to which PwDs access higher positions in employment.
06. **The government has maintained a 3 percent quota for employment of PwDs in all ministries, departments and corporations since 1988²³, but its impact remains minimal,** as the circular has not really been given effect to.²⁴ The community-based rehabilitation programme works together with 9 state vocational training institutions to provide officially recognised qualifications, job placements and instruments necessary for self-employment. However, **vocational training and the tools provided thereafter often do not match the demands of the market.**²⁵
07. Even though the National Action Plan for Human Rights for Persons with Disabilities (2016-2020) addresses many of these and other concerns of PwDs, it is yet to be approved by the Cabinet of Ministers. The draft National Human Rights Action Plan (2016-2020) included a chapter on disability, with comprehensive provisions to protect the rights of persons with disabilities. However, the final draft that is to be approved by the Cabinet of Ministers has neither been made public nor shared with the members of the sub-committee that were responsible for drafting the plan.

Questions

1. When will the Government enact legislation to fully incorporate the UN Convention on the Right of Persons Living with Disabilities (CRPD)—which was recently ratified—into domestic law?
2. What concrete measures, including with respect to implementing existing laws and regulations, have been or will be taken by Government to ensure equitable access of PwDs to employment, transport and all public spaces?
3. What specific measures, including reasonable accommodations, have been or will be taken by the Government to ensure equal opportunity for persons with disabilities to access employment?

Recommendations

1. Prioritise passing of new legislation to fully domesticate the provisions of the UNCRPD, including Article 33 on coordination and monitoring of implementation.
2. Ensure adequate institutional and financial resources to implement and monitor realisation of all the relevant aspects of the National Human Rights Action Plan.

²¹ Mendis, P. (2004), *Training and Employment of People with Disabilities: Sri Lanka 2003*, International Labour Organisation, pp.12-14.

²² Calculated as the ratio of the employed to the working age population with disabilities. Department of Census and Statistics (2012). *Census of Population and Housing – 2012 Sri Lanka*, Colombo: Department of Census and Statistics.

²³ Public Administration Circular No. 27/88, dated August 1988, cited in Mendis, P. (2004), *Training and Employment of People with Disabilities: Sri Lanka 2003*, Colombo: International Labour Organisation, p.18

²⁴ Mendis, P. (2004), *Training and Employment of People with Disabilities: Sri Lanka 2003*, Colombo: International Labour Organisation, p.18

²⁵ As stated by Dr. Padmani Mendis, Advisor on Disability and Rehabilitation.

3. Take immediate and effective steps to strengthen programmes and services that enhance the capacities of PwDs to live independently in the community.
4. Take specific measures to increase employment of PwDs, including ensuring quotas in government employed are filled and vocational training programmes are of adequate quality and relevance.

Malaiyaha Makkal (Up-Country People)²⁶

08. The community, primarily Tamils of an oppressed caste from Southern India brought as indentured labour to work in Sri Lanka's tea plantations (the Estate sector) by the British, has a long history of pervasive discrimination, exploitation and violence. A newly independent Ceylon perpetuated this through **the 1948 Citizenship Act,²⁷ which rendered the majority of the community stateless and disenfranchised.²⁸ With the last of the legislative amendments to correct the latter enacted only as late as 2009,²⁹ the adverse effects have been intergenerational and the community remains amongst the poorest and the most excluded, though they have always been at the heart of one of the country's most important economic sectors.**
09. The exclusion of the Up-Country community is in fact underlined by the fact that **the Estate sector is governed and classified as distinct from the Rural and Urban sectors.** The legacy of being governed by companies rather than the State is reflected even today in the restrictions in the Pradeshiya Sabha Act of 1987 on the State and local authorities from providing certain infrastructure development services to Up-Country communities living at Estates.
10. According to data from the latest Household Income and Expenditure Survey (HIES 2012/13), the **poverty headcount ratio in the Estate sector is 11 percent, higher than in the Rural (8 percent) and Urban sectors (2 percent).** Only 2.2 percent have passed GCE (A/L), whilst in the Urban and Rural sectors the rates are 20.5 percent and 11.1 percent respectively. Multiple forms of deprivation are pushing Up-Country youth to give up education and join the labour force. **Women in the Estate sector have the lowest Body Mass Index (BMI) in the country,** indicating that despite a larger number of women from the Estates participating in the labour force, their labour has not reaped an escape from poverty.
11. **Nearly 60 percent of the Estate sector live in 'line rooms',** which not only bring stigma, but most of which are cramped, very old and result in **reduced access to toilets or water, including safe drinking water within the household.**³⁰ They also suffer from high levels of landlessness.

²⁶ Also referred to as Hill Country People or Tamils of recent Indian origin

²⁷ Citizenship Act No. 18 of 1948.

²⁸ The Act was discriminative on two grounds: Firstly, for targeting the Upcountry Tamils as the Act required proof that their father or grandfather was born in Sri Lanka to qualify for citizenship under descent and secondly, the Act symbolised the passing of citizenship through the fathers and not through the mothers. See Kanapathipillai, V. (2009), *Citizenship and Statelessness in Sri Lanka: The Case of the Tamil Estate Workers*, London: Anthem Press, pp.42-45.

²⁹ Periodic Report of Sri Lanka submitted under articles 16 and 17 of the ICESCR, due in 2013

³⁰ According to the data from the Household Income and Expenditure Survey, 75.9 percent of households in the Estate sector have a toilet exclusive to the household compared to the national average, which is 89.9 percent). Only 67.4 percent of estate sector households have a source of drinking water within the premises while the data for Urban and Rural sectors is 92 percent and 79.6 percent respectively. For more, see Romeshun, K., & Fernando, P. (2015, May 07th), Poverty in the Estate Sector: Has it turned the corner?, *The Island*, Retrieved from: http://www.island.lk/index.php?page_cat=article-details&page=article-details&code_title=124227 and see also Malaiyaha Makkal (Up-Country People) and Transitional Justice: A Submission to the Consultation Task Force on Reconciliation Mechanisms, available on file.

Additionally, activists underlined that there had been no systematic efforts to nurture and support the community's traditional rituals and practices.

12. The Government has launched a '**Ten Year National Plan of Action for the Social Development of the Plantation Community 2016-2025**'. However, concerns have been expressed over a) the lack of emphasis on participation and social mobilisation, b) the longevity of the initiative given that it is only a scheme, and c) the long-term commitment to institutional and financial resources that can ensure not only its sustainability but also effective course correction.
13. A 2016 submission on behalf of the Malaiyaha Makkal (Up-Country People) to the Consultation Task Force on Reconciliation Mechanisms points out that **the community risks being excluded from transitional justice processes**. The submission highlights that on-going conversations around truth, reconciliation, justice and reparations have not taken into account the history of systemic violence faced by the community for almost 200 years, and side-line questions of economic exploitation and structural violence that have affected the community for far longer than the war.

Questions

1. Why does the Malaiyaha Makkal/Up-Country community continue to suffer from significantly unequal levels of education, healthcare, housing, water and sanitation relative to other sections of the country's population? What specific time-bound measures/steps will the Government take to address this?
2. What measures will the Government take to ensure the full inclusion of the historical experiences of economic exploitation and violence experienced by the community in the transitional justice process?

Recommendations

1. Revisit the 'Ten Year National Plan of Action for the Social Development of the Plantation Community 2016-2025' to ensure social mobilisation and participation. Furthermore, ensure that the Plan is financially adequate, institutionally resourced and its implementation closely monitored to enhance effectiveness.
2. Replace the Citizenship Act No. 18 of 1948 with a new Citizenship Act that incorporates all amendments to the original Act, and amend section 33 of Pradeshiya Sabha Act of 1987 to enable local authorities to implement infrastructure development, such as Estate settlements and roads.

Internally Displaced Persons (IDPs)

01. With the change of government in January 2015, there was a shift from a policy of denial of the problem, closing down IDP camps and deregistering IDPs towards pushing for hastily imposed and inadequate resettlement solutions. The most significant policy-related development was the adoption by the Government in August 2016 of a '**National Policy Framework for Durable Solutions on Persons Affected by Displacement due to the Conflict**'. It sets out a comprehensive framework for acknowledging the myriad interconnected problems relating to displacement, protracted displacement and durable solutions. However, **lack of clarity with regard to the implementation of this policy has raised fears about the policy being little more than a façade** for the international community.

02. **Accurate statistics regarding the number of IDPs remains a contested issue** with confusion relating to definitions still prevalent especially at the district level. Whilst the latest official figure of the number of IDPs stands at 43,607, IDP communities, especially the Northern Muslims and those affected by military occupation of their lands—some of whom have also been de-registered—dispute this statistic. A comprehensive census of displaced persons could address the issue of numbers and also identify the exact status of various communities who were displaced throughout the country, not only from the Northern and Eastern districts. The census could also look into obstacles that prevent them from achieving durable solutions.
03. Despite some lands being released, **the continued military occupation of lands in the North and East is a major obstacle to IDP's achieving durable solutions** in places like Vallikamam (Jaffna), Kepapulau (Mullaitivu), Mullikulam (Mannar) and elsewhere. Despite various commitments, including at the highest level, to release lands, the process has been extremely slow and not transparent, thereby causing a great deal of hardship to IDPs and leading to continued protests. **Occupation by other state agencies such as the Forest Department** and Mahaveli Authority is also a problem confronting IDP communities from villages such as Ashraf Nagar and Raigamwella in Ampara. A participatory process for verifying military occupation of private and public land led by the relevant government authorities but not the military is vital to help communities of IDPs and policy makers understand the situation better.
04. **For the Northern Muslims, forcibly expelled by the LTTE in 1990, return and reintegration have proven difficult.** The various problems faced by this population are in some ways similar to those of other communities experiencing protracted displacement, including a generation born and brought up whilst in displacement. They are also not recognised in terms of land allocation or as beneficiaries of state assistance, such as family resettlement packages. Due to their protracted displacement, they were not able to secure resources provided by the State, especially land. The lack of basic infrastructure, common amenities (including schooling, medical and transport) and opportunities in return areas has slowed down their return and resulted in individuals settling permanently whilst other family members continue live in places to where they were displaced or had subsequently moved.
05. Whilst many Northern Muslims desire to be registered as voters in their place of origin, their applications to register have sometimes been rejected on the grounds that they are not permanent residents. Activists working with the community have cited the **lack of support from district-level officials and the Northern Provincial Council coupled with tensions with the resident Tamil community as major constraints facing returning Northern Muslims.** It is vital to take steps to ensure that Northern Muslims can be registered in their place of origin and where necessary delimitation and drawing of administrative boundaries must be undertaken to account for their presence. In a similar vein, it is crucial to also heed the calls of Tamils in the North to reverse the decision taken by the previous Government to reduce parliamentary representation from the Jaffna electorate on account of mass displacement and slow return.
06. The need for **symbolic and substantive measures that would foster trust and confidence between the Muslim and Tamil communities in the North and East are crucial** from the perspective of both the local and national levels, especially in a context where there are on-going disputes relating to land and access to other resources.
07. **Another serious problem facing returning Northern Muslim communities in Musali South in Mannar is the pitting of the rights of returnees against the protection of the Wilpattu forest.** Fears of environmental destruction, have often arisen due to misinformation or are unhelpfully portrayed as an 'either-or' situation leading to opposition to the return and resettlement of Northern Muslim communities who had lived in the area for long before their expulsion by the LTTE in 1990. At the time of finalising this report, President Sirisena

designated areas in the vicinity of Mavillu, Veppalkaradithkuli, Marichchakatti, Wilaththikulam and Periyamuppu villages in Musali South as the Mavillu Conservation Forest, sparking widespread protests especially from the returning Northern Muslim community and their advocates.³¹

Questions

1. What is the extent of private and public lands held by the military and what is the plan for the expeditious release of these lands?
2. What measures have been or will be taken by the Government to ensure that the rights of returning IDPs are not compromised by designation of lands for special non-military purposes—be it for protection of the environment, wildlife, and archaeological or heritage value?

Recommendations

1. Conduct a comprehensive survey of IDPs, including identifying the current status of different communities with respect to durable solutions.
2. Draw up a concrete and time-bound plan to fully implement the National Policy Framework for Durable Solutions on Persons Affected by Displacement due to the Conflict.
3. Establish a credible and time-bound civilian mechanism with full participation of IDPs and other communities to verify details of military occupation of public and private lands.

Refugees and asylum seekers

14. **Refugees and asylum seekers receive minimal attention from the Sri Lankan state.**³²

According to information received from advocates working with refugees and asylum seekers in Sri Lanka in the course of consultations for this report, most of the asylum seekers and refugees are from Pakistan and Afghanistan.³³ Their presence is often viewed as ‘a potential compromise of the national security’ and a ‘drain [on] resources’.³⁴ Sri Lanka is not a signatory to the Refugee Convention of 1951.³⁵ The wellbeing of refugees is completely left to the UNHCR.³⁶

Even though they fall within the mandate of UNHCR, which extends its protection assistance in the form of registration and documentation, **asylum seekers in Sri Lanka remain especially vulnerable as they do not receive any subsistence support.** In the case of a negative determination, they are at risk of deportation, as UNHCR is required to inform the authorities about the determination.

³¹ The Wilpattu Controversy: Open Letter To The President, Shahul Hasbullah, March 31, 2017, *Colombo Telegraph* available at <https://www.colombotelegraph.com/index.php/the-wilpattu-controversy-open-letter-to-the-president/>

³² There was no mention about the state of refugees and asylum seekers in the Fifth Periodic Report of Sri Lanka to the Committee.

³³ According to activists working with these communities, refugees and asylum seekers number 604 and 576 respectively.

³⁴ In an unreported judgment, dated 01.09.2014, the Court of Appeal of Sri Lanka lifted its previous ban on deporting asylum seekers, and these arguments are put forward by the State in favour of lifting the ban. See Dawn, (2014, September 1st), Sri Lanka court gives green light to deport Pakistani asylum seekers. Retrieved from: <https://www.dawn.com/news/1129238>

³⁵ Argument put forward by the State in a fundamental rights case against the deportation of asylum seekers. Unreported, decision delivered on 29.09.2014. The Supreme Court dismissed the case holding that facts were insufficient to hear the petition. See Daily FT, (2014, September 30th), Supreme Court rejects petition to halt deportation of asylum seekers. Retrieved from: <http://www.ft.lk/article/357686/Supreme-Court-rejects-petition-to-halt-deportation-of-asylum-seekers> Protected - UNHCR

³⁶ Some States have asylum laws and systems to carry out refugee status determination. Other states, like Sri Lanka, do not have such legislation.

15. In the case of asylum seekers from Pakistan, in 2013-2014, rather than extending support to them, the Government subjected them to detention, arrest and deportation, which was in contravention of an agreement with the UNHCR.³⁷
16. **Refugees and asylum seekers are at risk of extreme poverty**, are not allowed to engage in work and, with the exception of children up to the age of 11 who having been accepted as refugees receive support from the UNHCR, have no access to free public education.³⁸ Except for a meagre allowance provided by the UNHCR once the asylum seeker is recognised as a refugee, other formal means of support are not extended.³⁹

Questions

1. Does the Government intend to sign the 1951 Convention Relating to the Status of Refugees?
2. What steps will the Government take to strengthen cooperation with UNHCR to meet its humanitarian and human rights obligations towards asylum seekers and refugees?

Recommendations

1. Sign and ratify the 1951 Refugee Convention and incorporate it into domestic law.
2. Take steps to prevent asylum seekers and refugees from falling into poverty by allowing them the right to work and ensure their access to the public health and education system, including compulsory enrolment of refugees and asylum seekers until at least the age of 16.
3. Work closely with and support the work of the UNHCR in all respects to safeguard the rights of refugees and asylum seekers.

Refugee Returnees from India and Deportees

17. As a result of the war, thousands fled from Sri Lanka, many of them to India using the sea route. Whilst the government welcomes Indian returnees, there are **significant gaps in support to enable them to reintegrate and realise their rights as citizens**. Those who have been deported back to Sri Lanka as a result of failed asylum or refugee claims face additional risks.
18. Whilst there is some attention to refugee returnees in policy, **there is no comprehensive programme and dedicated resources for refugee returnees or those forcibly returned** to re-establish themselves in Sri Lanka.⁴⁰ Treating them as IDPs, as the Government currently does, fails to account for many of their specific experiences and needs.

³⁷ The Economist, (2014, July 4th), Asylum-seekers in Sri Lanka Paradise lost. Retrieved from: <http://www.economist.com/blogs/banyan/2014/07/asylum-seekers-sri-lanka>

³⁸ According to information received from activists working with the communities, around 200 children remain excluded from schools.

³⁹ The asylum seekers who have been in Negombo for ten years state that living and finding means to live are further made difficult due to the inaccessibility of facilities. Except for the support provided by certain religious institutions, there is barely any assistance.

Sahoutara, N. (2016, December 19th), Distressed Pakistani Asylum Seekers rough it out in Sri Lanka. Retrieved from: <https://tribune.com.pk/story/1267469/distressed-pakistani-asylum-seekers-rough-sri-lanka/>

⁴⁰ The Ministry of Resettlement has formulated a national policy for IDP reintegration. But no policy has been formulated for the reintegration of refugee returnees. Refugee returnees are considered as part of the IDP national schemes.

19. Returnees, whether they come voluntarily or are forced to do so, face a number of hurdles, including:
- a. Loss of documents pertaining to their identity, civil status, health status, educational qualifications, ownership of land, house and other assets;
 - b. Lack of adequate housing, especially when their homes have been destroyed or occupied by the military or others;
 - c. Lack of secure livelihoods, and loss of land due to lost records or occupation by others or the military or because the land is overgrown or has been put to other uses;
 - d. Absence of support to restart and engage in traditional occupations, whether lack of access to agricultural land or fishing licenses or even lack of access to loans because of certain conditionalities, such as requirements that state sector employees give their consent to be guarantors;
 - e. Risk of educational or other qualifications earned in a foreign country, not being accorded recognition;
 - f. Shelter, dry ration, water and sanitation, education, health documentation and livelihood to the returned/returning refugees require urgent attention. Furthermore, significant improvements are required in the implementation of schemes for returnees.
20. Whilst **refugee returnees and deportees face a range of procedural and bureaucratic hurdles, deportees risk detention, torture and constantly being viewed with suspicion**. As a result, many of them are forced to seek shelter with relatives or in welfare homes with minimum facilities and limited access to social and economic opportunities.

Questions

1. What measures have been or will be taken by the Government to ensure that returnees and deportees have access to basic economic and social rights and entitlements?

Recommendations

1. Develop appropriate and well-resourced policy measures and programmes focussed on enabling a rights-based approach to the reintegration of returnees and deportees. These measures and programmes must abide by the principles and best practices underlying the durable solutions framework and bear in mind the distinct situation of returnees and deportees.

LGBTIQ Persons

21. Archaic laws continue to render it **legal to discriminate against LGBTIQ persons,⁴¹ and sections 365 and 365A of the Penal Code criminalise homosexuality**. Articles 15 (7) and 16

⁴¹ These laws include a number of sections in the criminal law of Sri Lanka embodied in the Penal Code. Same-sex sexual conduct is a crime in Sri Lanka for the last 134 years; Section 365 of the Penal Code of Sri Lanka criminalises ‘carnal intercourse against the order of nature’. The crime carries a sentence of up to ten years imprisonment and a fine. Section 365A criminalizes acts of ‘gross indecency with another person’. This crime carries a sentence of up to two years imprisonment and a fine. Until 1995, section 365A was exclusively a crime anticipated for males. In 1995, the law was amended to remove the reference to the male gender and thereafter it became applicable to women also. Section 399 of the Penal Code is also used against LGBTIQ individuals under the offense of ‘cheat by impersonation’. Activists suggest that this law is used to arrest transgender individuals. The lack of judicial interpretation of the legal definition of gross indecency and carnal intercourse against the order of nature creates a veritable breadth of interpretations that police officers, lawyers, judges and prosecutors

(1) of the Constitution shelter these laws as they effectively limit the application of the equality clause in Article 12 of the Constitution.⁴² There is **no legal provision that prohibits discrimination on account of gender identity or sexual orientation.**⁴³

22. **Owing to legalised discrimination and criminalisation, LGBTIQ persons are denied equal citizenship and access to justice and essential state services.** Activists report incidents of LGBTIQ persons being refused employment based on their sexual orientation or gender identity. As a result, many share experiences of poverty, vulnerability to poverty and deprivation.
23. **State-issued identity documents fail to allow for the self-defined gender identity of individuals.**⁴⁴ Some progress has been made in terms of transgender individuals being enabled to register a change in sex/gender status.⁴⁵ However, **the ‘Gender Recognition Certificate’ is problematic and invasive, as it requires an evaluation by a psychiatrist or a testimony by parents as opposed to relying on self-identification.** Furthermore, at present only an administrative circular enables this, and any change in executive policy can undo or undermine this practice.
24. **LGBTIQ persons have long suffered verbal abuse, harassment, bullying, beating, physical assault, rape, blackmailing and extortion by law enforcement authorities, such as the police, and even in state institutions, such as schools and hospitals.**⁴⁶ Law enforcement authorities have refused permits for a candlelight vigil to commemorate the International Day

can adopt. Although no prosecutions have taken place since 1948, the malevolent presence of this law makes persons of diverse sexual orientation and gender identity vulnerable to extortion, harassment and abuse at the hands of law enforcement as well as others in society.

⁴² In 2014, the Government of Sri Lanka asserted before the Human Rights Council that Article 12 of the Constitution protects persons from discrimination on the basis of sexual orientation or gender identity.

⁴³ Cheating by impersonation is a crime in Sri Lanka and inevitably applies to transgender persons (section 399 of the Penal Code), cited in EQUAL GROUND (2016), Human Rights Violations Against Lesbian, Gay, Bisexual And Transgender People In Sri Lanka –A Shadow Report. *Submitted For Consideration At The Fifty-Ninth Session Of The Committee On Economic, Social And Cultural Rights (Pre-Sessional Working Group)* at 5; LGBTIQ persons are arrested under the archaic Vagrants Ordinance which prohibits soliciting or committing acts of ‘gross indecency’ or procuring ‘unnatural or illicit intercourse’, Human Rights Watch (2016), cited in EQUAL GROUND (2016).

⁴⁴ This includes passports and national identity cards, as well as forms and applications to gain access to educational establishments, hospitals, immigration entry/exit cards, etc.,

⁴⁵ EQUAL GROUND—the prominent activist group on LGBTIQ rights based in Colombo, Sri Lanka—points out that while some transgender individuals opt for different procedures for change of gender identity, the physical procedure they undergo should not be the sole basis of the legal recognition of their identity. Since June 2016, Sri Lanka has permitted the request of a ‘Gender Recognition Certificate’ by transgender individuals. Unfortunately, a Circular (Dr. P.G. Mahipala, Director General of Health Services, Ministry of Health, Nutrition and Indigenous Medicine, *Issuing of Gender Recognition Certificate for Transgender Community*, General Circular No. 01-34/2016, 16 June 2016) issued by the State appears to require two different procedures to be carried out together (hormone treatment as well as surgery) in the legal recognition of the gender identity of a transgender individual. This violates the nondiscrimination interpretations provided by this very Committee in General Comment 22 as well as by the UN High Commissioner for Human Rights (2015) as well as the Yogyakarta Principles referred to previously. Activists EQUAL GROUND (2016), at 5-6.

⁴⁶ EQUAL GROUND (2016) at p. 7

Against Homophobia and Transphobia.⁴⁷ The Minister of Justice,⁴⁸ and other Members of Parliament have publicly made explicitly homophobic statements.⁴⁹

25. **In January 2017, the Cabinet rejected the decriminalisation of homosexuality and adult same-sex relations** in the National Action Plan for the Promotion and Protection of Human Rights 2016-2020.⁵⁰ Similarly, the State has used the argument of protection of ‘public morality’ to justify the denial of formal equality to LGBTIQ individuals.⁵¹

Questions

1. Why was the decriminalisation of adult consensual same-sex relations omitted from the National Human Rights Action Plan?
2. What measures will the Government take to ensure equal protection of the law for LGBTIQ persons?

Recommendations

1. Take all possible steps to ensure that the recommendation of the Fundamental Rights Subcommittee of the Constitutional Assembly that sexual orientation and gender identity be included as a ground for non-discrimination is retained in the new Constitution and is also reflected in all other laws and policies.
2. Take concrete measures to stop harassment and ill-treatment of persons owing to their sexual orientation or gender identity, including and especially ending impunity for such actions by public officials, and ensuring ending discrimination in access to employment and other basic services.

⁴⁷ *ibid*

⁴⁸ “...They [The European Union for grant of GSP+ Concessions] have several conditions which we agreed and some which we have not agreed. We were also asked to legalise homosexuality in the country. The European Union asked us to include it in the closes of the fundamental rights of the Constitution. We clearly told them although they have a culture of indecency Sri Lankans are not people of such mental illnesses.” Colombo Telegraph, “Homophobic Justice Minister Wijeyadasa Should Resign: Right Activists”, 22 January 2017, available at <https://www.colombotelegraph.com/index.php/homophobic-justice-minister-wijeyadasa-should-resign-right-activists/>

⁴⁹ EQUAL GROUND in its submission before the pre-session of this Committee cites a statement by Mr. Jayatissa where he states in an interview “I am totally against lesbian, gay, bisexual and transsexual rights. This is not the need of a human being”, EQUAL GROUND (2016) at p. 7.

⁵⁰ The draft had included de-criminalising homosexuality through key amendments to archaic laws contained in the penal code. The independent Human Rights Commission of Sri Lanka also strongly denounced the resistance by the State to include these actions in the National Action Plan.

⁵¹ The Constitution of Sri Lanka states that fundamental rights guaranteed by the Constitution including the right to equality may be restricted on the grounds of “protection of public health or morality”(Article 15(7)). The Penal Code continues to criminalize same-sex relations on the grounds of being “against the order of nature” and “gross indecency”. In fact, activists have cited the Attorney General of Sri Lanka saying that the archaic sections in the Penal Code (section 365 and 365A) are there to “protect public morality” and not to target any particular group. Under Article 16(1), all written and unwritten laws continue to be operative ‘notwithstanding inconsistency’ with the fundamental rights chapter. In this way, the formal equality guaranteed under Article 12 is entirely negated by the multiplicity of laws, which continue to discriminate based on sexual orientation, notwithstanding such ‘implicit’ guarantees. The fact that even the formal equality clause makes no explicit reference to gender identity or sexual orientation leaves the interpretation of this meager concession very much in jeopardy.

Oppressed Castes

26. Discrimination on the basis of caste tends to be more discreet in its practice and is meshed more than ever with markers of class, gender and ethnicity.^{52,53} To this end, **caste discrimination continues to marginalise people belonging to oppressed or ‘low’ caste groups in both Tamil and Sinhalese society.**⁵⁴
27. **Caste-based discrimination exists in state institutions resulting in poor access to basic services for oppressed caste groups.**⁵⁵ Children belonging to oppressed caste groups have been denied access to good schools and have alleged to be victims of abuse or unfair treatment by teachers, school principals and peers.⁵⁶ There are also single-caste community centres in the North, which also provide pre-school education to children, a discriminatory practice.
28. Many oppressed and marginal caste communities, whether Tamil or Sinhalese, **suffer from a legacy of marginalisation, forced service obligations, enforced indignities and deprivations, like landlessness.**⁵⁷ In the North, landlessness and dispossession in the context of the war has affected oppressed and marginal caste communities the most; they account for a significant share of those still in camps. The fact that they are landless makes them ineligible for many housing schemes.⁵⁸
29. Whilst **Up-Country Tamils who fled to the North have long been especially vulnerable to exclusion,**⁵⁹ the combination of caste, ethnicity and class discrimination renders their experiences of dispossession almost invisible even elsewhere in the country. For example, whilst the attack on the mosque in Dambulla by a mob led by Buddhist monks in July 2012 received widespread attention, the fact that a *Kali kovil* belonging to an Up-Country Tamil settlement did not is revealing.⁶⁰ In fact, the *kovil* was demolished a year later and the entire community was evicted to make way for a parking lot and an artificial lake without any significant national outcry.⁶¹

⁵² Weerathunga, N. (1988). *Aspects of ethnicity and gender among Rodi of Sri Lanka*, Colombo: ICES;

Uyangoda, J. (1998), *Caste in Sinhalese society, culture and politics*, Colombo: Social Scientists' Association;

Jayawardena, K. (2002), *Nobodies to somebodies: The rise of the colonial bourgeoisie in Sri Lanka*, London: Zed Books.

⁵³ Whilst caste discrimination can be targeted towards any person, it can also perpetuate poverty traps and reinforce systematic marginalisation and discrimination for the poorest and most vulnerable. Women are especially vulnerable to caste-based discrimination, which can compound the discrimination they face along the markers of gender, class and ethnicity.

Silva, K.T., Sivapragasam, P., & Thanges, P. (2009), *Caste Discrimination and Social Justice in Sri Lanka: An Overview, Working Paper Series 3(6)*, New Delhi: Indian Institute of Dalit Studies.

⁵⁴ Lall, A. (2016), Don't tell them where we live: Caste and access to education in Northern Sri Lanka, *Working Paper 49*, London: Secure Livelihoods Research Consortium;

Silva, K.T., Sivapragasam, P., & Thanges, P. (2009), *Caste Discrimination and Social Justice in Sri Lanka: An Overview, Working Paper Series 3(6)*, New Delhi: Indian Institute of Dalit Studies.

⁵⁵ Lall, A. (2016), Don't tell them where we live: Caste and access to education in Northern Sri Lanka, *Working Paper 49*, London: Secure Livelihoods Research Consortium.

⁵⁶ Ibid

⁵⁷ See Silva et al. *supra* note.

⁵⁸ Kadirgamar, A. (2017, March 20th) Dispossession and Landlessness in post-war North, *The Daily Mirror*, retrieved from <http://www.dailymirror.lk/article/Dispossession-and-Landlessness-in-post-war-North-125760.html>. See also Thanges, P.

(2015, December 8th) Caste & Camp People In Jaffna: Land ownership & Landlessness, *Colombo Telegraph*, retrieved from <https://www.colombotelegraph.com/index.php/caste-camp-people-in-jaffna-landownership-landlessness/>

⁵⁹ Ibid.

⁶⁰ Of Sacred Sites and Profane Politics: Tensions over Religious Sites and Ethnic Relations, Vol. II: Deegavapi and Dambulla, Secretariat for Muslims | October 2015.

⁶¹ Ibid.

30. **The silence on caste within state institutions** poses a direct challenge to understanding and addressing caste-based discrimination and to the rights of oppressed and marginal-caste communities.⁶²

Questions

1. What concrete measures have been or will be taken by the State to end caste-based discrimination?
2. Why does the National Human Rights Action Plan not contain any reference to oppressed castes? How will the Government address this?

Recommendations

1. Take concrete steps to identify and address practices of caste-based discrimination in schools and other public and private institutions.
2. Break the culture of official silence on caste-based discrimination by undertaking a comprehensive survey of exclusion based on caste identity, particularly with respect to access to housing, land—including in the post-war North and East—and access to entitlements, such as education and health.

Articles 2.2 and 3—Equality, Non-discrimination and Women’s Rights

Laws that discriminate against women

01. **Article 16 (1) of the Constitution** that preserves all written or unwritten laws in force, including those whose provisions are contrary to the fundamental rights, renders the equal protection of the law ineffective. This tends to affect women disproportionately as it protects discriminatory personal laws as well as laws like the **Vagrants Ordinance** used to criminalise the poor, sex workers and LGBTIQ persons, and the criminalisation of same-sex relations through **sections 365 and 365A of the Penal Code**.
02. With respect to personal laws, **the Muslim Marriage and Divorce Act (MMDA)** allows for under-age marriages, requires women to get the consent of male guardians to marry whilst men can do so up to four times without any conditions and gives husbands a right to unilateral as well as unconditional divorce. Moreover, the position of *Quazis*, the judges constituted under the MMDA, is reserved for men, though it is paid for from public funds. Whilst women’s groups have called for progressive reforms of Muslim personal law for decades, a committee to reform Muslim Law established by the State in 2009 (the Marsoof Committee) has failed to reach consensus after 8 years of deliberations.
03. The **Land Development Ordinance**—a key legislation used to distribute state land—privileges male succession whilst under *Thesawalamai*, **the personal law applicable to**

⁶² Lall, A. (2016). Don’t tell them where we live: Caste and access to education in Northern Sri Lanka, *Working Paper 49*, London: Secure Livelihoods Research Consortium.

Tamils from Jaffna, married women are deprived of their right to alienate their immovable property without the consent of their husbands.⁶³

04. Patriarchal stereotypes continue to be entrenched by way of state regulations. For instance, a **Foreign Employment Bureau circular of 2013 requires the husband's consent for a married woman to work** overseas whilst the same is not required of a husband to work overseas.⁶⁴
05. In 2012, when the need to establish a National Council on Women with an adequate legal and administrative mandate was voiced by the then Minister of Women and Child's Affairs, the Ministry of Finance and Planning discounted the proposal stating that 'a strong legal framework' already existed to protect the rights of women.⁶⁵ Whilst women's organisations continue to stress the **need for an independent, effective and well-resourced national commission on women**, including through the constitutional reform process, a Bill drafted to establish an independent body has not yet been tabled in Parliament.

Political participation and participation in workforce

06. **Women's participation in Parliament amounts to a mere 5.8 percent of the total Members of Parliament and it is less than 2 percent in local government bodies**, which is amongst the lowest in the world. Despite a 2016 law mandating a 25 percent quota for women in local government bodies,⁶⁶ an unfavourable atmosphere that demotes the political participation of women persists.⁶⁷ There appears to be no clear plan to support and implement the legislation.
07. **Women account for only 33.4 percent of the economically active population.**⁶⁸ Whilst key economic sectors of the country, such as tea plantations and the garment sector, have a large proportion of women working in them, the form of employment they generate is low-paid and exploitative (discussed subsequently). The same is true of women migrant workers who contribute a significant share of invaluable foreign remittances.⁶⁹ Moreover, women in the workforce are constantly required to choose between paid labour and unpaid housework. **Studies suggest that about one-third of working women quit their jobs at child bearing age due to the inability to balance childcare and paid work.**⁷⁰ The **gender-pay gap** and

⁶³ Imtiaz, Z. (2017, March 8th), CEDAW asks Sri Lanka to amend Personal Laws, *Daily News*. Retrieved from: <http://www.dailynews.lk/2017/03/08/local/109743/cedaw-asks-sri-lanka-amend-personal-laws>

⁶⁴ Jayaweera, H. (2015, May 29th), Gender, class and migration governance: A labour sending country perspective, *Compass by University of Oxford [Blog]*. Retrieved from: <https://www.compas.ox.ac.uk/2015/gender-class-and-migration-governance-a-labour-sending-country-perspective/>

⁶⁵ Imtiaz, Z. (2017, February 24th), Govt. approve setting up of National Council on Women, *Daily News*. Retrieved from: <http://dailynews.lk/2017/02/24/local/108649/govt-approve-setting-national-council-women>

⁶⁶ By way of amendment of Local Authorities (Special Provisions) Act No 21 of 2012; see also Kodikara, C. (2016, March 14th), The Quota for Women in Local Government: A pledge for parity and a parody in parliament?, *Women and Media Collective*. Retrieved from: <http://womenandmedia.org/the-quota-for-women-in-local-government-a-pledge-for-parity-and-a-parody-in-parliament/>

⁶⁷ Sri Lanka Mirror (2017, March 7th), Ministers Unite to Prevent 25% Female Quota. Retrieved from: <http://srilankamirror.com/news/2191-ministers-unite-to-prevent-25-female-quota>

⁶⁸ Department of Census and Statistics (2013), *Census of Population and Housing 2012*, Colombo: Department of Census and Statistics.

⁶⁹ The Sunday Times (2014, March 09th), If not for Lanka's Suffering Women. Retrieved from: <http://www.sundaytimes.lk/140309/business-times/if-not-for-lankas-suffering-women-87946.html>

⁷⁰ ILO (2013, March 01st), *Women's participation in Sri Lanka's labour force: Trends, drivers and constraints*, Colombo: ILO.

inaccessibility to quality employment also remain concerns in the male-dominated labour market.⁷¹

Women affected by the war

08. Whilst at the forefront of demands for truth and justice, **women affected by the war in the North and the East also bear the brunt of economic problems**, particularly with the loss of land, livelihoods and economic networks, which are often aggravated by the death or disappearance of men. However, the **social and economic costs of the war borne by women are yet to be fully accounted for** and ranges from loss of livelihoods and reduced school years to early marriage and more. Post-war militarisation has also placed additional risks and burdens, especially on girls and women heads of households and women ex-combatants.⁷² The **military occupation of lands has also undermined women's economic security** and the resistance to such occupation has invited threats and reprisals, including rape and sexual violence.
09. The **micro-finance based self-employment schemes have caused severe indebtedness and hardship for women in the North and East** as they have become the prime targets for loans aggressively pushed by private and public financial institutions.⁷³ A recent mapping of **livelihood support programmes in the North and East 'targeting' women-headed households showed up a number of concerns**, from lack of sustainability and coordination to insufficient levels of investment and absence of market linkages.⁷⁴ It almost inevitably follows then that "sometimes programme interventions have negative impacts" and "result in damaging the wellbeing of an already deeply vulnerable segment of the population."⁷⁵

Questions

1. When does the Government intend to establish an independent national commission on women with a wide mandate and adequate institutional and financial resources to frame, guide and oversee legal, policy and administrative measures to end discrimination and all forms of violence against women?
2. What concrete measures have been or will be taken by the Government to ensure secure and decent livelihoods for women in the post-war North and East? How would these counter the many failures of previous programmes and the mounting problem of indebtedness, especially in relation to micro-finance lending-based projects?

⁷¹ The Sunday Times (2016, October 09th), The Gender Pay Gap: Who's really Footing the Bill? Retrieved from: <http://www.sundaytimes.lk/161009/plus/the-gender-pay-gap-whos-really-footing-the-bill-211442.html>

⁷² Minority Rights Group International (2013, October), *Living with insecurity: Marginalization and sexual violence against women in north and east Sri Lanka* (p 8). Retrieved from: <http://minorityrights.org/publications/living-with-insecurity-marginalization-and-sexual-violence-against-women-in-north-and-east-sri-lanka-october-2013/>

⁷³ See, for example, Kadirgamar, A. (2013, June 1st), Banking on Rural Debt, *The Island*. Retrieved from: http://island.lk/index.php?page_cat=article-details&page=article-details&code_title=80359; Wijedasa, N. (2014, December 7th), North in a debt trap, *The Sunday Times*. Retrieved from: <http://www.sundaytimes.lk/141207/news/north-in-a-debt-trap-131679.html>

⁷⁴ United Nations (2015), *Mapping of Socio-Economic Support Services to Female Headed Households in the Northern Province of Sri Lanka*, Colombo: United Nations.

⁷⁵ Ibid. p.39

Recommendations

1. End *de jure* discrimination against women by a) repealing Article 16 of the Constitution, Vagrants Ordinance, and sections 365 and 365 A of the penal code, b) amending the Muslim Marriage and Divorce Act, the *Thesawalamai*, and the Land Development Ordinance.
2. Establish an independent and effective national commission on women with a strong mandate to guide law and policy concerning the full spectrum of women's rights.
3. Implement the recommendations of the Consultation Task Force on Reconciliation Mechanisms with regard to gender justice within the transitional justice process.

Articles 6, 7, 8—Right to Work, Right to Just and Favourable Conditions at Work, and Right to Organise

Informalisation and undermining of permanent and decent work

01. **Nearly 70 percent of Sri Lanka’s labour force is in the growing informal sector** with most of these workers living below the international poverty line and engaged in casual wage labour.⁷⁶ They are largely un-recognised, outside the purview of state protection, mostly unorganised and exploited by subcontracted hiring practices. Many, such as women who roll beedis or men working in mineral mines, also face serious health risks or even premature death.⁷⁷ There are **more women than men engaged in informal and precarious employment.**⁷⁸
02. **Informalisation is increasingly visible in the formal sector, both private and public**, with workers increasingly hired through third-party or ‘manpower’ agencies. These workers get lower wages (even for similar work), fewer benefits and are often not unionized or excluded from unions of permanent workers.⁷⁹
03. **Casualisation and precariousness as a result of ‘manpower’ work is expanding in agriculture**, which is increasingly commercialised with large companies cultivating for export.⁸⁰ This is also leading to peasants, including those dispossessed or landless, working as ‘manpower’ workers on these plantations/farms.⁸¹ The vulnerability inherent was underlined when, in November 2016, Dole abandoned its banana plantation in Kantale without fully compensating more than 100 workers hired through a manpower agency.⁸²
04. In the industrial and service sector, **trade unions have expressed concern over the limited number of labour officers and inspectors, and lack of commitment and dedicated resources to ensure effective monitoring and inspections** of factories and workplaces. Reportedly, the labour officers and inspectors are not even given an adequate travel allowance to make factory visits.

⁷⁶ The international poverty line is defined as being at \$1.90 per day. Gunasekara, V. (2015), Unpacking the Middle: A Class-based Analysis of the Labour Market in Sri Lanka, *Southern Voices Post-MDG International Development Goals, Occasional Paper Series* (22). Retrieved from <http://southernvoice.org/wp-content/uploads/2015/02/SV-OP-22.pdf>.

⁷⁷ Consultation with activists, trade unionists and civil society members, March 16th 2017

⁷⁸ Gunasekara, V. (2015), Unpacking the Middle: A Class-based Analysis of the Labour Market in Sri Lanka, *Southern Voices Post-MDG International Development Goals, Occasional Paper Series* (22). Retrieved from <http://southernvoice.org/wp-content/uploads/2015/02/SV-OP-22.pdf>.

⁷⁹ Symposium deliberations on labour organised by the Law and Society Trust (LST) and the Social Scientists’ Association (SSA) on 16th December 2017

⁸⁰ Major cash crops include tobacco, banana and palm oil. Nelna, Marina, Dole and Browns are some of the large multinational and Sri Lankan corporations involved.

⁸¹ Interview with Chinthaka Rajapakse, Moderator at the Movement for Land and Agricultural Reform on 23rd of March 2017.

⁸² Sanjeeva, K. (2016, December 4th), Dole flees from Kanthale (loosely translated from Sinhala), *Ravaya*. Retrieved from: <http://ravaya.lk/?p=48375%3Ehttp://ravaya.lk/?p=48375>

Minimum wage is insufficient for and inaccessible to many workers

05. The Parliament passed amendments to the National Minimum Wage Act in 2016,⁸³ ensuring a minimum monthly wage of LKR 10,000 per month and a minimum daily rate of LKR 400 for workers in the private sector. According to some estimates, however, **this minimum wage is almost three times less than what would constitute a decent living wage** for an individual given the costs of living.⁸⁴ The wage level set is really a political compromise without a clear basis in terms of principle and needs. Moreover, **the law lacks a clear and effective mechanism for both effective enforcement and periodic revision** of the minimum wage.⁸⁵
06. Moreover, **minimum wage legislation bypasses many workers**, including those in the informal sector, those not unionised, those on daily wages (plantation workers, for example), and many who are not even recognised as workers, such as domestic workers. The other danger is that in practice this wage, in reality a floor, may well become a ceiling.

The state and judiciary are hostile towards unions and the right to organise and strike

07. **Collective action and strikes are restricted by many conditionalities in law**, including fixing of the proportion of workers represented in a union at a given workplace, legal recognition of unions and sweeping powers to declare sectors as ‘essential services’. **The ILO has called on the Government to take corrective legislative measures in this respect, but this remains ignored.**⁸⁶
08. Trade unionists consulted in the course of preparing this report underlined **the tendency of the courts to restrict standing or the ability to represent workers and the issuance of injunctions to stop strikes and collective actions without adequate cause**, as major concerns.⁸⁷ Amongst other concerns raised by activists were surveillance and intimidation as well as impunity for excessive state violence against workers, such as the police shooting of Roshen Chanaka during a protest by FTZ workers on May 30th 2011. The report of the inquiry into the incident has not been made public as yet.
09. Activists also report that **union busting measures have also expanded and include establishing workers’ councils or welfare societies or giving low-interest loans, benefits**

⁸³ The Wages Boards Ordinance or the Shop and Office Act of 1954 states to whom the minimum wage shall apply.

⁸⁴ Gunasekara, V. (2016, October 30), Struggling For Security: Sri Lanka’s Informal Sector, *Roar.lk*. Retrieved from: <http://roar.lk/economy/sri-lankas-informal-sector-workers-need-social-security/>

⁸⁵ Gunawardena, D. (2016, March 27th), Proposed national minimum wage law: Preliminary victory for workers, *The Sunday Times*. Retrieved from: <http://www.sundaytimes.lk/160327/business-times/proposed-national-minimum-wage-law-preliminary-victory-for-workers-187429.html>

⁸⁶ ILO Committee on Freedom of Association in Case No. 2380

⁸⁷ A recent Supreme Court judgment (Ceylon Electricity Board Accountants’ Association v Hon. Patali Champika Ranawaka) established that trade unions could not come under the definition of a ‘person’ as required by Article 126 of the Constitution, which allows for any executive or administrative action that has or may violate any fundamental rights to be reviewed by the Court. This approach gravely restricts the ability of trade unions to prevent or rectify any abuse of power by government bodies by their own initiative.

and other incentives to keep workers away from unions.⁸⁸ The Board of Investment and the Department of Labour are widely seen as colluding in union busting.⁸⁹

Up-country Tamil workers in plantations

10. As underlined elsewhere in this report, the Malaiyaha Makkal or Up-Country People are amongst the poorest in the country. **The wages and other benefits of plantation workers continue to be set by biennial Collective Agreements (CAs) involving major unions, the federation of employers and the Government.** The last CA was signed in 2016, after more than a year's delay, but the revised wages were set at Rs. 730, which amounted to an increase of Rs. 110. The demand, however, was for a wage of Rs. 1000 per day, which led to protests against the meagre wage increment and that too for an increased workload.⁹⁰
11. The **CA system continues to keep workers on daily wages**, but as union and NGO representatives have noted, it does not address several other key issues including: a) the inconsistent and even declining number of days of work, b) recruitment of older workers or workers on a part-time basis who work for low wages and c) failure of many companies to meet their statutory social security obligations (discussed further below).

Women workers

Women workers in agriculture

12. Women's labour in agriculture is often **undervalued and unpaid**, and with gendered roles assigned to them, **women's wages are often lower** than that of male workers.⁹¹ Women also face *de jure* discrimination as the Land Development Ordinance privileges male inheritance. In addition to the burden of gendered roles, such as collecting water or firewood, women from agricultural households are more likely to own minor assets or smaller livestock, whilst **men are more likely to own larger livestock, land and major equipment.**⁹² The commercialisation of agriculture and displacement of small-scale farmers is likely to further marginalise women in agriculture.

Up-Country women workers in plantations

13. Women workers on plantations have a long history of being vulnerable to violence and abuse at the hands of estate owners, company officials and supervisors, including from their own community. They suffer from a number of specific problems, including:

⁸⁸ Activists and civil society members pointed out that the company, ATG Gloves, has an alternative model called the MAHISA club—where workers who do not join unions are provided with a loan system where the company pays 5 percent of the interest. Consultation with activists, trade unionists and civil society members, March 16th 2017.

⁸⁹ Consultation with activists, trade unionists and civil society members, March 16th 2017.

⁹⁰ The basic daily wage for the first three days of work was only increased from 450 to 500 rupees per day. The price supplement share of 30 rupees per day was left unchanged and is dependent on tea prices whilst the attendance allowance was reduced from 140 rupees to 60 rupees per day and will only be paid to workers who maintain 75 percent attendance out of 25 monthly working days. See Sunil, W.A. (2016, October 24th), Sri Lankan plantation workers protest union wage deal, *World Socialist Web Site*. Retrieved from: <https://www.wsws.org/en/articles/2016/10/24/plan%5D-o24.html>

⁹¹ Interview with Sumika Perera, Coordinator at the Women's Resource Centre, on 24th of March 2017

⁹² The Sunday Times (2015, November 15th), Oxfam-Monash report provides key insights into women's participation in village economic activity. Retrieved from: <http://www.sundaytimes.lk/151115/business-times/oxfam-monash-report-provides-key-insights-into-womens-participation-in-village-economic-activity-171367.html>

- a. Since **women work longer shifts than men**, and wages are paid in the afternoon, it is usually the **male workers who go to collect women's wages**. As a result, women workers often find their wages being partially consumed or even pilfered.⁹³
 - b. Even though the law stipulates that maternity benefits must be paid to the woman,⁹⁴ it has become **common practice for the husband or a male relative to collect the cash maternity benefit** and it is often vulnerable to being wholly or partly consumed by men or pilfered.
 - c. **Health and safety measures are woefully inadequate** for women with toilet facilities being insufficient or even non-existent in the fields.⁹⁵
 - d. **Statutory and welfare payments are often severely delayed** affecting the social security of the workers.
14. Declining work on the plantations and household poverty are forcing women into other forms of informalised or precarious work, such as domestic work within or outside the country. This makes them vulnerable to unscrupulous agents operating in the plantations seeking to recruit or in some cases even traffic women.

Women workers in the garment sector in export processing free trade zones (FTZs)

15. Whilst all of the workers in FTZs face significant challenges, research has shown that **women workers in garment factories are more likely to be paid lower. Furthermore, women workers are more likely to work longer overtime, have lower levels of education and face verbal abuse.**⁹⁶ Activists and organisations consulted raised several other concerns, including:
- e. **Casualisation of work through third-party or manpower agency hiring practices.** It was pointed out that sometimes workers are sent in rotation from factory to factory and job to job—sometimes women may be asked to work in a garment factory during the day and elsewhere at night.⁹⁷
 - f. **Tamil women workers from the North and East are most vulnerable** to exploitation at and outside of the workplace as they lack language skills and are far from home and support networks.⁹⁸

⁹³ Receiving wages for labour directly and in person is not only a right but also important from the point of view of asserting the dignity of the workers and the employer-employee relationship. The right of the worker to receive his or her wages directly and the duty of the employer to honour this right is clearly recognised in national and international labour laws. Section 2 of Sri Lanka's Wages Board Ordinance (1941) states that the employer shall pay "wages in legal tender directly to the worker." This is a reflection of ILO standards reflected in Article 28 of the Plantations Convention, 1958 (No. 110) and even earlier in Article 5 of the Protection of Wages Convention, 1949 (No. 95), both of which state: "Wages shall be paid directly to the worker concerned except as may be otherwise provided by national laws or regulations, collective agreement or arbitration award or where the worker concerned has agreed to the contrary."

⁹⁴ Section 8 of the Maternity Benefits Ordinance (1941) clearly states that: "The amount of maternity benefit for the period up to and including the day of confinement shall be paid by the employer to the woman within forty-eight hours of the production of such proof of confinement as may be prescribed."

⁹⁵ Civil society members pointed out how in plantations, when supervisors and field officers are all men, women face many difficulties in accessing proper sanitation. However, activists/trade unionists were laughed at when asked to build toilets in tea estates where workers work throughout the day: "What toilets in these mountains?" cited in Symposium deliberations on labour organised by the Law and Society Trust (LST) and the Social Scientists' Association (SSA) on 16th December 2017.

⁹⁶ Hancock, P., Carastathis, G., Georgiou, J., & Oliveira, M. (2015), Female workers in textile and garment sectors in Sri Lankan Export Processing Zones (EPZs): Gender Dimensions and Working Conditions, *Sri Lanka Journal of Social Sciences* 38(1), 63-77.

⁹⁷ Consultation with activists, trade unionists and civil society members, March 16th 2017.

⁹⁸ Symposium deliberations on labour organised by the Law and Society Trust (LST) and the Social Scientists' Association (SSA) on 16th December 2017

- g. In some cases, foreign investors have fled the country deserting many workers with no pay.⁹⁹
- h. Women workers are also **pressurised by incentive-based competitiveness**, which make workers work long hours,¹⁰⁰ often under very difficult circumstances, such as under severe heat for hours on their feet.¹⁰¹
- i. Women workers **living in factory-provided hostel accommodation face surveillance and discipline** (security guards, restrictions on visitors, signing in and out, and curfews). But accommodation outside also poses other challenges and risks to women workers.

Domestic workers

16. **Women account for an overwhelming majority of domestic workers**, a sector reinforced through a legally maintained heteronormative divide between private-public spheres, which legitimises a gendered and sexualised division of domestic and care work.¹⁰² **Under the Domestic Servants Ordinance No. 28 of 1871, domestic workers are ‘recognised’ as servants.** This socially entrenched and legalised notion of servitude exposes women domestic workers to multiple forms of deprivation and vulnerabilities, including low wages, no fixed hours of work or leave, exploitation, and physical and sexual violence.¹⁰³ Women domestic workers employed by ‘manpower’ agencies are also vulnerable to being bullied or exploited. Despite the efforts of the Domestic Workers’ Union, **domestic workers were not recognised in the recently passed minimum wages legislation.**

Women migrant workers

17. Sri Lankan migrant workers in the Middle East, especially **women domestic workers, are highly vulnerable to various forms of abuse and grave miscarriages of justice.**¹⁰⁴¹⁰⁵ Present memorandums of understanding (MoUs) between Sri Lanka and host countries “mention nothing about the protections provided to women migrant workers except protections and rights provided under existing labour laws of the destination countries”.¹⁰⁶
18. In July 2013, Sri Lanka’s **Ministry of Foreign Employment issued a circular, which makes it mandatory for women to obtain permission from their husbands or fathers to**

⁹⁹ Symposium deliberations on labour organised by the Law and Society Trust (LST) and the Social Scientists’ Association (SSA) on 16th December 2017

¹⁰⁰ Symposium deliberations on labour organised by the Law and Society Trust (LST) and the Social Scientists’ Association (SSA) on 16th December 2017

¹⁰¹ Symposium deliberations on labour organised by the Law and Society Trust (LST) and the Social Scientists’ Association (SSA) on 16th December 2017

¹⁰² Jayasekara, P. (2016, December), From the Estate to Domestic work: Women’s Labour and the Political Economy of Heteropatriarchy, *LST Review: Queering the Law*, 27 (341), p.32

¹⁰³ Kandasamy, M. (2014), From Plantations to Domestic Labour: The New Form of Exploitation and Political Marginalisation of Women, *SSA Pamphlet Series* (6). Retrieved from <https://www.scribd.com/document/238707527/From-Plantations-to-Domestic-Labour-The-New-Form-of-Exploitation-and-Political-Marginalization-of-Women>

¹⁰⁴ Women and Media Collective (2017), Sri Lanka Shadow Report To the Committee on the Elimination of All Forms of Discrimination against Women (CEDAW).

¹⁰⁵ In 2013, Saudi Arabia executed Sri Lankan housemaid Rizana Nafeek who was sentenced to death on the charge of murdering the son of her Saudi employer despite calls from international human rights groups to spare her life. 17 years of age when she went abroad on a forged passport prepared by recruiting agents (a common occurrence in Sri Lanka), Rizana retracted a confession that she said was made under duress. Despite this, she was incarcerated in Dawadmi prison since 2005. She had no access to lawyers and competent interpreters during her interrogation and trial. Rizana had no access to legal counsel until after a court in Dawadmi sentenced her to death by beheading in 2007.

¹⁰⁶ Women and Media Collective 2017

migrate.¹⁰⁷ This practice is discriminatory on the basis of sex, parental status and age, and arbitrarily restricts freedom of movement.¹⁰⁸

19. Overall, protection and support for workers against exploitation and gender-based violence in destination countries are inadequate. **Migrant workers are also vulnerable to exploitation by recruitment agencies** that siphon their money with little guarantees of secure or decent jobs. It is common for local recruiters to keep passports of applicants in their possession and exert pressure on women in case they change their mind about going through with the migration process.¹⁰⁹
20. There is an urgency to reformulate the Sri Lanka Bureau of Foreign Employment (SLBFE) Act to clearly enforce the protection of migrant workers and as well as regulating of foreign employment agencies. Even though the objectives of the SLBFE are responsible for the welfare and protection of Sri Lankans employed outside Sri Lanka, in practice the **SLBFE only protects the migrant workers registered under it, as insurance and other facilities are granted only if the fee is paid.** The insurance needs to be paid once in two years, but most of the migrant workers whose in-service period is longer sometimes are refused the services by SLBFR for not renewing their insurance knowingly or unknowingly. Some women migrant workers who have faced difficulties during the in-service period are kept in badly run detention camps until the sponsor provides an air ticket.¹¹⁰

Criminalisation of Sex workers

21. Sex work *per se* is not illegal in Sri Lanka, but the criminalisation of many of its outward manifestations, primarily under **the Vagrants Ordinance¹¹¹ and the Brothels Ordinance¹¹², renders this occupation and those who practice it *de facto* criminal.** Based on these laws, sex workers operating on the street, in massage parlours or hotels, and in possession of condoms, are arrested and are subjected to violence and exploitation by the police. **Transgender sex workers face specific vulnerabilities whilst in police custody.**

¹⁰⁷ The circular also sets a minimum age requirement higher than 18 years for female migrant hopefuls: Saudi Arabia – 25; Other Middle-East Countries – 23; Other Countries – 21. It makes it mandatory for the local government official to issue a *Family Background Report* (FBR). This effectively bans women with children under the age of five or with disabilities from migrating overseas whilst others can migrate only “if the safety of children can be assured”.

¹⁰⁸ Women and Media Collective (2017), Sri Lanka Shadow Report to the Committee on the Elimination of All Forms of Discrimination against Women (CEDAW).

¹⁰⁹ There is a common illegal practice of local recruiters keeping passports in their possession in the event of a visa applicant changing her mind about migrating (for example, following the training period where she is informed of what is to be expected abroad or even in the instance that a child suddenly falls sick). Recruiting agents in such instances are prone to saying – ‘we have spent this amount for your health tests and processing of papers; now you must go abroad through our agency’. If she refuses, the common practice is that the agency keeps her passport and demands a large sum of money if she wants it back. They also threaten to blacklist the migrant. There are reported incidents of these agencies deceiving the workers and sending them to places of work against the agreement—such as for sex-work—and exposing them to various forms of brutality. When such cases are reported, the SLBFE only blacklists the agency. Instead, such activities must be taken under trafficking laws.

¹¹⁰ The Act stipulates the government regulatory arm of the foreign employment, the SLBFE, to appoint 11 directors of which 4 are to represent Foreign Employment Agencies. There are none to represent the migrant workers and their families. There is an ‘Association of Licensed Foreign Employment Agencies’ (ALFEA) set up under the SLBFE Act, but there is no such body set up to look after the interest of the migrant workers and their families.

¹¹¹ Vagrants Ordinance (1842)

¹¹² Brothels Ordinance (1889)

22. **Sri Lanka’s Anti-Trafficking provisions¹¹³ conflates trafficking for sexual exploitation with sex work, further amplifying the precariousness of sex workers.** The concept of consent and the understanding of exploitation are at the heart of this conflation. As a result of conflating sex work with trafficking, migrant sex workers are particularly targeted. Authorities target migrant sex workers ostensibly as victims of trafficking. However, many sex workers report harassment by officials when attempting to travel abroad.¹¹⁴

LGBTIQ persons and discrimination at work

23. LGBTIQ persons’ right to work in Sri Lanka is often violated. LGBTIQ persons have lost or have been refused employment or promotions or are otherwise discriminated against due to their gender identity or sexual orientation.¹¹⁵

Questions

1. What concrete measures have been or will be taken by the Government to safeguard permanent work in the country, especially in the face of burgeoning third-party or manpower recruitment practices?
2. What concrete measures have been or will be taken by the Government to ensure that the right to strike and right to freedom of association of workers are fully and effectively safeguarded, including in free trade zones?
3. Given that an overwhelming proportion of workers are in the informal or unorganised sector, what measures have been or will be taken by the Government to ensure decent work and living wages for this workforce?
4. Does the Government intend to sign and ratify ILO Convention 189 on domestic workers? If so, when and what measures will the Government take in the meantime to ensure full recognition of domestic work and the rights of domestic workers? Will the Government amend archaic laws that stipulate a notion of servitude for domestic workers?

Recommendations

1. Take concrete steps to enhance access to social security and a living wage indexed to the cost of living to all workers, including in the informal sector.
2. Remove restrictions on the right to strike and freedom of association of workers that are in keeping with international standards and take clear measures to check union busting and undermining of trade unions in the public and private sectors.
3. Take concrete steps to stop unfair and exploitative practices, such as the use of manpower workers and unequal pay as well as benefits for work of equal value.

¹¹³ Section 360C of the Penal Code (Amendment) Act, No 16 of 2006.

¹¹⁴ The law is often applied in a discriminatory manner targeting female, male and transgender sex workers from economically disadvantaged backgrounds. As these restrictions make it increasingly difficult to travel, sex workers need the assistance of third party agents to facilitate travel abroad. Dependency on brokers increases the cost of migration and exposes sex workers to possible fraud and extortion. Sex workers thus are highly vulnerable to exploitation when they attempt to travel.

¹¹⁵ For example, a staff member of EQUAL GROUND, a prominent LGBTIQ rights organisation in Colombo, was reportedly threatened and extorted by two police officers for his gender identity and for working for such an organisation. Activists bring evidence of LGBTIQ persons who have lost employment due to their gender identity or who have been refused employment or promotions or even in the nature of their work or job description based on their gender identity—cited in EQUAL GROUND (2016), *Human Rights Violations Against Lesbian, Gay, Bisexual And Transgender People In Sri Lanka—A Shadow Report. Submitted For Consideration At The Fifty-Ninth Session of The Committee on Economic, Social And Cultural Rights (Pre-Sessional Working Group)*, p. 9

Article 9—Poverty and Right to Social Security

Persistent pockets of poverty and widening inequality

01. Whilst poverty in some absolute terms¹¹⁶ has reduced from 23 per cent (2002) to 6.7 percent (2012/13), a significant proportion of the population is near poor. About **40 per cent of the population lives on less than 225 rupees (app. UD \$ 1.5 per person) per day¹¹⁷ and multidimensional poverty measures classify an additional 1.9 million people as poor.**¹¹⁸ Moreover, levels of inequality have steadily increased,¹¹⁹ and leave many at risk of falling into extreme poverty due to shocks such as illness, inflation, natural disasters, etc.
02. There are also entrenched pockets of poverty—urban areas such as Colombo, the Estate/Plantation sector, war-affected districts such as Batticaloa, Mullaitivu, Kilinochchi, and other districts such as Moneragala and Puttalam.¹²⁰ Their vulnerability is aggravated by the fact that the **State’s spending levels on education and health as well as expenditure on social protection programmes have not kept pace (in relative terms) with GDP growth.**¹²¹
03. **Existing social security and protection programmes in Sri Lanka, as discussed below, are inadequate on many counts to address the many dimensions of poverty and vulnerability.** Moreover, informal sector workers, who constitute almost 70 percent of the workforce, are almost entirely excluded from existing social security schemes.

EPF/ETF—the primary social safety net for workers is under threat

04. **The Employees Provident Fund (EPF) and the Employees Trust Fund (ETF), the primary social security funds for workers in the formal sector, are under threat** due to inappropriate leveraging in financial markets, mismanagement, and lack of transparency and

¹¹⁶ Based on Rs. 120 a day per day per capita expenditure—The Centre for Poverty Analysis (2017, January 08th), Magic ‘line’ that makes us rich or poor, *The Sunday Times*. Retrieved from: <http://www.sundaytimes.lk/170108/business-times/magic-line-that-makes-us-rich-or-poor-222743.html>.

The absolute poverty line is measured based on minimum food and non-food needs of an individual, such as food, clothing, shelter, energy and health needs. There are shortcomings in money metric measures in terms of outcomes in health, education and living conditions. Money metric poverty measures do not take into account calorie requirement for a hard day’s work or of those who are chronically ill. It also does not take into account access and progress in education or living conditions, such as houses without electricity, no access to clean water, sanitation etc.,

¹¹⁷ The World Bank (2016, February 16th), Poverty has Fallen in Sri Lanka but Fiscal, Growth, and Inclusion Challenges Need to Be Tackled to Sustain Progress, *The World Bank*. Retrieved from: <http://www.worldbank.org/en/news/press-release/2016/02/16/poverty-has-fallen-sri-lanka-but-fiscal-growth-and-inclusion-challenges-need-to-be-tackled-to-sustain-progress>

¹¹⁸ The Centre for Poverty Analysis (2017, January 08th), Magic ‘line’ that makes us rich or poor, *The Sunday Times*. Retrieved from: <http://www.sundaytimes.lk/170108/business-times/magic-line-that-makes-us-rich-or-poor-222743.html>.

¹¹⁹ The World Bank (2015), *Sri Lanka Ending Poverty and Promoting Shared Prosperity*, Colombo: The World Bank.

¹²⁰ Puttalam has also been home to thousands of displaced Northern Muslims expelled by the Tamil Tigers in October 1990.

¹²¹ World Bank (2015): 46-47

accountability.¹²² The lack of information regarding the criteria used to select investors and the nature of investments,¹²³ which is further cemented by the range of exceptions likely to render the Right to Information Act ineffective in this context raises serious concerns.

05. **Many plantation companies, state-owned ones in particular, have not been remitting their EPF and ETF contributions** potentially compromising the social security of the workers.¹²⁴ Apart from being a breach of the law, this also results in immediate hardships, such as children of estate workers, already amongst the poorest in the country, failing to secure benefits accorded under certain schemes.¹²⁵

Samurdhi—A social protection scheme too weak to protect

06. Spending levels on education, health and social protection have failed to keep up with GDP growth.¹²⁶ **In 2015, public expenditure on education and health was 2.07 and 1.3 per cent of GDP respectively, far below the stipulated 6 and 3 per cent of GDP respectively.**

07. Sri Lanka's main social protection programme, **Samurdhi, suffers from a number of shortcomings** though it is critical for the poor and near poor:
- The **transfers are meagre** and at poverty line levels.¹²⁷
 - It is **not rights based**. Samurdhi is a scheme and its entitlements have no constitutional or legal foundation and are thus amenable to arbitrary changes as per executive discretion.
 - Paternalist rather than empowering in orientation with **high levels of coercion and control in imposition of conditionalities**; this includes mandatory deductions that are arbitrary.¹²⁸ Samurdhi recipients, a very large proportion of whom are women, are pressed into 'voluntary' activities, such as cleaning public places or canals.¹²⁹
 - High level of **arbitrariness, lack of transparency and accountability** in the administration of the scheme.¹³⁰ This enables further concentration and arbitrary exercise of their power by Samurdhi officers, often political appointees.
 - Samurdhi has become **increasingly loan based**, with cheap loans becoming an exit pathway.¹³¹

¹²² The Island (2015, November 9th), Unions ask govt. not to meddle with EPF and ETF. Retrieved from: http://www.island.lk/index.php?page_cat=article-details&page=article-details&code_title=135062

¹²³ Government securities, listed and unlisted equities, corporate debentures, etc.,

¹²⁴ The Island (2013, December 2nd), "What happened to plantation workers' EPF deductions", asks Sajith. Retrieved from: http://www.island.lk/index.php?page_cat=article-details&page=article-details&code_title=93287

¹²⁵ See Minutes of the 2nd Meeting of the National Labour Advisory Council, Labour Secretariat, 08 July 2015, available at www.wedabima.lk/file/2015/10/MINUTES-of-the-July-meeting.doc.

¹²⁶ World Bank 2015:46-47

¹²⁷ Poor households with four or above number of members are entitled to get 3500/= as monthly Samurdhi allowance while poor households with three members and two members are entitled to get Rs.2500/= and 1500/= respectively. But deductions from these allowances for compulsory savings, security and a housing lottery further reduce net transfers.

¹²⁸ Recipients lose a minimum of 10 percent of already very low levels of transfers by way of various deductions, which could go up to 16 percent or even higher. This includes forced savings, which cannot be accessed until recipients are 70. They are also compelled to make various other contributions, such as towards anti-smoking campaigns and festivals.

¹²⁹ This has the effect of re-emphasising the lower status of the Samurdhi beneficiary households and women in the communities.

¹³⁰ For example, officials report that from the end of 2017, the number of Samurdhi recipients has to be cut by 10 percent annually. Therefore, there are arbitrary caps on the number of Samurdhi beneficiaries in districts, meaning that many deserving families are excluded.

¹³¹ Officials also report that under the reforms currently being considered, Samurdhi beneficiaries will be encouraged to exit the programme by giving them livelihood loans at 5 percent interest. There is significant evidence to suggest that loan-based livelihood/self-employment programmes for women have failed and have increased the burden of debt. The impact on poor

- f. Even though they should be considered shareholders due to the capital accumulated from compulsory savings, **Samurdhi households are never consulted in decision-making regarding the use of the money** in Samurdhi banks.
- g. There is a **lack of sex disaggregated data** on different aspects of the scheme.

08. In 2015, the Government began an ambitious programme to reform the entire social protection and welfare system in the country. This includes amalgamating or converging several schemes and significant changes to Samurdhi but the reforms **process, which is being supported by the World Bank, is not transparent and appears to be focussed on efficiency at the cost of justice.**¹³² Of particular concern is how these **welfare reforms, which are being undertaken without extensive consultation,** will impact or respond to the needs of women, especially female heads of households, persons with disabilities, the elderly and war-affected communities.

Questions

1. What concrete and time-bound measures have been or will be taken by the Government to end poverty and ensure protection of those at risk of poverty? How will Sri Lanka achieve its commitments under the Social Development Goals (SDGs) to leave no one behind?
2. What measures have been or will be taken by the Government to safeguard the interest and rights of workers in the management of the Employees Provident and Employees Trust funds? In particular, what action will the Government take to ensure that all companies, especially public and private planation companies, pay their contributions into the funds?
3. Can the Government outline the planned reforms to the social security programmes, especially Samurdhi, pensions and related measures, and how these will expand and enhance universal access to meaningful social protection?

Recommendations

1. Take concrete measures to ensure effective social security for the large mass of workers who are in the informal or unorganised sector.
2. Ensure that reforms of schemes such as Samurdhi and integration of other such measures ensure a rights-based approach centred on justice and accountability rather than only on efficiency. Also guarantee universal and dignified access to meaningful levels of social protection, especially for women, persons with disabilities, the elderly and war-affected communities.

women in rural areas, including estate and more so the war-affected areas, are especially severe as women are often targeted for loan-based schemes.

¹³² Nagaraj, V.K. (2016, March 20th), SL's poor not just poor but destitute and barely managing to survive, *Sunday Times*. Retrieved from: <http://www.sundaytimes.lk/160320/business-times/sls-poor-not-just-poor-but-destitute-and-barely-managing-to-survive-186680.html>

Article 10—Rights within the Family and its Members

Gender inequality and violence within the family

01. **As detailed in the discussion under Articles 2, 3 and elsewhere in this report, there are many laws or legislative provisions in Sri Lanka that perpetuate gender inequalities within the family.** These must be repealed or reformed to ensure full equality within the family and must include:
- a. Article 16 of the Constitution that safeguards all written and unwritten laws in existence that are contrary to fundamental rights guarantees;
 - b. The Land Development Ordinance that privileges the eldest male in matters of succession;
 - c. The Muslim Marriage and Divorce Act that places various disabilities on women and exposes children to early marriage as it does not stipulate 18 years as the minimum age of marriage;
 - d. Non-recognition of marital rape as a crime except when it occurs during judicial separation;
 - e. *Thesawalamai*, the customary law applicable to Jaffna Tamils, which constrains a married woman from transacting in property without the husband's permission; and,
 - f. Restrictions imposed only on mothers seeking to migrate overseas in search of work, including the need to secure permission from the husband;
02. **The criminalisation of same-sex relations means that the family in Sri Lanka is defined in heteropatriarchal terms as being built around a male-female union.** This effectively denies the right to a meaningful family life for LGBTIQ persons. Same-sex relationships or co-habitation is often criminalised by making out a crime of abduction against those in same-sex relationships¹³³. Activists have recorded incidents of forced marriage, especially of lesbians, which have also led to suicides of LGBTIQ persons.¹³⁴
03. **Marital rape is not an offence punishable under the law, except under circumstances of judicial separation,** even with the 'National Action Plan Policy Framework and National Plan of Action to address Sexual and Gender-based Violence in Sri Lanka 2016-2020'. Gender-based violence is frequently reported, with women heads of households, women ex-combatants, women with disabilities and internally displaced women being at higher risk.¹³⁵ The inability to afford a dowry also increases the likelihood of violence.¹³⁶

¹³³ EQUAL GROUND (2016) at p.4

¹³⁴ EQUAL GROUND (2016) at p.13

¹³⁵ Shadow Report to the United Nations Committee on the Elimination of Discrimination Against Women, 8th Periodic Review of Sri Lanka, 2016.

¹³⁶ Jayathilaka, D., & Amirthalingam, K. (2015, February), The Impact of Displacement on Dowries in Sri Lanka, Washington D.C.: The Brookings Institute. Retrieved from: <https://www.brookings.edu/wp-content/uploads/2016/06/The-Impact-of-Displacement-on-Dowries-in-Sri-Lanka-Feb-2015.pdf>

04. **The Prevention of Domestic Violence Act of 2005 provides for protection orders as a civil remedy in cases of domestic violence but is rarely used,**¹³⁷ with the police more often than not preferring to ‘reconcile’ husband and wife. There are no official statistics on the number of cases filed under the PDVA but data from 2009 indicates, for example, that whilst the Children and Women Bureau Desks (CWBDs) of the Department of Police recorded 90,000 cases of ‘family disputes’, they filed only 55 cases under the PDVA that year.¹³⁸ Moreover, lawyers, judges and counselors prefer to keep the family together, thereby exposing women to a significant risk of violence within the family.¹³⁹
05. A large number of women prefer to use the Maintenance Act of 1999 to claim support for themselves and their children, which the courts seem more amenable to even though or precisely because in practice it continues to perpetuate the trope of ‘dependent wives or mothers’.¹⁴⁰ Nevertheless, **securing maintenance also faces many challenges** ranging from reluctance of the police to deliver summons and proving the income of respondents to low level of payments ordered by courts and non-compliance or inconsistent compliance with court orders.¹⁴¹
06. **Women’s access to justice in cases of sexual and gender-based violence is heavily constrained due to the delays in law and the entrenched impunity enjoyed by perpetrators.** According to the Report of the Leader of the Opposition’s Commission on the Prevention of Violence against Women and the Girl Child (2014), whilst the number of complaints of rape received by the Police have steadily increased, between 2007 and 2013 complaints were filed in only about 20-25 percent of reported rape cases and there were very few convictions. And even convictions are blunted by inadequate or suspended sentences; for example, in one case the sentence was suspended on the ground that the perpetrator was the sole breadwinner of the household.¹⁴²
07. **The Action Plan prepared in 2016 by the Prime Minister’s Task Force on Violence against Women**¹⁴³ makes far-reaching recommendations to address sexual and gender-based violence. However, there is also a ‘**National Action Plan Policy Framework and National Plan of Action to address Sexual and Gender-based Violence in Sri Lanka 2016-2020.**’ But it remains unclear as to how these will be integrated and their implementation overseen, especially in light of the draft National Human Rights Action Plan, which also contains several key measures to address discrimination and violence against women.

¹³⁷ The victim is able to get a restraining order from the abusive spouse according to the Domestic Violence Act No.34 of 2005; Also see: Kodikara, C. (2012), Only Until the Rice is Cooked? The Domestic Violence Act, Family Ideology and Cultural Narratives in Sri Lanka, *ICES Working Paper Series I*. Retrieved from: <http://www.wluml.org/sites/wluml.org/files/ICES%20Working%20Paper%20Series.pdf>

¹³⁸ Kodikara, C. with Piyadasa, T. (2012), *An Exploratory Mapping of Domestic Violence Intervention Services in Sri Lanka 2009–2011*, Revised edition, Colombo: International Centre for Ethnic Studies.

¹³⁹ Kodikara (2012), see also Kodikara, C. (2014), *Balancing Acts: Counselling for Intimate Partner Violence against Women in the Two Districts of Anuradhapura and Batticaloa*, Working Paper No. 6, Colombo: International Centre for Ethnic Studies.

¹⁴⁰ Kodikara, C. (forthcoming), Battered Wives or Dependent Mothers? Negotiating Familial Ideology in Law

¹⁴¹ Ibid.

¹⁴² *AG v Sampath S.C.* Appeal No. 17/2013

¹⁴³ Previously the Leader of the Opposition’s Commission on the Prevention of Violence against Women and the Girl Child.

Violence against children

08. According to UNICEF, **over 1500 cases related to violence against children are reported per year and close to a third of cases in the High Courts relate to a child victim.**¹⁴⁴ Over a half of all crimes reported against children are committed by known persons, including parents and other relatives.¹⁴⁵ Moreover, out of about 15,000 legal trials pending nationwide, more than 4,000 (27 percent) involve some form of violence towards a child.¹⁴⁶ **According to some estimates, (in 2013) there are roughly 17 cases of child abuse for every 100,000 people in Sri Lanka.**¹⁴⁷
09. The **National Child Protection Authority of Sri Lanka (NCPA) received 10,315 complaints of child abuse in the year 2014 and 10732 for the year 2015.**¹⁴⁸ In 2015, the highest number of complaints (2317) was related to cruelty to children, 1463 cases of not receiving compulsory education, 885 cases of neglect, 735 cases of sexual harassment, 433 cases of sexual harassment and 365 cases of grave sexual abuse.¹⁴⁹ Colombo, Gampaha and Kaluthara had the highest number of complaints, followed by Rathnapura, Anuradhapura and Puttalam.¹⁵⁰
10. According to UNICEF Sri Lanka, “a recent study involving 194 parents in Colombo, found that 40.7 percent of parents had kicked, choked, beaten, burned, threatened with a weapon, thrown, knocked down, punched or hit their child with an object anywhere other than their bottom during the previous month”.¹⁵¹ **Research indicates that in 96 percent of cases of sexual abuse, the abuser is a person known to the victim and in most cases a member of the family itself,**¹⁵² but this can extend to include teachers, school principals, religious instructors, as well as in some cases government officials as well.¹⁵³
11. **Children are also at risk of child or early marriage.** According to UNICEF Sri Lanka, in 2015, there were over 20,780 reported incidents of girls aged between 12 to 17 years, who were married or in cohabiting relationships before they reach adulthood. The Family Health Bureau states that 5.3 percent of all registered pregnancies are teenage pregnancies.
12. **Whilst statutory protection for children exists, enforcement is limited. There are deficits in processes of investigation and prosecution as well as in providing witness protection and support.** Delayed legal processes only provide more room for perpetrators to roam free or inflict further misery on the children or silence them, especially if the perpetrator is known to

¹⁴⁴ UNICEF Fact Sheet, see [https://www.unicef.org/srilanka/VAC\(3\).pdf](https://www.unicef.org/srilanka/VAC(3).pdf)

¹⁴⁵ Ibid.

¹⁴⁶ Ibid.

¹⁴⁷ Trivedi, A. (2013, August 13th), Sri Lanka Struggles to Contain a Growing Epidemic of Child Abuse, *TIME*. Retrieved from: <http://world.time.com/2013/08/13/sri-lanka-struggles-to-contain-a-growing-epidemic-of-child-abuse/>

¹⁴⁸ ColomboPage (2016, January 26th), Over 10000 child abuse cases reported last year in Sri Lanka. Retrieved from: http://www.colombopage.com/archive_16A/Jan26_1453794816CH.php

¹⁴⁹ Ibid.

¹⁵⁰ Ibid.

¹⁵¹ UNICEF Sri Lanka Website: https://www.unicef.org/srilanka/activities_884.htm

¹⁵² Ibid

¹⁵³ Austrian Centre for Country of Origin & Asylum Research and Documentation (2016, December), COI Compilation Sri Lanka

the victim. As at 2013, a third of the cases pending in Sri Lanka's high courts are those involving children, "who wait a harrowing five to eight years to get justice, if at all".¹⁵⁴

13. Children and youth are the focus of multiple agencies—child protection, probation, health, education, child rights monitoring committees and NGOs—at different levels of government. The **complex institutional ecology around child protection and youth presents serious challenges of coordination, relevance and effectiveness**; meanwhile, the framework of 'protection' may actually be used to further control and carry out surveillance.¹⁵⁵
14. There are also serious gaps in the substance and implementation of labour laws, which coupled with poverty or deprivation, can enable child labour and exploitation.

Questions

1. What measures have been or will be taken by the Government to strengthen implementation of the Prevention of Domestic Violence Act?
2. What concrete measures have been or will be taken in order to implement the recommendations of the Prime Minister's Task Force on Violence Against Women?
3. What measures have been or will be taken by the Government to strengthen coordination and complementarity between different agencies and actors responsible for children and youth?

Recommendations

1. Ensure integration and implementation of the recommendations pertaining to advancing women's equality and human rights made by or contained within various bodies and processes into law and policy, including the National Human Rights Action Plan, the Prime Ministers Task Force on Violence Against Women, the Consultation Task Force on Reconciliation Mechanisms, the National Plan of Action on Sexual and Gender-based violence, and the Prevention of Domestic Violence Act.
2. Ensure that the guiding principles specified in the April 2017 draft of the National Child Protection Policy, prepared by the Ministry of Women and Child Affairs, inform a comprehensive and adequately resourced process to institute programmes and reforms to create a comprehensive child protection system in Sri Lanka in line with international standards and Sri Lanka's obligations to its citizens under international law.

¹⁵⁴ Trivedi, A. (2013, August 13th), Sri Lanka Struggles to Contain a Growing Epidemic of Child Abuse, *TIME*. Retrieved from: <http://world.time.com/2013/08/13/sri-lanka-struggles-to-contain-a-growing-epidemic-of-child-abuse/>

¹⁵⁵ Emmanuel, S et al. (2015), Failing Adolescents: Social Control, Political Economy & Human Development in post-war Sri Lanka, *Stability: International Journal of Security & Development* 4(1): 18, pp. 35-52, DOI: <http://dx.doi.org/10.5334/sta.fe>

Article 11—Right to Housing and Land, and Food Producers

Right to Housing

01. The Constitution of Sri Lanka recognises adequate housing as a Directive Principle of State Policy.¹⁵⁶ The current deficit in housing, including the post-war housing reconstruction needs, is estimated at one million units.¹⁵⁷
02. **Housing remains a significant issue for war-affected communities in the North and East.** Data from the 2012 census shows that 44.5 percent in Mullaitivu and 24.4 percent in Kilinochchi were living in temporary shelters. Whilst close to 100,000 houses are estimated to have been built since 2010 and considerable progress has been made by international and national organisations, there is a considerable backlog with a deficit of 60,000 houses for those originally displaced and another 75,000 needed to meet the requirements of subdivided families, landless etc. Not much progress has been made over the past two years towards addressing this gap.
03. Some **inadequately resourced post-war housing projects have in fact led to indebtedness** owing to them being under-resourced or not accounting for the numerous vulnerabilities of the beneficiary households and communities.¹⁵⁸ In late 2015, the Government announced a 65,000-house project for the North and East. But it has been widely criticised for its lack of participation and social mobilisation, arbitrarily imposing pre-fabricated houses on poor war-affected households, and for its reliance on imports and lack of integration into the local and domestic economy coupled with excessive financial cost.¹⁵⁹ A comprehensive alternative has been proposed by a platform of independent experts and national as well as international organisations working on housing but it is yet to receive the full support of the Government.
04. Since 2010, the Urban Development Authority embarked on an Urban Regeneration Programme. Central to this has been **the forcible eviction and relocation of around 5500 families in Colombo—often using the military**¹⁶⁰ and without due process or compensation—

¹⁵⁶The Constitution of the Democratic Socialist Republic of Sri Lanka, Chapter 6, article 27 (c)

¹⁵⁷ Ministry of Construction, Engineering Services, Housing and Common Amenities, National Housing Symposium 2011; In 2010, the NHDA Chairman stated that there were 1.2 million people without housing, who face difficulties such as no permanent address, with its resulting impacts on access to employment, income, schooling, and even nutrition.

¹⁵⁸Romeshun, K., Gunasekara, V., & Munas, M. (2014). *Life and Debt*. Colombo: Centre for Poverty Analysis.

¹⁵⁹ Daily FT. (2015, February 3rd). Open letter to the Prime Minister on proposed 65,000 houses project in NE. Retrieved from: <http://www.ft.lk/article/524944/Open-letter-to-the-Prime-Minister-on-proposed-65-000-houses-project-in-NE>; Eye Sri Lanka. (2016, December 7th). Controversy over 65,000 Steel Houses. Retrieved from: <http://www.eyesrilanka.com/2016/12/07/controversy-over-65000-steel-houses/>.

¹⁶⁰ This figure does not include hundreds of families whose land has already been acquired and are awaiting housing from the UDA, such as the 500 plus families from Java Lane who were promised housing by 2016. Construction of their promised housing has not yet begun and families have not been informed about time lines as yet. See Centre for Policy Alternatives (2017), *The Making of a World-class City: Displacement and Land Acquisition in Colombo*, Colombo: CPA.

into high rises.¹⁶¹ Thousands more are due to be moved,¹⁶² despite evidence of deteriorating quality and standard of life, breakdown of community life, and other problems.¹⁶³

05. Official estimates suggest that almost **60 percent of the Malaiyaha Makkal/Up-Country community in the Estate sector live in ‘line rooms’**—a colonial legacy, but many in the community contest this claiming the figure is in fact much higher, close to 80 percent. Living in ‘line rooms’ not only brings stigma but it is also unhealthy as they are cramped, often very old and lack access to toilets or safe water within the household.¹⁶⁴
06. In 2016, the Government launched a new housing project with support from the Indian Government to build 4000 houses as part of a larger housing project for the Up-Country community.¹⁶⁵ However, this programme excludes the landless people not working in the plantations. And whilst the Government has committed to providing 7 perches of land per family, including the housing plot, activists are calling for at least 15 perches of land per family.¹⁶⁶

¹⁶¹ Not all those who were forcibly relocated were living on State land. Many lived on private land and had title to their properties and due process was not followed in land acquisition process. See Centre for Policy Alternatives (2015), *Forced Evictions in Colombo: The Ugly Price of Beautification*, Colombo: CPA; Centre for Policy Alternatives (2015), *Forced Evictions in Colombo: High-rise Living*, Colombo: CPA.

¹⁶² Even though UDA figures claim that a total number of 68,812 families live in 1,499 community clusters (underserved settlements) which “do not have a healthy environment for human habitation and access to basic infrastructure facilities such as clean water, electricity, sanitation etc”, according to the Underserved Settlements Survey 2012 conducted in the Colombo district by the Colombo Municipal Council and Sevanatha Urban Resource Center, 54.4 percent of settlements in Colombo fall into the category of ‘upgraded’ and 39.3 percent fall into the category of ‘fully upgraded’—which means that almost 94 percent of the settlements in Colombo are of satisfactory conditions and do not fall into the categories ‘underserved’ (5.9 percent) or ‘extremely poor’ (0.3 percent). Furthermore, according to the Census of Population and Housing 2011 of the Department of Census and Statistics, out of the 555,926 housing units in the Colombo District, only 7979 housing units fall under the category of “hut/shanty”

¹⁶³ In a survey conducted in 3 high-rise complexes built for involuntarily relocated communities, the Centre for Policy Alternatives interviewed 1222 households who have been living in the apartments for more than one-and-a-half years. Some key findings include: Only 26 percent of surveyed respondents stated that they were fully informed prior to relocation regarding moving, terms and conditions, nature of the house, location etc. Almost 40 percent of respondents say that the relocation has deteriorated the quality of life of their family, with 13.2 percent saying that it has greatly deteriorated. 32.4 percent say that there has been no change whilst 17.9 percent say that their quality of life has somewhat improved. 60 percent said that people using drugs was a big problem in their apartment complex 17.4 percent said that it was not a problem. A majority of the surveyed respondents (77.2 percent) prefer to live in a detached house whilst 14.4 percent would prefer to live in a low-rise apartment that doesn’t require elevators. Only 6.9 percent of respondents said that they would prefer to live in a high-rise apartment. 47.1 percent say that the move has had no effect on their earnings while 36.8 percent say that their earnings have decreased. However, a majority of respondents (79.9 percent) say that their total monthly expenses are higher now whilst 18.9 percent say that it is the same. Around 70 percent of surveyed respondents said that their electricity and water bills are higher now. For the complete report, see Centre for Policy Alternatives (2016), *Living it down: Life after Relocation in Colombo’s High-rises*, Colombo: CPA.

¹⁶⁴ According to the latest HIES, 75.9 percent of households in the Estate sector have a toilet exclusive to the household compared to the national average of 89.9 percent. Only 67.4 percent of estate sector households have a source of drinking water within the premises whilst the data for Urban and Rural sectors is 92 percent and 79.6 percent respectively. Whilst the national percentage of housing units owned by a member of the household has grown from 70 percent in 1981 to 83 percent in 2012, in the Estate sector it has only increased to 22 percent in 2012 from 1 percent in 1981. For more, see Romeshun, K., & Fernando, P. (2015, May 07th), Poverty in the Estate Sector: Has it Turned the Corner? *The Island*. Retrieved from: http://www.island.lk/index.php?page_cat=article-details&page=article-details&code_title=124227 and see also Malaiyaha Makkal (Up-Country People) and Transitional Justice: A Submission to the Consultation Task Force on Reconciliation Mechanisms, available on file.

¹⁶⁵ ‘Official Launch of the Plantation Housing Project in Sri Lanka’s Central and Uva Provinces’, 24 April 2016, UN-Habitat, available at <http://unhabitat.lk/news/indian-housing-project-in-central-and-uva-provinces-news/official-launch-of-the-plantation-housing-project-in-sri-lankas-central-and-uva-provinces/>.

¹⁶⁶ Consultation with civil society members on the 16th March 2016

Land Rights

07. Conflict related to land and environment has proliferated across the country with **militarisation and large development projects continuing to dispossess and displace people**. From Panama¹⁶⁷ (on the east coast) to Vallikaamam¹⁶⁸ (in the North) to Mullikulam¹⁶⁹ (on the west coast) and Kepapulavu (inland in the north),¹⁷⁰ **lands taken over by the military for security, tourism or other purposes continue to seriously undermine rights of communities**. Fisherfolk in places such as Kalpitiya¹⁷¹ on the west coast and Passikudah¹⁷² on the east coast are facing dispossession and loss of access to the sea owing to large-scale tourism projects. Meanwhile, as pointed out above, thousands of urban poor households in Colombo have been forcibly relocated without compensation into high-rises, resulting in multiple social and economic disadvantages.

¹⁶⁷ In 2010, 350 families of farmers and fisher folk living in Panama, a coastal village in the east of Sri Lanka, were forcibly and violently evicted from lands they had cultivated and lived on for over forty years. Approximately 1220 acres of land were taken over by the military to establish camps and they are now being used to promote tourism. In February 2015, the Government, through a cabinet decision, announced the release of 350 acres of land back to the community. In May 2015, the Pottuvil Magistrate Courts ruled out that the land should be made accessible to its rightful owners. However the Government has not taken any measures to release and resettle the community back in their own lands. See Piyadasa, T. (2016), Development by Dispossession? Forced evictions and land seizures in Paanama, Sri Lanka, *Oxfam International and Peoples' Alliance for Right to Land (PARL)*. Retrieved from: https://www.oxfam.org/sites/www.oxfam.org/files/file_attachments/bn-development-dispossession-land-sri-lanka-260916-fr.pdf; Kannangara, N. (2015), Panama Land Grab Exposed, *The Sunday Leader*. Retrieved from: <http://www.thesundayleader.lk/2015/03/01/panama-land-grab-exposed/>

¹⁶⁸ The demarcation of a High Security Zone in Valikamam North and East in 1990 led to approximately 9,905 Tamil families, consisting of 33,353 individuals, being displaced. Out of the 6381 acres of private land occupied by the military in Valikamam, only 1,013 acres of land (613 acres in Valikaamam North and 400 acres in Valikamam East) were released in March 2015. The Myliddy harbour in the area still remains inaccessible to fisherfolk as it is under the control of the Navy. Displaced families continue to demand the release of the remaining 5368 acres, which are yet to be released. See NAFSO (2016), Valikamam Land Issue. Retrieved from: <http://www.nafso-online.org/2016/02/valikamam-land-issue.html>

¹⁶⁹ Over 200 families from the village of Mullikulam were forced to leave their village in September 2007 by the Sri Lankan Army. Subsequently, the Navy occupied Mullikulam. Occupied land includes private lands of people (legally owned by deeds, grants or permits), land belonging to the Catholic Church, as well as State land. As a result of rigorous campaigning and lobbying to win their right to land, villagers of Mullikulam were allowed to resettle near the border of their village in June 2012. Approximately 175 displaced families went and started living in the jungle close to their original homes. They had to seek shelter under trees as they were not provided with any assistance by the Government¹⁶⁹. In September 2014, 146 families were given half-an-acre of land by the Government of Sri Lanka with no proper facilities and living conditions. The community of farmer and fisherfolk has been resettled in an area where they cannot engage in their livelihood activities. At present, 245 families are protesting, calling for justice and their right to land. Fernando, R. (2012), The struggle to go home in post war Sri Lanka: The story of Mullikulam. *Groundviews*. Retrieved from: <http://groundviews.org/2012/08/01/the-struggle-to-go-home-in-post-war-sri-lanka-the-story-of-mullikulam/>; Azwer, M. (2012), Displaced Community In Mullikulam Forced To Settle In Jungle, *The Sunday Leader*. Retrieved from: <http://www.thesundayleader.lk/2012/06/24/displaced-community-in-mullikulam-forced-to-settle-in-jungle/>; NAFSO (2016), Who belongs Mullikulam lands (2016). Retrieved from: <http://www.nafso-online.org/2016/02/who-belongs-mullikulam-lands.html>

¹⁷⁰ Approximately 520 acres of land belonging to displaced families in Kepapulau have been occupied by the military. The community in Kepapulau was displaced during the last leg of war and were held in IDP camps. Subsequently, 150 families were resettled in an area called 'Kepapulau Model Village' in 2012, where they were given 40 perch lands irrespective of the extents of land they owned prior to displacement. In the aforementioned model village, the land provided was neither adequate nor suitable for farmers and fisherfolk to engage in livelihood activities. The remaining families who did not accept the alternative lands continued to live with host families. Since 2012, there have been many public protests and demonstrations by the community calling for the release of their own lands. In March 2017, subsequent to a rigorous fasting protest, 54 families were allowed to return to their own lands. The rest of the families continue to demand for their right to land and have recommenced a series of public protests in Kepapulau. See Fernando, R., de Silva, M., & Arulingam, S. (2016), Broken promises: Kepapulau displaced to restart fast unto death next week, *Daily FT*. Retrieved from: <http://www.ft.lk/article/554936/ft>

¹⁷¹ The Investigative Report On The Looting Of Sustenance Lands Belonging To Kalpitiya Island Inhabitants: Study of the issues on Land Grabbing and its Socio-Cultural, Economic and Political Implications on Kalpitiya Island Communities, April, 2013, Consolidated and Edited by Herman Kumara, National Fisheries Solidarity Movement [NAFSO].

¹⁷² Society for Threatened People (2015), *Dark Clouds over the Sunshine Paradise*, Society for Threatened Peoples. Retrieved from: https://assets.gfbv.ch/downloads/report_sri_lanka_english.pdf

08. **There are a number of large commercial agriculture projects, which will displace hundreds of peasant families**, including the release of 20,000 acres from the Maduru Oya right bank for large-scale commercial agriculture and over 3000 acres through the Heda Oya scheme.¹⁷³ Large development projects such as the Uma Oya water diversion scheme¹⁷⁴ and the Colombo Port City¹⁷⁵ projects continue to be pursued despite evidence of serious harm to the environment and livelihoods. **Poor enforcement of environmental norms¹⁷⁶, weak regulation and poor planning** have caused significant loss of lives, livelihoods and property as a result of floods and landslides, especially in the Up-Country/Estate areas.¹⁷⁷ On the other hand, the politically charged use of environmental norms has resulted in cases such as the opposition to the return of the Northern Muslims of Musali South in Mannar after years of protracted displacement on the grounds that they pose a threat to the Wilpattu forest.¹⁷⁸
09. As the Peoples' Alliance For Right To Land (PARL) has argued, the **risk of dispossession faced by the poor, rural or urban, will be aggravated by measures such as establishing 'land banks'** to facilitate access to land for companies and private capital.¹⁷⁹ The Government has also initiated a large-scale land titling programme, which seems to be designed to open up land markets, lacks adequate safeguards against alienation and actually risks increasing dispossession.¹⁸⁰
10. In virtually all of the cases cited above, either the Land Acquisition Act has not been followed as laid down or other legislation granting special powers to the State to take over public and private lands without adequate safeguards have been used. **Affected persons have little**

¹⁷³ Peoples' Alliance For Right To Land (2016, November), *Government sets ground for large scale land grabs: Development over dispossession: farmers, fisherfolk, rural communities and the urban poor at risk*. Retrieved from: http://www.southasianrights.org/wp-content/uploads/2016/12/PARL_land_rights_statement_English.pdf

¹⁷⁴ The Uma Oya development project, which commenced in 2011, has taken over 3000 acres of housing and cultivation lands. Approximately 2700 people have been displaced by the project due to the construction of Maketilla Oya, Kuhulpola reservoir, Handapanagala tank and Alikota Ara reservoir. The construction of underground tunnels has drastically affected the water table and also caused serious damages to houses and buildings in the area. In 2016 September, the Supreme Court ordered the Director of Agriculture, Uva Province to estimate the loss caused to the farmers as a result of the Uma Oya Multi-Purpose project and to pay compensation to them. The Court also ordered that water should be provided before December 31 to the victims. Interview with Sajeewa Chamikara, Executive Director at the Environment Conservation Trust on 01st of December, 2016. See also Nizam, I. (2016), Uma Oya Project To Benefit Or Ruin? *The Sunday Leader*. Retrieved from: <http://www.thesundayleader.lk/2016/09/19/uma-oya-project-to-benefit-or-ruin/>

¹⁷⁵ Corea, C. (2016), Why the Port City is bad for the country, *The Sunday Times*. Retrieved from: <http://www.sundaytimes.lk/160612/sunday-times-2/why-the-port-city-is-bad-for-the-country-196859.html>; Kumarasinghe, K. (2016), Port City Project: Development or disaster, *Daily Mirror*. Retrieved from: <http://www.dailymirror.lk/article/Port-City-Project-Development-or-disaster-120208.html>

¹⁷⁶ Though it is mandatory for larger development projects to have an environmental impact assessment, it is more common to submit incorrect reports for initial environmental approval and neglect proper environmental assessment. The Uma Oya development project, Port City development project, Mattala International Airport project, Moragahakanda and Kalu ganga irrigation projects have all led to undesirable effects on the environment and wildlife due to the lack of proper environmental assessment before implementation. A Wind Power project in Mannar has been launched on the basis of an Initial Environmental Examination though the project site sits on a path used by migratory birds.

¹⁷⁷ Bandara, R.M.S. (2015), *Overcoming Landslide Issues and Effects*, Colombo: Ministry of Disaster Management. Retrieved from: http://www.mpid.gov.lk/en/images/NPA_UNDP/9_Mr_Bandara_plantation_final_30-4-2015.pdf. See also Perera, A. (2016, May 26th), After devastating floods and landslides, Sri Lanka plans new building code, *IRIN News*. Retrieved from: <http://www.irinnews.org/news/2016/05/26/after-devastating-floods-and-landslides-sri-lanka-plans-new-building-code> and, Kariyawasam, R. (2016, May 25th), Floods and landslides in Sri Lanka: Where have we erred, *Daily News*. Retrieved from: <http://dailynews.lk/2016/05/25/features/82709>

¹⁷⁸ Hasbullah, S. (2017, March 31st), The Wilpattu Controversy: Open Letter To The President, *Colombo Telegraph*. Retrieved from: <https://www.colombotelegraph.com/index.php/the-wilpattu-controversy-open-letter-to-the-president/> and see also Hasbullah, S. (2015, May 29th), An Issue About A Non-Issue Wilpattu Land For Resettlement? *Colombo Telegraph*. Retrieved from: <https://www.colombotelegraph.com/index.php/an-issue-about-a-non-issue-wilpattu-land-for-resettlement/>

¹⁷⁹ Peoples' Alliance For Right To Land, 2016 *supra note*.

¹⁸⁰ Nagaraj, V. (2015, December 13th), What the 2016 budget means for land rights, *The Sunday Times*. Retrieved from: <http://www.sundaytimes.lk/151213/business-times/what-the-2016-budget-means-for-land-rights-174728.html>

recourse to remedy in the face of unfettered powers of eminent domain and vague and expansive definitions of ‘public purpose’.¹⁸¹ Moreover, despite the change in government, the National Involuntary Resettlement Policy (NIRP) of 2001 remains a dead letter and the enhanced protections it provides—in terms of compensation and resettlement, especially to those without formal title or the landless—elude the most vulnerable.

11. The Lessons Learnt and Reconciliation Commission (LLRC) went into the question of land rights in the north and east in some detail and made a number of important recommendations. Some of these focussed on addressing the gamut of issues and disputes pertaining to land rights of internally displaced communities. But the LLRC also made crucial broader recommendations, including the need to establish an independent National Land Commission (NLC)—as per the 13th Amendment to the Constitution—and to develop a national land policy to ensure equitable governance of state land. **Whilst there has been progress on some aspects, internally displaced persons and returnees face many obstacles in access to land,** and urgently needed broader and fundamental reforms to the governance and distribution of land continue to be neglected.
12. **Repealing or reforming legal provisions that discriminate against women’s access to land and property is critical.** As highlighted previously, this includes amending the Land Development Ordinance to ensure succession is not *de jure* in favour of male children and the *Thesawalamai* (applicable to Jaffna Tamils), which discriminates against women by requiring the husband’s consent in all transactions relating to property owned by women.

Food producers

13. Increasing local food production and promotion of sustainable food production systems are key components of the ‘National Strategic Review on Food and Nutrition – Towards Zero Hunger’¹⁸² and of the ‘Food Production National Program for 2016-18’¹⁸³—both launched in 2016. However, in the budget proposals for 2017 and in the mid-term economic plan presented by the Prime Minister in 2015, the Government envisions a complete transformation of the country’s agriculture sector.¹⁸⁴ **Labeling the existing agriculture sector as inefficient and low-income, the Government aims to promote commodity production by targeting global value chains. This poses threats to the livelihoods of small-scale food producers in the country.** Large-scale land allocations for commercial agriculture (referred to above) as well as industrial zones, tourism and infrastructure development have already displaced thousands of food producers from their lands and from coastal areas.¹⁸⁵

¹⁸¹ Centre for Policy Alternatives (2017), *The Making of a World Class City: Displacement and Land Acquisition in Colombo*, Colombo: CPA.

¹⁸² World Food Programme (2017), *National Strategic Review of Food Security and Nutrition: Towards Zero Hunger*. Colombo: WFP. Retrieved from: https://www.wfp.org/sites/default/files/NSRFSNZH_FINAL.pdf

¹⁸³ Presidential Task Force on National Food Production (2015), *Food Production National Programme (2016-2018)*. Retrieved from: <http://www.agrimin.gov.lk/web/images/pdf/FoodProductionBook-English.pdf>

¹⁸⁴ “Our government is determined to support agriculture to transform itself from the low yielding, low income, few crop dependent, subsistence agriculture to commercial agriculture, raising income levels of farmers and developing small scale producers into big exporters” – Finance Minister Ravi Karunanayake, Budget Proposals 2017

¹⁸⁵ Interview with Chinthaka Rajapakse, Moderator at the Movement for Land and Agricultural Reform on 23rd of March 2017. In November 2016, Dole abandoned its banana plantation in Kantale without paying more than 100 workers who had been hired through a manpower agency. See Ravaya, 4th December 2016, <http://ravaya.lk/?p=48375>.

14. Sri Lanka is one of the highest users of agro chemicals, which are widely implicated as one of the possible causes of Chronic Kidney Disease of Unknown Etiology (CKDu). The disease is precipitating serious crisis amongst farming communities in many parts of the island.¹⁸⁶

Questions

1. What concrete steps have been or will be taken by the Government to ensure that the right to adequate housing and land of war-affected communities, including returnees in the North and East as well as the Up-Country Tamil community, are fully realised?
2. What concrete and time-bound steps have been or will be taken by the Government in order to ensure demilitarisation of the governance of land in the North and East?

Recommendations

1. Prioritise the implementation of all recommendations of the LLRC in relation to land, including establishing an independent National Land Commission, which can guide and oversee implementation of an equitable national land policy.
2. Undertake comprehensive reforms of the land acquisition legislation to ensure it is rights-based, prevents all forced evictions and include all provisions of the NIRP, suitably updated and in keeping with the highest international standards.
3. Halt the involuntary relocation of the urban poor in Colombo and elsewhere pending an independent and comprehensive review of development options and redress the multiple grievances of those forcibly relocated to the high-rises.
4. Protect the rights of small farmers, fisherfolk and food producers, and take decisive remedial measures to protect those living in agro-ecological crisis prone areas, like those affected by CKDu or floods or landslide-prone areas.

¹⁸⁶ Presidential Task Force on Chronic Kidney Disease Prevention. See <http://www.presidentialtaskforce.gov.lk/en/kidney.html#>

Article 12—Right to Health including Right to Food and nutrition

Quality public healthcare does not reach all people

01. Sri Lanka's 'free' healthcare system does not meet the quality health needs of all people.¹⁸⁷ **State spending on health is less than 1.5 percent of GDP,**¹⁸⁸ which is significantly low for a middle-income country. Regional disparities in healthcare infrastructure, a long wait for specialist care and advanced procedures in the public sector and the burden of out-of-pocket health expenditure have eroded the fundamentals of universal free health care coverage.¹⁸⁹
02. **Severe cuts—to the tune of Rs. 13 billion in the 2017 budget—in state spending on public healthcare and the privatisation of health care are forcing the poor to compromise their health needs or, in many instances, access private healthcare.**¹⁹⁰ Measures such as the introduction of a health insurance scheme for school children are problematic, as they exemplify a larger push by the State to privatise healthcare in the country.¹⁹¹ At the same time, the quality of private medical degrees and the costs of accessing private medical care as well as weakness in its regulation remain significant concerns.¹⁹²
03. In addition, **high prices of drugs,**¹⁹³ inadequate support for alternate systems of medicine,¹⁹⁴ and **poor response to negligence by medical and health professionals** present additional challenges to the realisation of the right to health. Even though the Government has put forward a Health Master Plan for 2016-2025, which was drafted after the lapse of the previous Health Master Plan for 2007-2016, there are still doubts about its adequacy and implementation. Recent legislative reforms, such as the Mental Health Act Bill and National Blood Transfusion Bill of 2007, remain stagnant in the draft stage.

¹⁸⁷ Institute for Policy Studies (2016), *Sri Lanka State of the Economy 2016. Fiscal Policy for Growth: Sustainable Financing for Development*, Colombo: Institute for Policy Studies

¹⁸⁸ Author's own calculation based on Budget 2017 allocations

¹⁸⁹ Institute for Policy Studies (2013), *Sri Lanka State of the Economy 2013. The Transition to a Middle-Income Country*, Colombo: Institute of Policy Studies; Institute for Policy Studies (2016), *Sri Lanka State of the Economy 2016. Fiscal Policy for Growth: Sustainable Financing for Development*, Colombo: Institute for Policy Studies

¹⁹⁰ Kumar, R. (2015, September 27), Unequal access to healthcare in Sri Lanka? *The Sunday Times*. Retrieved from: <http://www.sundaytimes.lk/150927/sunday-times-2/unequal-access-to-healthcare-in-sri-lanka-165845.html>

¹⁹¹ Economynext (2017, January 30th), Sri Lanka tax payers to provide health insurance for school children. Retrieved from: <http://www.economynext.com/Sri-Lanka-tax-payers-to-provide-health-insurance-for-school-children-3-6978.html>

¹⁹² Dayaratne, G.D. (2013), *Private Hospital Health Care Delivery in Sri Lanka: Some Issues on Equity, Fairness and Regulation*, Colombo: IPS. Retrieved from: <http://www.ips.lk/index.php/resources/latest-publications/20-latest-publications/32-private-hospital-health-care-delivery-in-sri-lanka-some-issues-on-equity-fairness-and-regulation>

¹⁹³ Despite the passing of the National Medical Regulatory Authority Act of 2015.

¹⁹⁴ Ayurvedic, Unani, Siddha and Homeopathy systems

The state of mental health care is poor

04. According to the National Institute for Mental Health's (NIMH) statistics, one out of five persons in Sri Lanka suffer from a mental illness.¹⁹⁵ However, **due to the lack of mental health resources and limited psychological awareness, only 20 percent of those needing treatment actually receive it.**¹⁹⁶ Post-traumatic disorders as a result of the tsunami and the war present significant challenges.¹⁹⁷ However the mental health and psychosocial services provided by the state in the war-affected North and East have largely been *ad hoc*, if at all, whilst non-government initiatives to provide such services were faced with hostility, suspicion and deliberate restrictions from the State.
05. **Mental health and psychosocial care services in Sri Lanka are inadequate** owing to poor funding, insufficient number of trained psychologists and medical officers, regional disparities in service provision, poor referral systems, and the lack of social protection for patients and families.¹⁹⁸ There is a **lack of systematic programmes for prevention and promotion of mental health and psychosocial wellbeing at a community level.** The expansion of mental health and psychosocial service providers at different levels in recent years within the state sector has been blunted by: (a) Uneven geographic patterns of deployment, (b) mismatches between resourcing and needs, (c) fragmentation of efforts, lack of multi-disciplinary and multi-sectoral responses and weak coordination between different levels and types of service providers, (d) poor supervision and referral arrangements, (e) challenges in constructive collaboration with non-govt counterparts, and (f) a failure to collect and use data systematically.¹⁹⁹

The healthcare system is not equipped to face chronic non-communicable diseases

06. **The healthcare system is not well equipped to face the increase in chronic non-communicable diseases (NCDs)** like diabetes, hypertension, heart disease, asthma, cancer and chronic kidney disease—all of which are on the rise.²⁰⁰
07. There have been **weak public health responses to some of the leading causes of NCDs**, such as increased use of chemicals on agricultural products, unhealthy living patterns and

¹⁹⁵ The Sunday Times (2013, October 06th), Poor Mental Health: National Institute can't cope with the demand. Retrieved from: <http://www.sundaytimes.lk/131006/news/poor-mental-health-national-institute-cant-cope-with-the-demand-64878.html>

¹⁹⁶ Ibid

¹⁹⁷ D'Souza, R., & Singh, B. (2005, June), The mental health challenge in Sri Lanka from working within the disaster area, *World Psychiatry*, 4(2): 68. Retrieved from: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1414733/>

¹⁹⁸ Ellepola, Y. (2016, October 10th), Why Sri Lanka needs better responses to mental health issues, *Ceylon Today*. Retrieved from: <http://www.ceylontoday.lk/print20160701CT20161030.php?id=7017>; The Sunday Times (2013, October 06th), Poor Mental Health: National Institute can't cope with the demand. Retrieved from: <http://www.sundaytimes.lk/131006/news/poor-mental-health-national-institute-cant-cope-with-the-demand-64878.html>

¹⁹⁹ Submission to Consultation Task Force on Reconciliation Mechanisms, Public Consultation on Psychosocial Issues in Relation to Transitional Justice and Reconciliation in Sri Lanka, Colombo, 13 August 2016, made by Ananda Galappatti, Medical Anthropologist and Mental Health and Psychosocial Support Practitioner, Director of Strategy, The Good Practice Group; Member, Task Force on Psychosocial Wellbeing, Office for National Unity and Reconciliation; Visiting Lecturer, University of Colombo.

²⁰⁰ Institute for Policy Studies (2013), *Sri Lanka State of the Economy 2013. The Transition to a Middle-Income Country*, Colombo: Institute of Policy Studies

environmental pollution. For instance, whilst the use of Glyphosate pesticide was banned in 2015, its use in plantations is still allowed²⁰¹ and a new pesticide, fifteen times stronger than Glyphosate, was introduced subsequently.²⁰²

08. Moreover, the excessive use of agrochemicals, deforestation, associated soil erosion and irresponsible factory discharges (e.g., chemicals and paint from rubber and textile factories etc.) are factors that contribute to pollution.²⁰³ **Chronic Kidney Disease of Unknown Etiology (CKDu), which has been linked to the use of agrochemicals, amongst many other causes, has become a critical health challenge in Sri Lanka.**²⁰⁴ While CKDu is concentrated in the North Central and Uva Provinces of the country, its prevalence has now been recorded in many other parts of the country as well.²⁰⁵ A Presidential Task Force on CKDu has not been able to ensure an effective response to the overlapping health, social and economic crises precipitated by the disease within affected farming communities.²⁰⁶

High levels of undernourishment and food insecurity

09. Whilst there has been progress on child and maternal nutrition,²⁰⁷ **there are high levels of and significant disparities in malnutrition and micronutrient deficiencies.**²⁰⁸ In fact, wasting increased significantly enough to leave Sri Lanka with “...one of the highest wasting prevalence in the world” (ranking 128 out of 130 countries), “...indicating a serious public nutrition situation”.²⁰⁹ A national review (2017) notes that 5.2 million people (almost 25 percent of the population) are currently undernourished, **18 percent of pregnant women were in “a poor maternal nutrition situation” in 2015 and a quarter of the children between 6-59 months were found to be underweight.**²¹⁰ The review found that war-affected districts, the estate sector and some areas in the north and southeast “...represent the worst levels of under nutrition”.²¹¹
10. **A 2015 survey of over 1300 households from Trincomalee, Mannar and Jaffna found that food insecurity has generally worsened since a baseline survey of the same households in**

²⁰¹ Kumarasinghe, K. (2016), Health OR Wealth? Changing tunes on the Glyphosate ban, *Daily Mirror*. Retrieved from: <http://www.dailymirror.lk/article/Health-OR-Wealth-Changing-tunes-on-the-Glyphosate-ban-117684.html#sthash.XNO5N6QC.dpuf>

²⁰² Ada Derana (2016, June 14th), Glyphosate banned, but new pesticide far worse – expert. Retrieved from: <http://www.adaderana.lk/news/35671/glyphosate-banned-but-new-pesticide-far-worse-expert#sthash.CJ1MLyaz.dpuf>

²⁰³ Ibid

²⁰⁴ Wimalawansa, S. A., & Sunil J. Wimalawansa, S. J. (2016), Environmentally induced, occupational diseases with emphasis on chronic kidney disease of multifactorial origin affecting tropical countries, *Ann Occup Environ Med*, 28: 33. Retrieved from: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4974668/>

²⁰⁵ According to a Presidential Task Force focused on CKDu, 60 Divisional Secretariat areas across 10 districts are considered affected, some severely and as at December 2014, there were 40,680 patients officially registered as having been affected by CKDu. See <http://www.presidentialtaskforce.gov.lk/en/kidney.html#>

²⁰⁶ Law and Society Trust (2017), *Voices and Perspectives of Communities Affected by Chronic Kidney Disease of Unknown Etiology*, Colombo: LST

²⁰⁷ The stunted and underweight population amongst children under 5 declined from 21.2 percent to 13.1 percent and 27.3 to 23.5 percent respectively during the period 1995/96 to 2012. Low birth weight declined from 21 percent in 1993 to 18 percent in 2012. Anaemia in children has declined from 25.2 percent in 2009/10, to 15.1 percent in 2012. See World Food Programme (2017), *National Strategic Review of Food Security and Nutrition: Towards Zero Hunger*, Colombo: WFP. Retrieved from: https://www.wfp.org/sites/default/files/NSRFSNZH_FINAL.pdf

²⁰⁸ World Food Programme (2017), *National Strategic Review of Food Security and Nutrition: Towards Zero Hunger*, Colombo: WFP. Retrieved from: https://www.wfp.org/sites/default/files/NSRFSNZH_FINAL.pdf

²⁰⁹ Ibid.

²¹⁰ Ibid.

²¹¹ Ibid.

2012.²¹² Some of the major causes identified for overall food insecurity and malnutrition include: High reliance on the market and physical and financial barriers; rising food prices; income inequality; poor infrastructure; high informal sector labour force; gender inequality; land degradation; urbanization; population aging, and climate change.²¹³

State interventions for eradicating the Dengue epidemic are inadequate

11. In 2016, Sri Lanka was named one of the most Dengue affected countries in Asia with 54,945 cases reported in the same year—25,168 more than in 2015.²¹⁴ Fifty-nine deaths were reported due to Dengue in 2016.²¹⁵ At the time of writing this report a major Dengue epidemic was sweeping Batticaloa in the east with over 1500 cases being reported from the district in the first three months of 2017.²¹⁶ Whilst central, provincial and local authorities are engaged in preventive measures, it is clear that **there is an urgent need to significantly step up preventive and curative responses to the disease.**

Right to health, gender and sexual orientation

12. Women's rights organisations have noted that enhancing women's right to health in Sri Lanka calls for urgent attention to redressing **serious regional disparities in maternal, child care and family planning services, increasing women's access to information on health and health care services**, and taking measures to counter prejudices and misconceptions regarding sexual and reproductive rights.²¹⁷ Women's sexual and reproductive health continues to be severely compromised because current law holds that abortion is illegal, except when a mother's life is in danger.²¹⁸
13. **LGBTIQ persons risk public humiliation, harassment and threats to their right to privacy at the hands of medical officers in public hospitals** upon revealing their sexual orientation and gender identity.²¹⁹ The lack of public data on healthcare availability, the inability and/or

²¹² Sanguhan, Y. and Gunasekara, V. (2017), *Researching livelihoods and services affected by conflict: SLRC panel survey Sri Lanka wave II report*, London: Overseas Development Institute.

²¹³ See Sri Lanka: Food Security Atlas 2015, p. v. World Food Programme (2017), *National Strategic Review of Food Security and Nutrition: Towards Zero Hunger*, Colombo: WFP. Retrieved from: https://www.wfp.org/sites/default/files/NSRFSNZH_FINAL.pdf

²¹⁴ Epidemiology Unit, Ministry of Health, Sri Lanka. http://www.epid.gov.lk/web/index.php?option=com_casesanddeaths&Itemid=448&lang=en#

²¹⁵ Robert, H. (2016), Sri Lanka Dengue Update: 38,000 cases and 59 deaths. Retrieved from: <http://outbreaknewstoday.com/sri-lanka-dengue-update-38000-cases-and-59-deaths-26991/>

²¹⁶ See The Sunday Times (2017, April 02nd), Dengue epidemic overwhelms Batticaloa: 1,500 cases in three months. Retrieved from: <http://www.sundaytimes.lk/170402/news/dengue-epidemic-overwhelms-batticaloa-1500-cases-in-three-months-234980.html>

²¹⁷ Sri Lanka Shadow Report to the Committee on the Elimination of All Forms of Discrimination against Women (CEDAW), submitted for the 66th Session of the CEDAW Committee (2017)

²¹⁸ Ibid.

²¹⁹ EQUAL GROUND. (2016) at p.11 in its submission before the Committee records the story of a Transgender man whose garments were forcibly removed to convince the patients of a female ward that he was indeed female and should be admitted to the female ward; of the request by the nursing staff to allow the staff to examine his body of 'learning purposes' and of the harassment thereafter with unsolicited calls, and public identification of him in a local market exposing his transgender status publicly. Other similar accounts of coercive examination of transgender persons whilst they were unconscious, refusal to provide pain medication possibly due to gender identity and sexual orientation, further these accounts.

unwillingness to provide adequate healthcare services to LGBTIQ individuals and the prejudiced discourse that links LGBTIQ persons to HIV carriers further perpetuates the lack of access to healthcare and **homophobia and transphobia amongst healthcare providers.**²²⁰

Questions

1. What concrete policy measures are envisaged in relation to eradicating pockets of high food insecurity and malnutrition, especially with respect to children and pregnant or lactating mothers?
2. What steps have been or will be taken by the Government to implement the 2013-2020 Mental Health Action Plan, which was unanimously approved at the 66th World Health Assembly?
3. What measures have been or will be taken by the Government to ensure there is no discrimination in the provision of health services against any group owing to their social identity or status?

Recommendations

1. Recognising that many mental health and psychosocial problems have their roots in social, political and economic determinants, the Government must integrate measures to protect and promote mental health and psychosocial wellbeing within its economic, welfare, education, health and other activities.
2. Take definitive and time-bound measures to strengthen the public health system by ensuring adequate budgetary and human resources as well as infrastructure, and ensuring public health facilities are more equitably distributed across the country.
3. Take all possible steps to ensure that the right to health and the right to food are recognised as fundamental rights in the new constitution.

²²⁰ Interview with LGBTIQ Activists, Colombo, February 17, 2017;

Articles 13 & 14—Right to Education

Economic status, geography and access to education

01. Sri Lanka's high literacy levels and universal access to primary-level schooling are the outcomes of a free public education system that goes back decades. However, **many challenges remain with regard to the quality, accessibility and adequacy of public education.** Communities in poverty continue to be disadvantaged by the unevenness in quality and access to education.²²¹
02. Across the country, **higher levels of educational attainment are linked to being from higher economic classes.**²²² This is largely because the youth between the age group 15-24 from better-off families invest in furthering their education, whilst youth from low-income households drop out in order to work or are unable to access the quality of education that can enable them to progress further.²²³ As a result, a majority of individuals who venture further into tertiary education belong to higher economic classes.²²⁴ This is reflected in labour force participation as well, where most of the unskilled, informal and precarious workers (almost 70 percent of the labour force) belong to poorer economic classes.²²⁵
03. The United Nations National Human Development Report (2014) further points out how poverty and the obligation to support families are key reasons why boys across the country drop out of schools more than girls.²²⁶ The report further states that **girls find it harder to secure employment**, which is largely determined by gender stereotypes, and therefore remain in schools as a 'safer location'.²²⁷
04. The NHDR (2014) also shows that, nationally, **60 percent of young people who dropped out or discontinued schooling identified cost of education as a barrier.** Despite public education being free, families have to shoulder a number of obvious and hidden financial costs—for school maintenance, extra-curricular activities, additional tuition classes and in particular donations for school admittance, which are essentially substantial bribes to the schools. Costs of boarding or hostels and everyday transport, in cases where schools or tuition classes are far, are additional cost barriers to low-income or underprivileged households.
05. But **access to and the experience of education are also shaped by other factors, such as caste identity.**²²⁸ There are also schools that are restricted to students coming from certain

²²¹ United Nations Development Programme (2014), *National Human Development Report 2014: Youth and Development*, Colombo: United Nations.

²²² Gunasekara, V. (2015), Unpacking the Middle: A Class-based Analysis of the Labour Market in Sri Lanka, *Southern Voices Post-MDG International Development Goals, Occasional Paper Series* (22). Retrieved from <http://southernvoice.org/wp-content/uploads/2015/02/SV-OP-22.pdf>.

²²³ Ibid

²²⁴ Ibid

²²⁵ Largely comprised of those who live below the international poverty line of \$1.90 a day per person.

²²⁶ Some civil society members contested the idea that boys drop out more than girls. However, NHDR information is based on a country-wide representative youth survey conducted in 2013 and is the largest national youth survey conducted in the recent past.

²²⁷ Ibid

²²⁸ Lall, A. (2016), 'Don't tell them where we live', Caste and access to education in Northern Sri Lanka, *Working Paper 49*, London: Secure Livelihoods Research Consortium.

ethnic or religious backgrounds, further accentuating divisions and inevitably shaping one's access to and experiences of education.

06. **Inter- and intra-regional disparities in school infrastructure, trained staff, choice of subjects and transport** have also led to unevenness in access to and quality of education. The latest available data reveals that 34 percent of the schools across the country are classified as 'difficult' or 'very difficult',²²⁹ with only 9 percent of schools (distributed unequally countrywide) offering A/LS²³⁰ in all subject streams.²³¹ **Rural areas (70 percent of the population) have the least number of well-resourced schools**²³² and access to education is hindered by caste as well as ethnicity.²³³ The estate/plantation areas, home to Up-Country Tamils of recent Indian origin, suffer serious barriers to access²³⁴ and the war-affected North and the East also lag behind.²³⁵
07. A 2012 school census indicates that 80 percent of schools in Mannar district, 75 percent of schools in Kilinochchi district and 53 percent of schools in Mullaithivu district were without electricity.²³⁶ The census further indicates that **there are more than 10 percent of schools in 20 districts out of the 25 districts without access to water.**²³⁷ Whilst the situation may well have improved since then, it underlines the legacy of disadvantage with respect to education in the North and East.

Trilingual proficiency

08. A 'trilingual policy' was recommended in the Report of the Lessons Learnt and Reconciliation Commission (LLRC) as an integral component of 'peace education'.²³⁸ **However, out of the 10162 government schools in the country, only 47 (less than 1 percent) schools offer teaching in all three languages.**²³⁹ Sixty-two percent of the schools teach in Sinhala, 29 percent in Tamil, 1 percent in Sinhala and Tamil, 5 percent in Sinhala and English and 2 percent in Tamil and English. Furthermore, only 2 percent of students are studying in English Medium and of them 30 percent are in the Western Province.²⁴⁰ There is an obvious shortage of trained teachers with bi-lingual proficiency and the current resource pool is incapable of imparting language skills to their students.

²²⁹ Ministry of Education classifies schools into five categories based on their level of difficulty in terms of facilities and accessibility. Ministry of Education (2013), *Sri Lanka Education Information*. Colombo: MOE

²³⁰ Advance Level

²³¹ Ministry of Education (2013), *Sri Lanka Education Information*, Colombo: MOE. These subject streams include commerce, science and arts subjects.

²³² See United Nations Development Programme (2014), *National Human Development Report 2014: Youth and Development*, Colombo: United Nations.

²³³ Lall, A. (2016), 'Don't tell them where we live', Caste and access to education in Northern Sri Lanka, *Working Paper 49*, London: Secure Livelihoods Research Consortium.

²³⁴ Submission by the Malaiyaha Makkal (Up-Country People) to the Consultation Task Force on Reconciliation Mechanisms (2016).

²³⁵ United Nations Development Programme (2014), *National Human Development Report 2014: Youth and Development*, Colombo: United Nations.

²³⁶ Prof. Ranasinghe A, Dr. Arunathilake N, Dr. Dunusinghe DDPM, 23.

²³⁷ Ministry of Education Sri Lanka (2016), *School Census Preliminary Reports 2016*, Colombo: MOE, 5.

²³⁸ Report of the Commission of Inquiry on Lessons Learnt and Reconciliation (November 2011), 382.

²³⁹ Ministry of Education Sri Lanka (2016), *School Census Preliminary Reports 2016*, Colombo: MOE, 6.

²⁴⁰ Ibid 7.

Right to education must be made enforceable in legislation

09. The Final Report of the Public Representations Committee on Constitutional Reforms (PRC) called for constitutional recognition of the right to education and further suggested “a right to primary, secondary and tertiary education at the cost of the state.”²⁴¹
10. The PRC noted that the public demand for the **constitutional recognition of the right to education was influenced by the importance of free education in the country and by concerns raised regarding privatisation, politicisation and commodification of education.**²⁴² Reliance on private tuition, which is on the rise as a result of the diminishing quality of secondary education and the growth of ‘unregulated private enterprises’ providing educational services, was especially highlighted.²⁴³ Further concerns were raised regarding the tendency to neglect the standards of state education to create a demand for private education.
11. However, despite the persistence of the public on the State’s continued ‘strong role’ in education, which was delineated in the Report of the PRC, the recent case of *Suriyarachchi v SLMC* (the SAITM case)²⁴⁴ indicates a regressive trend. In this case, the judiciary implicitly sanctioned the dire deficiencies in state regulation of private tertiary educational institutions. In such a situation, explicit constitutional recognition of the right to education would have provided further remedies to the people to ensure that the quality of tertiary education is protected, whilst ensuring the right of all students to a standard degree.

The nature of state-society compact in provisioning public education must be revisited

12. **In 2017, the state cut over Rs. 100 billion on education spending, ignoring demands to commit 6 percent of the GDP to education;** likely increasing the overall burden on low-income populations. Measures to privatise education, which may further erode people’s access to education as a right, have raised serious questions regarding a market-centric approach to education.²⁴⁵ This coupled with **uneven access to education can have serious consequences in terms of inclusiveness, equity and social harmony.**
13. **Supplying workers and sustaining the country’s economic expansion have become two of the main drivers of the state provision of education in Sri Lanka.**²⁴⁶ In various election manifestos, policy directives and budget speeches, successive governments have expressed similar sentiments.²⁴⁷ However, empirical evidence from Sri Lanka does not support the

²⁴¹ Public Representations Committee on Constitutional Reform, ‘Report on Public Representations on Constitutional Reform’, (May 2016) 101-2.

²⁴² PRC Report, 102.

²⁴³ Ibid.

²⁴⁴ (31.01.2016) CA/WRIT/a87/2016

²⁴⁵ United Nations Development Programme (2014), *National Human Development Report 2014: Youth and Development*, Colombo: United Nations.

²⁴⁶ Amarasuriya, H. (2015, August 31st), Current Issues In University Education, *Colombo Telegraph*. Retrieved from: <https://www.colombotelegraph.com/index.php/current-issues-in-university-education/>

²⁴⁷ “Honourable Speaker, as you are aware, successive governments have implemented many policies in the context of education. Nevertheless, Sri Lanka’s education system requires a substantial modernisation to create the required human

assertion that achievements in education directly translate into economic benefits.²⁴⁸ The youth who participated in focus group discussions for the National Human Development Report 2014 often reiterated this point—“education does not guarantee employment”.²⁴⁹

14. **According to NHDR, 55 percent of youth in the country believe that the goal of education is to produce good citizens.** The Presidential Commission on Youth, referring to the 1971 youth insurrection that rebelled against stark social inequalities at the time, also stressed the importance of education and social justice.²⁵⁰ An increasing stress on education to be ‘marketable’ and focus on employability is eroding education as a pathway to deepen plural and democratic citizenship.²⁵¹ This approach to education is also indicated by the steady decline of social science and humanities education, resulting in generations with poor language skills (including in their mother tongues), weak civil and social consciousness, and little appreciation of democratic principles, pluralism and tolerance.²⁵²

Questions

1. What concrete policy measures are envisaged in relation to eradicating the significant inequities in access to quality education at all levels?
2. What steps have been or will be taken by the Government to address the problems arising from ethno-religious segregation of school children whilst ensuring access to education in the language of choice?
3. What measures have been or will be taken by the Government to ensure there is no discrimination in the provision of education?

Recommendations

1. Take immediate steps to eliminate all hidden costs in free public education.
2. Take definitive and time-bound measures to strengthen the education system at all levels by ensuring adequate budgetary and human resources as well as infrastructure, including their equitable distribution across the country.
3. Take all possible steps to ensure that the right to education is recognised as a fundamental right in the new constitution and that education policy recognises the wider social purpose of education.

capital base to sustain the growth momentum of the economy” – Minister Ravi Karunanayaka, tabling the budget at the Parliament in November 2015.

²⁴⁸ The trends from 1998 to 2012 within Sri Lanka’s labour force indicate a clear class distinction in relation to accessing jobs and achieving class mobility; for example, those who belong to higher economic classes have a greater share of labour force participation in comparison to those who belong to the lower classes. The poorest economic classes largely comprise low skilled, casual wage employees and are part of the growing informal sector, which now accounts for 70 percent of the labour force. The class distinctions within the labour force and the expansion of precarious work (discussed earlier) indicate the uneven growth that has taken place and the inability of the political economy to create decent, safe and secure jobs for the people in the country and enable their class mobility.

²⁴⁹ UNDP NHDR, 2014, p. 26.

²⁵⁰ The 1971 youth insurrection is an example of how conflict and violence in Sri Lanka have not always been simply ethno-religious in nature, but are also linked intrinsically to social inequalities and the lack of social justice. However, successive governments have narrowly interpreted education as a form of human resource development. This has huge impacts on curricula, with the focus exclusively on improving employability.

²⁵¹ Amarasuriya, H. (2017, February 13th), SAITM: A manifestation of the deep crisis in education, *The Daily Mirror*. Retrieved from: <http://www.dailymirror.lk/123695/-SAITM-A-manifestation-of-the-deep-crisis-in-education>

²⁵² Comments by Dr. Harini Amarasuriya, Senior Lecturer at the Open University of Sri Lanka to ICESCR Joint Civil Society Shadow Report 2017

Article 15—Language, Religious and Cultural Rights

Minorities, religious freedom and heritage spaces

01. Post-war Sri Lanka witnessed a surge in majoritarian nationalism and despite Constitutional guarantees of equality, non-discrimination and freedom of religion as well as religious worship, Sinhala Buddhist militant-fundamentalist groups like the Bodu Bala Sena (BBS), Ravana Balaya and Sihala Ravaya grew powerful. **In the years immediately after the end of the war, there was a dramatic rise in hate speech, ‘campaigns’ against *halal* food and the *hijab*, and systematic violence against religious minorities.** Most of the attacks were focused on places of worship (especially in the case of Evangelical Christians) and against businesses and economic interests (in the case of Muslims especially).
02. In mid-June 2014, soon after a large BBS rally, Muslims in Aluthgama, Beruwala and Dharga Town were attacked leading to at least 4 dead and dozens injured.²⁵³ Many, mainly Muslims, were made homeless as their houses were ransacked. Muslim-owned shops, factories and mosques were systematically attacked, damaged or destroyed. Thousands, again largely Muslims, were displaced. Both before and after Aluthgama, there have been attacks on prominent Muslim-owned businesses such as Fashion Bug, a popular clothing retail outlet. Notwithstanding the gravity of these incidents, **there has been little by way of decisive action to find and punish the perpetrators, thereby giving rise to a culture of impunity.**
03. The change in government following the Presidential election in January 2015 did not end the violations. Just days after the election, there was an attempt by Sinhala fundamentalist groups to attack the Dafthar Jailani Sufi shrine at Kurugala in which some graves were damaged.²⁵⁴ A report by Minority Rights Group (MRG) International lists 64 violations of religious freedom against Sri Lanka’s Muslim community during the period of November 2015 and June 2016.²⁵⁵ According to the National Christian Evangelical Alliance of Sri Lanka (NCEASL), a total of 87 cases of attacks on churches, intimidation and violence, including obstruction of worship services, were recorded in 2016.²⁵⁶
04. Additionally, **heritage and ‘sacred sites’ have again emerged as flashpoints.** This includes Deegavapi in the east to Devanagala in the south-west and Dambulla in the north-centre to Kurugala/Jailani towards the south-east, amongst other sites. A closer analysis of the conflicts reveals the multiple political and economic interests at play—especially in terms of exercising

²⁵³ Law and Society Trust (2015), *Where have all the neighbors gone?* Colombo: LST

²⁵⁴ Of Sacred Sites and Profane Politics: Tensions over Religious Sites and Ethnic Relations, Vol. I, 2015, Secretariat for Muslims.

²⁵⁵ The Minority Rights Group International (2016), *Confronting Intolerance: Continued Violations against Religious Minorities in Sri Lanka*, Colombo: The Minority Rights Group International

²⁵⁶ Information retrieved from the draft joint-civil society report to the Universal Periodic Review (2017). A number of Evangelical churches are reported to have been pressured/harassed by government authorities and the police. The authorities classified their assembly as ‘unauthorised gatherings’ since they were not registered with the Government, and had to suspend their religious services or shut down completely—see US Department of State, Human Rights Report 2016 – Sri Lanka, <https://www.state.gov/documents/organization/265760.pdf>

control over lands, particularly those being occupied by minorities, and over local demographics—in the designation of areas as archaeological reserves or certain structures as monuments.²⁵⁷ Moreover, **heritage interventions are often folded into nationalist political agendas and privilege majoritarian concerns and narratives of history.**²⁵⁸

Language rights

05. The Official Languages Policy (OLP) introduced through the 13th Amendment has been further strengthened, defined and reinforced by the 16th amendment, and through several gazette notifications, regulations, circulars and special orders. Successive governments established regulatory bodies to formulate, oversee and implement the OLP.²⁵⁹ But **autonomous powers, adequate resources, expertise and authority to enforce the OLP have been lacking.**
06. A 2009 Gazette (25), which laid down the National Language Policy, mandated that state offices and government departments had to offer services in both languages (i.e. Sinhala and Tamil).²⁶⁰ However, there are many **shortfalls in the implementation due to a lack of trained personnel, political commitment and financial as well as other resources.**²⁶¹ As a result, there is inadequate capacity for state structures to respond to the needs of citizens in their native language; effectively implement the draft 2012-2020 trilingual action plan; provide fair and equal access to state services, and justice to minority communities across the country. The **inability and incapacity to promote and respect language rights risk the violation of interlinked basic rights**, such as the right to information, access to justice, right to education and the right to adequate health. It further infringes upon people's culture, identity, social status and their way of life.²⁶²
07. For example, **in many government and private sector offices, forms and printed material are only or initially made available in Sinhala, and material in Tamil may be made available upon request.**²⁶³ There are reported incidents of essential documents such as birth certificates being written by Sinhala-speaking officials and the errors are only recognised years

²⁵⁷ See 'Of Sacred Sites and Profane Politics: Tensions over Religious Sites and Ethnic Relations', Volumes I & II, 2015, Secretariat for Muslims, Colombo.

²⁵⁸ Ibid, Volume 1

²⁵⁹ The Ministry of National Languages and Social Integration was created in April 2012 with the mandate of "Formulating policies, providing guidance and facilitating full implementation of the Official Languages Policy and the building of a strong inclusive Sri Lanka".²⁵⁹ It is supported in its mandate by three institutions: the Department of Official Languages (DOL), the National Institute of Language Education and Training (NILET), and the Official Languages Commission (OLC). The ministry under the current government, namely, the Ministry of National Co-Existence Dialogue and Official Languages (NCDL) has an additional arm – the National Secretariat for Non-Governmental Organizations. A key priority of the Department of Official Languages under the NCDL is to carry out "the recommendations of [the] Lessons Learnt and Reconciliation Commission (LLRC) relating to implementation of the official languages policy."²⁵⁹

²⁶⁰ Language, among others, has been a key factor in defining the contours of Sri Lanka's ethnic conflict in the past. Insofar, the government appointed Lessons Learnt and Reconciliation Commission (LLRC) too observed that "It is language that unifies and binds a nation" LLRC Recommendation 8.236

²⁶¹ The Sunday Times. (2009, July 05th). Official Languages Policy - mere rhetoric?. Retrieved from: http://www.sundaytimes.lk/090705/News/sundaytimesnews_19.html

²⁶² See Groundviews (2013), Watchdog, *State Facilitated Colonization of Northern Sri Lanka*. Retrieved from: <http://groundviews.org/2013/09/19/state-facilitated-colonization-of-northern-sri-lanka-2013/> and Bandara, T. (2011), *Without a Mother Tongue*, Colombo: CPA. Retrieved from: <http://www.cpalanka.org/wp-content/uploads/2012/02/2nd-Edition-Vibhasha-English-.pdf>

²⁶³ Sekaram, S. (February, 2017), Lost in Translation: Shortfalls in the Implementation of Sri Lanka's Official Languages Policy, *Groundviews*. Retrieved from: <http://groundviews.org/2017/02/20/lost-in-translation-shortfalls-in-the-implementation-of-sri-lankas-official-languages-policy/>

later; for example, when applying for higher education.²⁶⁴ When accessing justice, important information gets lost in translation as key institutions such as the police force have a majority of Sinhala-speaking officers.²⁶⁵ In Pungudutheevu, Jaffna, the mother of young Vidya, who was raped and murdered, had to rely on the help of a three-wheel driver to report the crime, as there was no Tamil-speaking officer or interpreter at the police station.²⁶⁶ In Vavuniya, when the mother of another rape victim attempted to make a statement at the police station, the Sinhalese officer incorrectly noted that it was the mother who had been raped.²⁶⁷

08. Additionally, the languages of the indigenous Vedda and other minority communities, such as the Burgher, Malay, Sri Lankan Africans and Telungu, are now endangered and therefore at risk of becoming extinct. Members of these communities have little or no opportunities to be taught in their respective mother tongues and for language skills to be transmitted to the next generation.²⁶⁸

Questions

1. What concrete steps have been or will be taken by the Government to implement the ‘Ten-Year National Plan for a Trilingual Sri Lanka (2012-2021)’?
2. What steps have been or will be taken by the Government to investigate, prosecute, and prevent violence and hate speech against minorities?

Recommendations

1. Ensure that processes of designating structures as monuments or sites as archaeological reserves and heritage or ‘sacred’ sites are transparent, independent and reviewable, and that they do not cause or impose unreasonable restrictions on access to land and on the cultural identity of minorities.
2. Fully implement the guidelines set forth in the OLP and give due consideration to the recommendations of the LLRC and the Consultation Task Force on Reconciliation Mechanisms on the implementation of a trilingual language policy.

²⁶⁴ Ibid

²⁶⁵ Ibid

²⁶⁶ Ibid

²⁶⁷ Ibid

²⁶⁸ Report submitted by the Special Rapporteur on Minority Issues, Ms. Rita Izsák-Ndiaye on the conclusion of her official mission to Sri Lanka (10–20 October 2016), A/HRC/34/53/Add.3, 31 January 2017.

1. Ambagamuwa United People's Organization (AUPO)
2. Arising Sun
3. CAMID, Batticaloa
4. CCDF, Badulla
5. CCS, Matara
6. CDC, Betticaloa
7. Center for Society and Religion, Maradana
8. Centre for Social Concern
9. Citizen Council , Passara
10. Citizen Forum, Galle
11. Citizen Forum, Mananr
12. Citizen Forum, Trincomalee
13. Council of Returned Refugees
14. CSDF-Dematagoda
15. CWA, Passara
16. Dabindu Organization, Katunayake
17. Dakune Kantha Handa, Galle
18. DFCFU, Trincomalee
19. DIFESO, Batticaloa
20. DIFSO, Ampara
21. DIFSO, Jaffna
22. DIFSO, Mannar
23. DIFSO, Trincomalee
24. Environmental Conservation Trust
25. EQUAL GROUND
26. EST, Madulsima
27. FFD, Matara
28. FIAN Sri Lanka
29. Future in Our Hands Development Foundation, Badulla
30. Ginimella Fisheries Organaization
31. HPDP, Galle
32. HRO, Poddala, Galle
33. ICHC, Kaluaggala
34. INFORM Human Rights Documentation Centre, Colombo
35. Institute of Social Development, Kandy
36. Inter Religious Group, Galle
37. Jayantha Gamage Foundation, Matara
38. JDFCSU, Jaffna
39. Justice for All (JFA), Colombo,
40. Kilakku Sooriyan Women District Committee, Addalaichenai
41. Lanka Farmer Forum, Rajagiriya
42. Law and Society Trust (LST), Colombo
43. Lawyers for Democracy, Colombo
44. Mannar Women's Development Federation
45. Marumalarchchi Women District Organaization, Betticaloa
46. MCC, Mannar

47. Movement for Land and Agriculture Reforms, Rajagiriya
48. Movement for the Protection of Democratic Rights
49. MSED0, Mannar
50. National Fisheries Solidarity Movement, Negombo
51. Nawauga Social Development Forum.
52. Nesakaram Citizen Forum, Mannar
53. NGO Consortium, Batticaloa
54. NPFPU, Mannar& Jaffna
55. NSLA, Akkaraipaththu
56. Panampattu Protection Organization, Paanama
57. PCDF, Passara
58. People's Alliance for Right to Land
59. People's Health Movement, Borella
60. People's Movement for Plantation Community Land Rights.
61. Plantation Women Development Organization (PWDO)
62. Plantation Community Development Forum, Badulla
63. Poonthilir Women District Committee, Jaffna
64. Praja Abilasa Network, Negombo
65. Pratheeba Media Collective, Matara
66. Progressive Peasant Congress, Higurakgoda
67. PWSCR Sri Lanka
68. RDS, Poththuvil,
69. RLO, Jaffna
70. Rural and Estate Development Organization.
71. Rural Workers Organization, Jaffna
72. SAMATHAI feminist circle
73. SANRIM
74. Savisthri Women's Movement, Baththaramulla
75. SDF, Galle
76. SLNF, Batticaloa
77. Social Institute for Development of Plantation Sector (SIDPS)
78. Society for Resettlement, Trincomalee
79. Southern Fisheries Organization, Galle and Matara
80. Sramabimani Kendraya, Seeduwa
81. Sri Lanka Nature Group
82. Sri Vimukthi Fisher Women organization, Negombo
83. Stand Up Movement, Negombo
84. Suneru Foundation
85. Surya Women's Development Centre, Batticaloa
86. TDC, Trincomalee
87. Tissa Jaya children welfare foundation, Weligama.
88. Udayam District Women Organization
89. United Federation of Labor
90. United Plantation Worker's Union (UPWU)
91. Up-Country Social Development Forum
92. Uva Rural Development Foundation, Monaragala
93. Uva Shakthi Foundation, Badulla
94. UVA Valampuri Up-Country Forum

95. Uva Wellassa Women Organization, Wellawaya
96. UWF, Badulla
97. UWS, Matara
98. Valarpirai Citizen Forum , Addalaichenai
99. Valarpirai District Women Organizatin, Mannar
100. Vali East Citizen forum, Jaffna
101. Vali North Citizen Forum, Jaffna
102. Vali North Resettlement Organization, Jaffna
103. Venasa Transgender Network
104. WNW, Trincomalee
105. Women and Media Collective
106. Women Development Centre, Badulla
107. Women Development Federation, Weligepola
108. Women's Resource Centre, Kurunegala
109. Women's Action Network
110. ZOA