

SRI LANKA

**IMPLEMENTATION OF THE INTERNATIONAL COVENANT ON
ECONOMIC, SOCIAL AND CULTURAL RIGHTS**

CIVIL SOCIETY REPORT

10 SEPTEMBER 2010

**COLLECTIVE FOR
ECONOMIC, SOCIAL AND CULTURAL RIGHTS IN SRI LANKA**

Introduction

01. Sri Lanka's 26 year long war ended in May 2009 with the military annihilation of the separatist Liberation Tigers of Tamil Eelam (LTTE). An estimated 85,000 people were killed in the course of the conflict, with enduring suspicions and grievances among all of the island's ethnic and religious communities.
02. Hundreds of thousands of persons of all ethnicities have been displaced; some on multiple occasions spanning the duration of the war. As of January 2010 there were some 529,500 IDPs and returnees lacking durable solutions to their displacement¹; and as of May 2010 almost 250,000 among them in the Northern Province continue to be dependent on emergency humanitarian assistance.²
03. Of over 280,000 IDPs interned in the last phase of the war, and denied freedom of movement until December 2009, the government claims to have resettled 182,946 IDPs. The current number of IDPs at six sites in Vavuniya and two sites in Jaffna are 61,898 and 1,347 respectively.³ Those 'resettled' lack adequate shelter, food and water and livelihood opportunities.
04. The end of the war has not been accompanied by rapid improvements in human rights and widening of the democratic space despite the defeat of armed secessionism, and the first all-island presidential and parliamentary elections for decades in January and April 2010 respectively.
05. The state of emergency continues to be operative throughout the island (although partially relaxed since May 2010), while the Prevention of Terrorism Act remains in force in the absence of acts of terrorism, restricting the full enjoyment of democratic and human rights. Over 1 900 Tamils (including of Up-Country or Indian-Origin) continue to be in detention under emergency laws more than one year since the war ended.⁴
06. The North and East is highly militarised with permanent encampments of security forces at regular intervals; high security zones barred to all civilian access; provincial administration by former armed forces personnel; and linguistic, religious and cultural markers of occupation.
07. No concrete measures have been taken by government to address the political grievances that are at the root of the conflict. The All-Party Representative Committee process on power-sharing has been suspended through obstruction by the Executive and virulent opposition from within the governing coalition. The full implementation of the 13th Amendment to the Constitution that provided for limited devolution of power has been continually frustrated by central government intervention, and its opposition to autonomy for the Northern and Eastern provinces.
08. The urgent task of reconciliation is reduced to the development of the Northern and Eastern provinces, and the recruitment of Tamil-speakers to the police force. The government has rejected even discussion of accountability for alleged gross violations of human rights especially in the last phase of the war. The current 'Lessons Learned and Reconciliation Commission' (LLRC) has a narrow and flawed mandate and is widely regarded as cosmetic – for the objective of deflecting international pressure for accountability. The recent experience of past Commissions has not created confidence among minority communities either in the process or likely outcome of the LLRC.⁵
09. The National Human Rights Commission (NHRC) has been paralysed through non-appointment of Commissioners since June 2009, thereby preventing it from making recommendations following its inquiries and investigations. Consequently, as of August 2010, some 5,500 cases are pending resolution.⁶ Its downgrading in 2007 to Status 'B' (reconfirmed in March 2009), by the International Coordinating Committee of National Human Rights Institutions, as the direct result of non-compliance with the 'Paris Principles' underlined its utter inadequacy. The NHRC continues to lack independence from government, and to lack effectiveness in responding to serious human rights violations such as enforced and involuntary disappearances, extra-judicial killings and preventive detention.⁷
10. The 18th Amendment to the Constitution in September 2010 has gutted the good governance provisions in the 17th Amendment.⁸ This regressive constitutional change concentrates even greater powers in the already

¹ 2010 UNHCR country operations profile – Sri Lanka, <http://www.unhcr.org/cgi-bin/texis/vtx/page?page=49e4878e6#>.

² UN Office for the Coordination of Humanitarian Assistance, *Joint Humanitarian Update*, Report #25, 24 April – 21 May 2010, <http://ochaonline.un.org/srilanka/Home/tabid/2581/language/en-US/Default.aspx>.

³ "Resettlement in Vadamarachchi East begins", Ministry of Defence, 9 January 2010, http://www.defence.lk/new.asp?fname=20100901_04.

⁴ "PTA detainees to remain", *Daily Mirror Online*, 17 May 2010, <http://www.dailymirror.lk/index.php/news/3772-pta-detainees-to-remain.html>.

⁵ Kishali Pinto-Jayawardena, *Post-War Justice in Sri Lanka: Rule of Law, the Criminal Justice System and Commissions of Inquiry*, International Commission of Jurists, Bangkok 2010, http://www.icj.org/IMG/Sri_Lanka_COI_18.01.09-2.pdf.

⁶ "SLHRC overloaded with unresolved cases", *Daily Mirror*, 27 August 2010, <http://www.dailymirror.lk/print/index.php/news/news/19733.html>.

⁷ 2009 ANNI Report on the Performance and Establishment of National Human Rights Institutions in Asia, Forum-Asia, Bangkok 2009, pp. 195-219, http://www.forum-asia.org/news/in_the_news/pdfs/2009/2009%20ANNI%20Report.pdf.

⁸ Centre for Policy Alternatives, *Statement on the Eighteenth Amendment Bill*, 3 September 2010, <http://www.cpalanka.org>.

- authoritarian Executive through the abolition of term limits on the Presidency, and entitles the incumbent to make direct appointments to what were intended to be independent institutions such as the National Police Commission and the Commission to Investigate Allegations of Bribery and Corruption with the effect of undermining their independence and therefore effectiveness.
11. Dissenting media workers, human rights defenders and advocacy non-governmental organisations are subject to intimidation and threat from unknown sources. The government has appeared to condone such actions through its own antagonism towards dissenters; and inaction in the face of assaults, abductions and arson directed against those exercising the freedom of expression.
 12. The government's lack of respect for human rights guaranteed in the Constitution and national laws, led to the suspension of preferential trading access to the European Union under its GSP+ scheme as of 15 August 2010. This will have an immediate impact on the livelihoods of 300,000 mainly women garment workers, particularly those employed by small and medium enterprises, driving many into precarious and unregulated employment in the sub-contracting and informal sectors.
 13. Although the government claims to have technically resolved the problem of statelessness through the 2003 Citizenship Act and its previous amendments, the main discriminatory Citizenship Act No. 18 of 1948 has not been amended or repealed. Also, Indian Origin Tamils⁹ continue to be discriminated in (a) voter registration; (b) obtaining services, assistance, welfare facilities from local government and grama niladharis; (c) obtaining basic documents such as birth certificates and national identity cards in the Tamil-language.
 14. Section 365A of the Penal Code (enacted in 1883) criminalises sexual activity between two consenting adults of the same sex. In 1995, the government amended the word 'males' in the original text to 'persons', thereby criminalising same-sex sexual activity between women as well.
 15. There is an extensive culture of secrecy within government and the state administration. The right of the public to know, to have access to information that concerns them as individuals or as a class, and that encourages transparency, accountability and participation is critical to the protection of all human rights. A freedom of information act consistent with international standards is urgently needed.
 16. In 1999, draft equal opportunities legislation prohibiting discrimination on grounds of ethnicity, gender, religious or political opinion, language, caste, age or disability, in employment, education, access to public places and means of transportation and in the provision of accommodation, goods and services; and creating an equal opportunity tribunal, was shelved. Its revival and adoption, as well as expansion to include discrimination on the basis of sexual orientation and gender identity, is imperative to removing institutional and social barriers to equality and non-discrimination, as well as post-war reconciliation and justice.
 17. The main statistical sources for monitoring ESC issues are the Population and Housing Survey (last undertaken in 2001), Agricultural Surveys (last undertaken in 2002), Household Income and Expenditure Survey (last undertaken in 2007) and Consumer Finances and Socio Economic Survey (last undertaken in 2003/4), in addition to various Central Bank publications (annual). However there are weaknesses that need to be addressed to maximise their usefulness:
 - a. Lack of reference to accepted indicators as per UN Doc HRI/MC/2008/3.
 - b. Lack of coordination on indicators and definitions means that data does not corroborate across these official statistical measures.
 18. 33 years of the export-led growth model of development has failed the poorest and most vulnerable, and is not likely to succeed in future. Democratic rights have been weakened and political authoritarianism entrenched. An independent peoples' commission, with the assistance of the UN human rights system, should evaluate this experience and review actually existing alternatives to current strategies and policies.

⁹ There is debate among contributors and endorsers of this report as to the appropriate description of the descendants of South Indian Tamils who emigrated to Sri Lanka in the 19th and 20th century, in conditions of indenture, largely for employment on the coffee and later tea and rubber estates or plantations. Some prefer *Malaiyaha* (or 'Up-Country') Tamil to emphasise historic habitation of the hill country and legitimate right to Sri Lankan citizenship, whereas others believe it to be inappropriate because the community is also to be found in other parts of the island and in diverse occupations, and have reclaimed the older usage of 'Indian-origin Tamil'.

Article 1: Rights of Indigenous People¹⁰

19. The *adivasi* (also known as *veddah*) community now numbers only a few thousand, and through assimilation into the Sinhala and Tamil communities, are on the verge of extinction.¹¹
20. Since 1931 the *adivasis* have not been able to manage their own affairs in their areas of historic habitation. Instead they are now regulated by the state administrative structure which has at best neglected and at worst trampled on their rights.
21. Post-independence land redistribution and clearance schemes have reduced the forest coverage which was the habitation of the *adivasis* and the source of their food and traditional knowledge. Mega-development irrigation schemes such as Gal Oya and Mahaweli projects led to forest areas of the *adivasis* being taken over by the government. The concerns of the *adivasis* have been ignored completely in the development process.
22. Forest areas have been declared as nature reserves and the *adivasis* are prohibited from freely entering those areas. Their livelihood has been hunting wild animals for consumption, acquiring bee's honey, yams, and fruits and *chena* (shifting) cultivation. All these activities are linked to the forest. By prohibiting their access to the forest all their economic activities are barred and those who do enter the forest are criminalised.
23. The social status of the *adivasi* community can be described as a humiliated and marginalised section of the population, who are widely considered to be dependent on *samurdhi* benefits (cash-transfers), who possess an inferiority complex, and are considered to be 'primitive' and 'uncouth' by the majority of society.
24. *Adivasi* children have been stigmatised and ostracised in mixed ethnicity schools such as in Ratugala leading to their exclusion and drop-out from the education system.¹²
25. *Adivasi* children have been employed in hazardous occupations such as manufacture of fireworks contrary to laws regulating child labour.¹³

26. As a result of their socio-economic marginalisation and impoverishment, *adivasis* experience many physical and mental ailments and there is increased incidence of drug-abuse and alcoholism.
27. The economy shapes the culture. Once the economic livelihood is banned by the laws of the country, other-inter dependent factors pertaining to culture such as food, housing, language, art and behaviour inevitably becomes forbidden or outmoded as practical activities in life.
28. Although past governments have implemented ad-hoc programmes for the uplift of *adivasis*, they are not involved in their planning or setting of objectives and consequently the benefits have only been enjoyed by a few individuals and not the community as a whole. There is no comprehensive programme that begins from the needs and wellbeing of *adivasis* including their socio-economic independence and cultural identity.
29. In the past a budgetary allocation has been made for the welfare of *adivasi* community which is to be appreciated. However, due to the uncertainty of how the funding is used, and whether the budgetary allocation is annually maintained, it is doubtful how beneficial this will be.

Questions

- *Will the government recognise the identity of adivasis and monitor the realisation of their economic, social and cultural rights through their separate enumeration in the census and in other statistical measures?*
- *Will the government create an independent authority for adivasis with their participation and representation and that is resourced and empowered to protect their economic, social and cultural rights?*

Recommendations

- *Freedom of access and movement within the Maduru Oya Nature Reserve should be assured to adivasis.*
- *A comprehensive and long-term programme for the sustainability and survival of the adivasis must be launched with their full and informed participation in decision-making.*

¹⁰ This chapter is largely based on a submission by *adivasi* rights activist Dambane Gunawardena.

¹¹ See generally, Wiveca Stegeborn, "The Disappearing Wanniyala-Aetto ('Veddahs') of Sri Lanka: A Case-Study", *Nomadic Peoples* NS (2004), Vol. 8, Issue 1, pp. 43-63.

¹² "Veddahs ask authorities to help them live", *Daily Mirror*, 26 November 2009.

¹³ "Vedda kids abused in Negombo", *Daily Mirror*, 1 March 2010, <http://www.dailymirror.lk/index.php/news/1936-vedda-kids-abused-in->

[negombo.html#comment-49780](#); "Vedda children employed at fireworks factory", *Daily Mirror*, 19 July 2005.

Articles 2 and 3: Non-Discrimination and Equality

30. Women are discriminated against in the general law. For example, the application of the principle of primogeniture (or preference for males in any category of heirs) on death of a male permit holder of state lands under the Land Development Ordinance of 1935, has not been eliminated.
31. State agencies have made no effort to amend gender-discriminatory aspects of the three recognised personal laws (Kandyan, *Thesavalamai* and Muslim), in relation to married women's property rights.¹⁴
32. The minimum age of marriage has been retained as 12 in the Muslim statutory law, whereas it is 18 in the general law, as there is a perception that any harmonisation will infringe cultural or religious sensitivities.
33. In 2004 the draft Women's Rights Act *inter alia* protected women and girls from all communities against early and forced marriage and proposed the creation of an independent commission to advance women's rights. However, the 2009 draft only provides for the establishment of the National Commission on Women. Even this proposal is unsatisfactory because appointments to the Commission are to be made directly by the Executive President.¹⁵
34. Women's representation in parliament is presently 5.7% and has rarely exceeded five percent; and even in the middle-tier provincial councils has only averaged 2% despite women exercising the right of franchise along with men since 1931. No measurable steps have been taken to increase the political participation and representation of women at all levels of government.¹⁶ Women's groups have urged for 30% quota of nominations for women at local government level but to no avail. There is also lack of political will among the major parties to nominate women candidates.
35. Between 2003 and 2008 women's participation rate in waged labour has stagnated at around 33%. Women workers are predominantly in clerical, skilled and semi-skilled grades and scarcest in the top-level administrative and managerial grades.¹⁷ Gendered

norms on occupations and career options for women continue to be perpetuated and reinforced by family members, educators, policymakers, employers and the mass media.

36. Sri Lanka has signed the Convention on the Rights of Persons with Disabilities but has not ratified it. Current legislation (Protection of the Rights of Persons with Disabilities Act No 28 of 1996 as amended in 2003) does not fully implement Sri Lanka's obligations under the UN Convention.
37. Following the Supreme Court upholding a fundamental rights application to order the State to make public buildings accessible to persons with physical disabilities, the Accessibility Regulation of 2009 (amending the 2006 Regulation) was made. However, compliance is postponed for up to eight years from September 2009.¹⁸
38. According to the National Secretariat for Persons with Disabilities, more than 150 Divisional Secretariats are now accessible to persons with disabilities, as well as the Colombo National Museum, some public theatres in Colombo, and some post-offices and railway stations. However public transport (particularly buses and trains) as well as public spaces in general and particularly outside of Colombo, are not designed for accessibility to persons with physical disabilities.

Questions

- Will the government amend the Land Development Ordinance to ensure women's rights to property and land are respected?
- Will the government ensure that in proposed electoral system and law reforms that at least 30% of nominations are earmarked for women?

Recommendations

- The 2009 Women's Rights Bill should be withdrawn and new legislation enacted on the basis of the 2004 Draft Bill.
- The UN Convention on the Rights of Persons with Disabilities should be ratified and domestic legislation enacted for its implementation.

¹⁴ Sri Lanka Shadow Report to the Committee on the Elimination of All Forms of Discrimination Against Women, (facilitated by the Women and Media Collective), July 2010, p. 28, www2.ohchr.org/english/bodies/cedaw/docs/ngo/WMD_SriLanka48.pdf.

¹⁵ Sri Lanka Shadow Report to the Committee on the Elimination of All Forms of Discrimination Against Women, (facilitated by the Women and Media Collective), July 2010, pp. 8-9.

¹⁶ Sri Lanka Shadow Report to the Committee on the Elimination of All Forms of Discrimination Against Women, (facilitated by the Women and Media Collective), July 2010, pp. 12-14.

¹⁷ Department of Labour, *Labour Statistics 2008*, Colombo 2009, p. 44.

¹⁸ Gazette of the Democratic Socialist Republic of Sri Lanka Extraordinary, No. 1619/24, 18 September 2009.

Articles 6, 7, 8 and 9: Rights to and at Work and Social Security

39. There is no national legislation enforcing equal pay for equal work across public and private sectors. ILO Convention No.111 on Discrimination (Employment and Occupation) was ratified in 1998. No new legislation was enacted subsequent to this ratification. Trades that are not covered by the minimum wages standards stipulated by the Wages Board¹⁹ such as domestic service are known to discriminate against women. Women workers in estates receive less than male workers for work of similar value.
40. The minimum wage set by the Wages Board is Rs6900. This is clearly insufficient for an adequate standard of living, and has to be supplemented by over-time (where available) in most cases. The budgetary relief allowance that applies to private-sector workers (excepting estate workers) earning under Rs20000 per month is only Rs1000. Estate workers continue to be daily-waged and are denied a living monthly salary.
41. According to a 2005 survey by the non-governmental Apparel Industry Labour Rights Movement (ALaRM),²⁰ a 'living wage' for a family of 2 adults and 2 children in the Western province is Rs17750 per month.²¹ The enactment of a national minimum wage law has been resisted by employers, as it would (a) raise the current floor wage, and (b) provide universal coverage including to those workers not regulated by wages boards.
42. Sexual harassment is an offence under the Penal Code (as amended in 1995). It covers incidents at place of work. However, sexual harassment is under-reported and remains neglected by the state, employers and in society.
43. There is no national labour legislation addressing the issue of sexual harassment in the workplace. The Labour Ministry does not have any specific measures to combat sexual harassment in the work place, including on estates. The Labour Ministry appears to believe that this is an issue for the Women's Affairs Ministry.
44. Although the right to form trade unions is recognised in the Sri Lankan constitution, and Sri Lanka has ratified ILO Conventions No. 87 and 98, there is declining respect for freedom of association of workers, through non-enforcement of legal provisions by the State and acts of anti-union discrimination and victimisation of worker activists by employers in the context of neo-liberal globalisation.
45. All labour laws are applicable in export processing zones (EPZs) where over 80% of workers are women. However, in practice there have been widespread violations of restrictions on over-time and night-work, as well as repression of unions. Out of 259 factories in 14 Zones, only 22 are unionised and of these only 12 unions are recognised by management, underlining the obstacles to unionisation in the Zones.
46. The management-dominated employees' councils that are promoted by the Board of Investment are not genuine workers organisations, do not have legal standing, and are not collective bargaining agents.²² Management stacks the councils with supervisors and office-based (rather than shop-floor) workers. Management also sets the schedules and agendas for meetings, limits discussions to marginal issues and avoids discussion of wages, working hours, and working conditions. The use of employees' councils to subvert the will of workers to form a union is a clear violation of the right to organise and bargain collectively.
47. The main reason behind the low level of unionisation of women workers in the EPZ is the fear of losing employment. There have also been many instances where female workers who take an active role are fired and blacklisted in the Zones under the pretext of trouble makers, making it impossible for them to find new employment. This unfortunate situation is caused primarily by the lack of genuine political will on the part of the government especially the Department of Labour to enable workers to exercise the right to freedom of association.
48. As a result of labour rights violations, an investigation by the US Trade Representative is underway to ascertain whether Sri Lanka can retain preferential trading access to the United States under its Generalised System of Preferences (GSP) scheme.²³
49. While the right to strike is implicitly recognised in statute law, there has been a recent trend of the courts intervening in labour disputes through injunctions

¹⁹ According to Labour Ministry officials, only 30% of industry is regulated by the Wages Board. Another 40% is regulated by the Shop & Office Employees Act which does not have a minimum wage provision, and the remaining 30% is wholly unprotected.

²⁰ ALaRM had stated that the Asian Floor Wage was Rs16705.75 but that local apparel workers were only receiving an average of Rs6750 a month on average –which is even below the minimum wage limit: "Lankan apparel workers demand Asian floor price", *LBO online*, 30 September 2009.

²¹ "Garment workers in 'Living Wage' campaign to raise wages", *The Sunday Times*, 23 September 2007, <http://www.sundaytimes.lk/070923/FinancialTimes/ft328.html>.

²² International Trade Union Confederation, *2010 Annual Survey of Trade Union Rights – Sri Lanka*, <http://survey.ituc-csi.org/+Sri-Lanka-+html>.

²³ AFL-CIO (2008), *Petition to remove Sri Lanka from the list of Eligible Beneficiary Developing Countries pursuant to 19 USC 2462 (d) of the Generalized System of Preferences*, <http://www.naturesl.lk/>.

barring strike action for e.g. the port-workers and teachers strikes in 2006 and 2007 respectively.

50. The 40 per cent threshold for the compulsory recognition of trade unions becomes in practice, the threshold required for a trade union to be established at the workplace with employers engaging in various union-busting tactics in order to avoid such recognition (in particular, changing the lists of employees, as the vote is based on a list furnished by the employer).²⁴
51. The ILO Governing Body Committee on Freedom of Association in Case No. 2380 on the denial of the right to freedom of association and collective bargaining in Sri Lanka recommended that the Government shall amend legislation, in the event of unions being unable to represent 40 per cent of the workers²⁵. It further held that the 40 per cent requirement shall not preclude unions from being recognised for the purpose of collective bargaining.
52. Essential Services Orders, such as that proclaimed in response to the port-workers strike in August 2006, severely restrict the right to strike and similar trade union action and encompass a vast segment of services such as banks, financial institutions, government ministries, public corporations, health, electricity, transport, plantations, broadcasting and television services, exports, etc., which are clearly not essential and do not satisfy the ILO's strict definition.
53. Current laws dealing with offences of unfair labour practices/anti-union discrimination are improperly enforced while the present maximum fine of Rs20000 fails to provide sufficient discouragement against such offences.
54. The local law on industrial disputes authorises action before courts only to be initiated by the Department of Labour or anyone who has been granted sanction by the Commissioner General of Labour. This situation has resulted in the government neither prosecuting errant employers nor granting sanction to affected victims of anti-union discrimination to file cases on their own behalf. This mandatory requirement of having to go through the arbitrary discretion of government authorities has in practice made the law defunct.
55. Ethnic minorities especially Indian Origin Tamils and Muslims are under-represented in public employment including state administrative services even in districts where they are concentrated. According to one official survey of state sector institutions, Indian-Origin Tamils constituted only 0.31%; Muslims only 3.29%, and North-Eastern Tamils only 5.26% of all employees,²⁶ whereas their proportion in the population is 5.5%; 7.3%; and 12.7% respectively.
56. There is no adequate social security system such as pensions for the elderly; and insurance benefits for people with disabilities and unemployed youth in the estate sector. The government's 2005 election manifesto promised a monthly social welfare allowance of Rs3000 to families of persons with disabilities. In 2008, around 2125 families were beneficiaries. However, this is only a fraction of all eligible households.
57. Despite the impacts of the global financial crisis on employment and living standards, social security spending in Sri Lanka as a percentage of the national budget is estimated to have contracted by 38.3% in 2009 as compared to pre-crisis levels.²⁷
58. Protection against discrimination at employment is only guaranteed to public servants through fundamental rights action or recourse to the Human Rights Commission. In the private sector there are no mechanisms or laws to deal with discrimination in employment and occupation. Obtaining redress with respect to discrimination by private employers on the grounds enumerated in Article 1 (1) (a) of ILO Convention 111 is still an impossibility.
59. LGBT persons, especially trans-gendered persons, are discriminated through homophobic attitudes in access and admission to public and private sector employment leading to their exclusion from a range of trades and workplaces and contributing to their income poverty.
60. The inability for people of the same sex to register civil partnerships or to marry prevents them from accessing a whole range of benefits that persons in heterosexual marriages enjoy, such as naming their partners as beneficiaries to their state pension and employees' provident and trust funds.
61. The government's policy decision of 7 March 2007 to 'ban' mothers of children under the age of five from migrating abroad for work violates their rights under the

²⁴ International Labour Conference, 93rd and 96th Sessions in 2005 and 2007, Report of the Committee of Experts on the Application of Conventions and Recommendations,

<http://www.ilo.org/public/english/standards/relm/ilc/ilc93/pdf/rep-iii-1a.pdf> and <http://www.ilo.org/public/english/standards/relm/ilc/ilc96/pdf/rep-iii-1a.pdf> respectively.

²⁵ ILO Governing Body Committee on Freedom of Association Case No.2380, Report No.344, Vol. XC, 2007, Series B, No.1, para 192, <http://webfusion.ilo.org/public/db/standards/normes/libsynd/getRepsCtryStatus.cfm?hdroff=1&ctry=1750&Lang=EN&status=D>.

²⁶ Department of Census and Statistics, *Census of Public and Semi-Government Sector Employment – 2006*, <http://www.statistics.gov.lk/CPSGSE06/index.html>.

²⁷ Naren Prasad and Megan Gerecke (2010), "Social Security Spending in Times of Crisis", *Global Social Policy*, Vol. 10, No. 2: 218-247 at 234.

UN Migrant Workers Convention to seek work and to freedom of movement.²⁸

62. The 15 day pre-departure orientation to housemaids bound for the Middle East is insufficient and does not adequately inform workers of their rights, remedies available to them, and protection mechanisms.
63. Labour Attaches in Sri Lankan missions abroad the Sri Lanka Bureau of Foreign Employment (SLBFE) are not perceived as effective and concerned to protect the rights of migrant workers in host countries: for instance in cases of breach of employment contracts, exploitative working hours and conditions, physical and sexual abuse, detention and non-compensation.
64. The ‘shelter’ for migrant workers in Olaya, Saudi Arabia is reputed to be more like a prison camp. One parliamentarian who has visited the facility claims that there are 350 Sri Lankan housemaids stranded there and that many of them have faced abuse and sexual assault inside the camp.²⁹ On 22 August 2010, the SLBFE belatedly claimed that it would take steps to repatriate migrant workers at the Olaya camp.³⁰
65. Workers in the informal sector, many of whom are women, are not protected by social security legislation. There are currently no known social security or pension schemes for migrant workers of any skills category or their families,³¹ offered by host-country governments. As migrant domestic workers are generally not covered by host country labour laws,³² their employers usually do not provide them with any type of social security or pension.

²⁸ “Maternal bond”, *Lanka Business Online*, 8 March 2007, <http://www.lankabusinessonline.com/fullstory.php?nid=723768503>; “State move to ban migrant mothers raises storm of protests”, *Sunday Times*, 25 March 2007, <http://sundaytimes.lk/070325/FinancialTimes/ft308.html>.

²⁹ “UNP Calls for Return of SL Housemaids in Saudi Refugee Camp”, *Sunday Leader*, 18 August 2010, <http://www.thesundayleader.lk/2010/08/18/unp-calls-for-return-of-sl-housemaids-in-saudi-refugee-camp>.

³⁰ “Steps Taken to Repatriate 150 Lankan Migrants from Olaya Camp in Saudi Arabia”, *News First Online*, 22 August 2010, http://www.newsfirst.lk/index.php?option=com_content&view=article&id=12740:steps-taken-to-repatriate-150-lankan-migrants-from-olaya-camp-in-saudi-arabia&catid=97:news-items-2&Itemid=294.

³¹ Interviews with staff of the Sociology and Welfare Departments of the Sri Lanka Bureau of Foreign Employment by the Law & Society Trust between April and July 2010.

³² Human Rights Watch, *Exported and Exposed – Abuses against Sri Lankan Domestic Workers in Saudi Arabia, Kuwait, Lebanon and the UAE*, November 2007, at p.4, states that the labour laws of these countries categorically exclude domestic workers from protection, <http://www.hrw.org/en/reports/2007/11/13/exported-and-exposed-1>.

Questions

- *When will the government guarantee the rights of migrant workers, especially women, in the UN Migrant Workers Convention through domestic legislation?*
- *When will the government abide by ILO Conventions and recommendations of ILO expert committees for revision of national labour laws?*

Recommendations

- *The government should generate alternative livelihood options for women and men so that they are not compelled to migrate abroad, while respecting their freedom of choice and movement.*
- *The threshold to be established by law for the compulsory recognition of trade unions should be lowered to 25 per cent of the workers on whose behalf such trade unions seek to bargain, to facilitate both the general recognition of a trade union by the employer and the right of the union to make bargaining demands, but not exclusive collective bargaining rights.*
- *Special protection should be granted to certain persons, for example, to the members of a trade union which has applied for registration/union certification or which is in the process of being established, or to the founding members of a trade union or to trade union officers and leaders.³³*

³³ *Freedom of association and collective bargaining*, General Survey of the Reports of Conventions No.87 and 98, Report III (Part 4B), International Labour Conference, 81st Session 1994, Geneva, para 207.

Article 10: Rights in the Family³⁴

66. The Prevention of Domestic Violence Act (PDVA) 2005 makes no specific reference to women despite their being at greatest risk of violence within the family. It is mostly concerned with protection of the victim rather than punishment of the offender. Deterrent punishment against the abuser under the PDVA is only in the event of violation of the protection order.
67. The PDVA's definition of violence is by reference to offences in the Penal Code such as grievous hurt, causing miscarriage, emotional abuse etc., instead of an independent definition that would recognise the gendered dimensions of domestic violence.
68. The PDVA does not make it mandatory for medical service providers to make complaints to the police of evidence of domestic violence. Neither does the PDVA provide instructions to the police about what action should be taken with regard to responding to complaints of domestic violence.
69. When the interim protection order is issued there is provision for the court to order counselling. However, in some cases the counsellor has advised the victim to return to the abusive environment and seek reconciliation with the abuser, thereby making redundant the reason for the issuance of the protection order.
70. According to one non-governmental organisation, Women in Need (WIN), between 2005 and 2009, some 219,825 individuals sought their assistance in complaints of domestic violence. Since the enactment of the Prevention of Domestic Violence Act, WIN has documented 101 applications for protection orders, of which 85 were successful.
71. 'The Plan of Action for the Prevention of Domestic Violence Act 2005' adopted by the National Committee on Women has a comprehensive set of strategies and activities to ensure the implementation of the Domestic Violence Act. However the government appears to believe that awareness-raising and sensitisation activities are sufficient, which is not the case. In any case, awareness-raising among judicial and law-enforcement agencies is unsystematic.
72. There is lack of gender sensitivity in hearing and collection of evidence, victim testimony and sentencing.

³⁴ This chapter is largely based upon the *Sri Lanka Shadow Report to the Committee on the Elimination of All Forms of Discrimination Against Women*, (facilitated by the Women and Media Collective), July 2010, esp. pp. 18-19; 30-38, www.20hchr.org/english/bodies/cedaw/docs/ngo/WMD_SriLanka48.pdf.

This lack of sensitivity resonates throughout the auxiliary actors of the judicial system such as law enforcement officers, judicial-medical officers, medical professionals and lawyers.

73. Marital rape has not been recognised in law despite progressive reform of the Penal Code in this regard in 1995. Currently, only if the couple are judicially separated can a husband who forces sexual relations on his wife be prosecuted for rape.
74. There are disparities in maternity benefits between public and private sectors.³⁵ Women in the private sector are entitled to 84 working days of fully paid leave but only for the first two live births. There is no entitlement to leave for women who may experience a miscarriage. Leave is reduced to 42 days from the third pregnancy onwards. However, in the public sector, women are granted paid leave for an additional 84 days, and further leave on a half-pay and no-pay basis. Fathers in government employment are entitled to three days of paternity leave, but this does not apply to the private sector.
75. 19.2 percent of young people between the ages of 15 and 19 were in the labour force.³⁶ Although no official data is available on working children between the ages of 10 and 14, the Deputy Commissioner of Labour (Women and Children's Division) has estimated their number at around 30000, mostly in domestic service as well as petty trade and 'boutiques' (small shops).³⁷

Questions

- Will the government systematically collect data on violence against women, including domestic violence, disaggregated by sex and ethnic group?
- Will the government recognise marital rape in all circumstances as a crime?

Recommendations

- Harmonise all laws relating to children to eliminate inconsistent definitions of the child across family, labour and criminal law ensuring implementation of Sri Lanka's international obligations.
- Eliminate child labour by addressing the root causes of the exploitation of children, through poverty eradication and access to education.

³⁵ Asian Development Bank, *Country Gender Assessment: Sri Lanka*, Manila 2008, pp. 5-6, <http://www.adb.org/Documents/Reports/CGA-SRI/CGA-sri.pdf>.

³⁶ Table 30, *Economic and Social Statistics of Sri Lanka 2008*, Central Bank of Sri Lanka, Colombo 2008, p. 22. Data excludes the Northern and Eastern provinces.

³⁷ "Over 30,000 child labourers in country", *The Island*, 26 August 2008, <http://www.island.lk/2008/08/26/news3.html>

Article 11: Right to Adequate Food

76. The right to adequate food is a directive principle of state policy and a fundamental duty of the state under Article 27 (2) (c) of the Constitution of the Democratic Republic of Sri Lanka (1978).³⁸
77. The State further guarantees the right of both men and women to “equality in distribution of family food resources” under the Right to Health Care and Nutrition in Article 13 (i) (a) of the Sri Lanka Women’s Charter of 1993.
78. Sri Lanka in the early post-independence decades ensured that all people got their basic food at affordable cost. This policy was withdrawn to cut down social welfare expenses to invest more on providing tax concessions, infrastructure and other benefits to attract foreign investment. The policy of strengthening domestic food production was also withdrawn in favour of dependence on the then cheaper food imports. These policies attempted to achieve higher growth rates through higher exports. These policies have neither succeeded in increasing growth nor in poverty reduction through trickle- down.
79. The rise in global food prices in 2008 has had a significant impact on domestic food prices which have stabilised at a higher level than before the crisis. This is illustrated below based on price rises of basic commodities.

Average Retail Prices of Selected Consumer Items 2000-2009

Food Item	Year / Retail Price in LKR		
	2000	2004	2009
Rice (Samba) (kg)	29.16	40.93	74.97
Beans	41.16	57.18	90.45
Spinach (Niviti)	22.19	25.70	46.17
Potato	39.82	65.98	89.81
Chicken	115.0	177.68	332.38
Sprats	123.46	171.38	330.62
Dhal	53.74	69.49	201.42
Coconut	7.48	12.75	20.03
Coconut oil	44.93	68.90	139.50

³⁸ Article 27 (2) (c) of the *Constitution of the Democratic Republic of Sri Lanka* (1978) states “the realisation of all citizens of adequate standards of living for all citizens, including **food**, clothing and housing”.

Banana (Ambul)	2.09	2.39	46.25
Fresh Milk (Dairy)	16.80	25.48	52.77
Milk Powder (Anchor)	98.26	137.24	258.60
Tea	197.29	249.14	648.20
Wheat flour	17.73	25.89	71.40
Sugar	29.86	37.55	78.61

(Source: *Economic and Social Statistics of Sri Lanka*, Central Bank of Sri Lanka, 2010, Table 7.4, p.66)

80. Sri Lanka imports 32% of its total food needs. Consumer goods consisted of 18.2% of total imports in 2008, which increased to 19.3% in 2009. Food and beverages made up 10.7% and 12.2% of imported consumer goods in 2008 and 2009 respectively.
81. Indebtedness among households is highest in rural agricultural areas, particularly where rice paddy is cultivated (for e.g. 77.8% in Polonnaruwa; 62.6% in Ampara; 62.8% in Kurunegala).³⁹
82. The daily average dietary energy consumption per capita is also applied as an indicator to measure living conditions of a society. The daily per capita calorie requirement for the country has been set at 2030 kilo calories. However, the population below this level is shown as being 65% in the urban sector, 49.2% in the rural sector and 49.2% in the estate sector.⁴⁰
83. The Poverty Head Count Index (HCI)⁴¹ as a percentage of the total population was 15.2% (2805 people) according to the 2006/2007 survey⁴². These statistics exclude the Jaffna district. Poverty in terms of HCI is lowest in the urban sector (6.7 percent) and highest in the estate sector (32.0 percent) with the rural sector recording 15.7 percent. This reflects that poverty incidence in the estate sector is more than four times that of the urban sector.
84. *Samurdhi* (poverty-alleviation) services are insufficient in the plantation sector where poverty conditions (32.0%) are much higher than the national level

³⁹ *Household Income and Expenditure Survey 2006/07*, Department of Census and Statistics, 2009, <http://www.statistics.gov.lk/poverty/PovertyIndicators.pdf>.

⁴⁰ Table 4: Dietary energy consumption by Poverty status, Sector, Province and District, *Household Income and Expenditure Survey 2006/07*, Department of Census and Statistics, 2009, <http://www.statistics.gov.lk/poverty/PovertyIndicators.pdf>.

⁴¹ The basic measure of poverty by the size of the poor population which falls beneath the Official Poverty Line (OPL).

⁴² *Household Income and Expenditure Survey 2006/07*, Department of Census and Statistics, 2009, <http://www.statistics.gov.lk/poverty/PovertyIndicators.pdf>.

(15.2%).⁴³ The predominantly Indian-origin Tamil Nuwara Eliya district presents the highest incidence of poverty at 33.8%.

85. According to the Department of Health as many as 50% of estate women have a body mass index (BMI) of below 18.5% which is almost half that of the all island average of 33%.⁴⁴ Maternal under nutrition is the main causation factor for Low Birth Weight (LBW). The proportion of LBW babies in the estate sector has declined from 29.7 to 20.8 between 1993 and 2006 but is still much higher than the national average of 16.7%. Neo-natal Mortality in the estate sector is 31.0% whilst the national average is 13.9%. Under-5 mortality is 51.6% and 20.8% respectively.
86. The Ministry of Estate Infrastructure and Livestock Development⁴⁵ was established for the social development of the estate-sector. The Ministry formulated a Three-Year Development Plan (2006-2008) in 2005 and obtained Cabinet approval for its implementation.⁴⁶ Regrettably, the present government abolished this Ministry and the National Plan of Action (NPA) has not been implemented.
87. The nutrition/malnutrition situation among the IDPs in the North and East has been found to be: Children under five years: 5.2% severe wasting (male 28.1%: female 23.3%); 8% severe stunting (male 35.7%: female 33.5%); 11.5% severe underweight (male 46.1%: female 42.6%); and 38.8% anaemia prevalence amongst children.⁴⁷
88. By directing the present programmes of the government such as “Let’s grow and build the Nation” (*Api Wawamu Rata Nagamu*), *gemi saviya* and *gemi diriya* in the direction of such ecological small scale farming more food, more nutrition, less pollution and a better environment and health can be achieved with no additional expenditure.
89. The *Api Wawamu Rata Nagamu* programme aims at achieving 4 million home gardens. Adequate funds have been allocated to these rural programmes. However, these programmes still try to adopt

uneconomical and ecologically damaging approaches of chemical farming. In fact, some of these programmes are being utilised to produce maize as an animal food, on the demands of companies and the government supports it.

Case Study: Prevalence of Anaemia

There is widespread malnutrition and anaemia particularly among children and young mothers, and in the estate-sector and other poor districts according to the Nutrition and Food Security Assessment of the Ministry of Health, World Food Programme and UNICEF of March 2010.

Among pregnant women 13.4% are underweight, while one in five of all (lactating and non-pregnant) women are anaemic rising to 41.7% in the estate sector mainly comprising the Indian Origin Tamil minority.

Among children in the 0-59 month age-group, some 19.2% were classified as stunted, 11.7% as wasted and 21.6% as underweight. One in four children between the ages of 6 and 59 months are anaemic, rising to 34% in the conflict-affected and largely Northern Tamil minority Jaffna district.

The problem of low birth weight is most serious among marginalised and vulnerable rural communities such as in Badulla (22.6%); Nuwara Eliya (27.3%); and Hambantota (21.5%). A baby born in the estate sector is three times more likely (46.7%) to be stunted than one born in the urban sector (14.3%).

Questions

- What measures has the Government taken to protect the right to adequate food of the most vulnerable groups in society?
- What measures have been taken by the Government to promote ecological agriculture as a means of combating the problems of malnutrition, improving the quality of nutrition and food, and lowering food prices?

Recommendations

- Re-think current economic and agrarian strategies and instead strengthen the capacity of small farmers to produce domestic food as a way of achieving greater food security for all.
- Revive traditionally productive sectors in the North and East such as agriculture, fisheries, livestock and small industries together with a corresponding livelihood-related infrastructure such as roads and water and sanitation systems.

⁴³ Table 5: Poverty Headcount Index (percentage) by Sector, Province, District and Survey period – Sri Lanka from 1990/91 to 2006/07, *Household Income and Expenditure Survey 2006/07*, Department of Census and Statistics, 2009, <http://www.statistics.gov.lk/poverty/PovertyIndicators.pdf>.

⁴⁴ *National Plan of Action (NPA) for Social Development of the Plantation Community (2006-2015)*, Chapter 3, p.21.

⁴⁵ Previously the Ministry of Estate Housing Infrastructure and Community Development.

⁴⁶ The National Plan of Action was to cover economic and social infrastructure, housing and community development amounting to a needs assessment of Rs44 billion.

⁴⁷ *Rapid Assessment of Nutritional Status among the Displaced Population in Vavuniya*, Medical Research Institute, Ministry of Health, 2009.

Article 11: Right to Adequate Housing

90. The right to adequate housing is a directive principle of state policy and is protected under Article 27(2).⁴⁸ Article 14 of the Constitution provides for freedom of movement and the right to choose one's residence.
91. The right to adequate housing and its sub-component security of tenure is of particular importance given that 49% of the workforce lives in rural locations and 32% engage in agriculture.⁴⁹ Claims of ethnic colonisation and territorial issues over land were significant drivers of the conflict and hence land related issues are also of vital importance in the post-war era if true reconciliation is to be achieved.
92. There are no clear policies in place related to housing, land, property and resettlement. The national housing and land policies remain in draft form. No clear coherent restitution policy exists in distinct contrast to the relatively clear policy developed and implemented for the tsunami affected.
93. The Public Security Ordinance No. 25 of 1947 (PSO) empowers the President to declare a state of emergency and adopt emergency regulations if s/he believes they are necessary "in the interests of public security and the preservation of public order".⁵⁰ This permits the restriction of some rights in cases where this is in the interest of national security, public order and the protection of public health or morality.⁵¹
94. A series of emergency regulations have been issued creating High Security Zones (HSZs) throughout the country, typically protecting military or high value civilian targets. Conditions pertaining to these HSZs are detailed within the respective gazette notifications and broadly fall into three types. The first type places restrictions on those residing and visiting a given area usually by way of increased security checks at entry points to the area. This is the case with the HSZ in Colombo which includes the Presidential residence. The second type imposes greater restrictions and prevents people from residing and accessing a specified area without prior authority as is the case with the HSZ in Trincomalee. Finally, there are those which relate to coastal areas and restrict access to the sea by fishermen.
95. One of the largest HSZs is that in Sampoor in Trincomalee District. This is located at the mouth of Trincomalee harbour and is therefore both militarily and commercially important. The HSZ, first declared in 2007, covers an area of approximately 37 sq km.⁵² 5,438 people (1,731 families)⁵³ are from this area and cannot return due to the restrictions on access. Half of these people currently stay with host families and the rest in three 'transit' sites (Kilivetti, Pattithidal and Manatchenai). Compensation is yet to be paid. While many people have been offered the option to be permanently resettled elsewhere with standard IDP resettlement packages⁵⁴, it is reported that only 160 families (or around 470 persons) have accepted this offer.⁵⁵
96. The Trincomalee HSZ is further complicated by its location within a Special Economic Zone (SEZ) and the fact that the government appears to have plans to use the land for a coal power plant and also possibly for setting up industrial or commercial parks in the surrounding area. It is felt that the HSZ is being used as a vehicle to acquire the land without following proper land acquisition processes.
97. Aside from the formally gazetted HSZs there are a range of issues with informally declared HSZs. These include large areas such as those in Jaffna District which cover approximately 190sq km and affect between 50,000 – 130,000 people.⁵⁶ At the other end of the scale, there are countless smaller installations affecting individual families and these typically involve military check points and barracks. Despite the fact that there are well defined processes to legally acquire such land either permanently or temporarily, no formal steps to do so have been taken nor have people been provided with compensation. In some instances, the government does pay nominal rent but few people know of this or are able to access it.
98. While the government is taking steps to reduce HSZs, this is a slow process and there are gaps inherent within the release procedure; for example, the lack of support to those returning to identify their land, leading to boundary and ownership disputes.

⁴⁸ Article 27 (2) (c) of the *Constitution of the Democratic People's Republic of Sri Lanka* (1978) states "adequate standard of living for all citizens, including adequate food, clothing and **housing**".

⁴⁹ *Economic and Social Statistics of Sri Lanka 2010*, Central Bank of Sri Lanka, Colombo, 2010.

⁵⁰ Public Security Ordinance No. 25 of 1947, Section 5(1).

⁵¹ Article 15 (7).

⁵² *Extraordinary Gazette* No. 1499/25 of 30 May 2007 and subsequently reduced (from 105.2 sq km to 37.42 sq km) in *Extraordinary Gazette* notification 1573/19, 30 October 2008.

⁵³ UNHCR figures, IDP protection working group, May 2010

⁵⁴ The package offered would include a core house, 20 perches of land (0.125 acres) and Rs25000 (\$230 USD).

⁵⁵ The main reason for the rejection was that for many, their property within the HSZ is significantly greater than this.

⁵⁶ The number of people affected varies greatly depending on the source. See COHRE, 'High Security Zones and the Rights to Return and Restitution in Sri Lanka', April 2009, p. 16, <http://www.cohre.org/srilanka>.

99. The Land Acquisition Act (LAA) No. 9 of 1950 allows for the state to acquire land for development purposes and sets out a standard open process with certain checks and balances including public notification and the opportunity to appeal at various stages. A National Involuntary Resettlement Policy (NIRP) was approved in 2001 and provides guidance on a broader range of issues beyond pure acquisition of the land including consideration of alternative options, livelihoods issues and compensation to those without title.
100. In some instances, such as the Upper Kotmale Hydropower project, the acquisition of land has been in accordance with both the procedures set out in the LAA and NIRP.⁵⁷
101. However, there are also instances where serious issues may be raised regarding the following of proper procedures and the degree of transparency in the process. Two such examples would be the construction of an outer circular road and power plant in Trincomalee.⁵⁸
102. For the road, no public notifications have been issued and therefore there is no clarity on the legal basis for the acquisition. People with land within the area are prevented from returning by the army.
103. For the coal power plant (which is located within the HSZ detailed above), there appears to have been some attempt to acquire the land under the LAA by issuing public notices in Sampukalai and Katakaraichenai from 08 July 2008 to 19 July 2009. However, few of the affected people in the area received such notice and of those that have, many may not fully comprehend the implications of such notices.
104. Further, it has been reported that 42,000 people await settlement of claims for land acquisition, some of which are 25 years old. In total, approximately 8.5 billion rupees are owed.⁵⁹
105. The State Lands (Recovery of Possession) Act No. 7 of 1979 enables the state to evict people from state land and provides few protections. The notice required is only 30 days and there is no requirement for the state to provide compensation or alternative accommodation. The only defence that can be raised is to show a valid permit or written authorisation from the state according to law. A person evicted under this legislation commits an offence if they re-enter the land within 10 years.
106. The main protection against forced evictions in Sri Lanka is the Primary Courts Procedure Act No. 44 of 1979 which allows lower courts to issue orders preventing evictions unless “by order of a competent court”.⁶⁰ The same procedure can also be used to restore possession.
107. The Government has a policy of regularising encroachments on state land and the majority of new titles issued are dealing with regularisations. The Land Commissioners Report for 2006 indicates that almost one million such grants had been issued up to the end of 2002. This number is likely to be much higher now.
108. From the most recent figures dating from a 2002 survey there are 77,612 families living in 1,614 urban poor settlements in Colombo.⁶¹ There are no official figures available for the number of people evicted. Those affected by eviction face similar problems to those cited above relating to inherent deficiencies in the process and a lack of transparency in decision making. The case-study below of the Slave Island evictions is a good example.
109. Those living in informal settlements are presently living under a significant threat of eviction. After the recent parliamentary elections the Urban Development Authority (UDA) was moved to be under the control of the Ministry of Defence⁶² and subsequently there has been considerable rhetoric from senior government officials regarding the clearance of all slums in Colombo.⁶³ A variety of reasons for the proposed clearances have been given including prevention of flooding and outbreaks of Dengue Fever, however in truth the underlying reason is to clear the land for development purposes as it is considered to be very valuable prime land.
110. The UDA plans to use the REEL (Real Estate Exchange Ltd) Programme to relocate people into new housing developments using funds received from selling the prime land on which they are presently residing. It is questionable whether there is any genuine attempt to consider ‘all feasible alternatives’⁶⁴ to eviction.

⁵⁷ “High Security Zones and the Right to Return and Restitution in Sri Lanka, April 2009, <http://www.cohre.org/srilanka>.

⁵⁸ Centre for Policy Alternatives, “Trincomalee HSZ and SEZ”, September 2009, <http://www.cpalanka.org>.

⁵⁹ Secretary, Road Development Authority quoted in “Sri Lanka has not paid for some acquired land for 25 years: official”, *LBO Online*, 27 July 2010, <http://www.lbo.lk/fullstory.php?nid=465033139>.

⁶⁰ S. 68(2).

⁶¹ “A formal assessment of the extremely poor settlements of Urban Colombo”, Mercy Corps and Sevanta 2007, referring to survey conducted in 2002.

⁶² *Extraordinary Gazette* No. 1651/20, 30 April 2010.

⁶³ “Quit Colombo Notice to 66,000 squatters” 13 August 2010, *Daily Mirror*; “Ministry of Defence Gets Approval to Clear slums”, *Sunday Leader*, 12 August 2010; “UDA in Rs 5bn debentures issue: The UDA to issue Rs5bn in debentures to develop Colombo city by leasing prime land”, *The Island*, 13 August 2010.

⁶⁴ Para 13, General Comment No 7.

Case Study: Slave Island Eviction

The Urban Development Authority (UDA) demolished 17 houses on Mews Street on the 8th of May 2010. This is in a neighbourhood in central Colombo which has been zoned in the Colombo Urban Development Plan as a 'Concentrated Development Zone' and is considered to be the main area of the city that would eventually constitute a Central Business District. The stated reason for the eviction is that it is government land required by an adjacent military installation.

107 people lived in the houses, 24 of whom were minors. The affected people had been living in the permanent brick houses on the site since the 1950's. Court documents indicate that some claim to have deeds. The community were given only four days notice of the eviction. There was no genuine consultation with the community regarding options available to them, no due legal process for acquisition or eviction and insufficient notice to enable people to find alternative accommodation.

On the day of the eviction, according to filed court papers and newspaper articles, approximately 2500 military and police were present. The street was sealed off and heavy machinery brought in to demolish the houses. The residents remained and were forcibly removed by police. Residents were given 30 minutes to recover personal possessions. Subsequent to the eviction many residents remained in the area sleeping in makeshift tents/shelters on the opposite side of the street to where their houses once stood.

The affected persons have filed a fundamental rights case in the Supreme Court (S.C F.R Application No 349/10) which is next due to be heard on 6 September 2010.

The Government is providing allowances to meet rental costs although this is deemed too low to enable the affected people to rent suitable accommodation. A subsequent offer of alternative housing has been made but this has been rejected as being unsuitable.

111. The plantation sector is a particularly marginalised group in Sri Lanka, including with regard to housing. The occupiers have no ownership rights to these properties and the properties themselves are in extremely bad condition. Such housing units tend to be very old, in poor condition with severe overcrowding. Census data shows housing in this sector to be some of the worst in the country. The data for the plantation sector is disaggregated in the indicators below to highlight the disparities present.

Indicator	Source	National	Estate
Floor area per person (Sq Mt)	(a)	16.8	7.6
Rooms per person	(a)	1.1	0.7
Percentage of housing units with 1 or less sleeping rooms	(b)	25.2	54.2
Percentage of housing units with less than 250sq ft floor area	(b)	17.4	38.3
Percentage of households with access to safe water	(b)	84.8	46.2
Percentage of households with no toilet facilities	(b)	3.6	11.8
Percentage of households using electricity for lighting	(b)	80	62.3
Percentage of households owning land	(b)	86.8	23.8
Percentage of mean income spent on housing	(b)	9.96	No data
Number of low-income settlements in Colombo and Population	(c)	1616 settlements 77,612 people	

- (a) *Consumer Finances and Socio Economic Survey Report 2003/04, Central Bank of Sri Lanka.*
- (b) *Household and Income Expenditure Survey 2006/7, Department of Census and Statistics.*
- (c) *Poverty Profile of Colombo. February 2002, Colombo Municipal Council / Sevantha*

Questions

- *How many evictions were made by the government during the reporting period?*
- *How much land is presently occupied by the military and what plans are there for release of such areas?*
- *What are the government's future plans with regard to land currently covered by the Sampoor HSZ?*

Recommendations

- *The GoSL should develop a clear policy for the orderly release of areas presently identified as HSZs.*
- *The GoSL should ensure that all land acquisitions follow the National Involuntary Resettlement Policy; and strictly adhere to the guidelines in General Comment No.7.*
- *Upgrading of informal settlements should be the preferred approach to improving the right to adequate housing rather than relocation.*
- *Reform the male-biased 'head of household' concept in law and administrative practices in which women have been ignored in the allocation of state lands for agriculture and housing and recognise women's rights to housing, land and property.*
- *The GoSL should ensure it meets its minimum obligations in the plantation sector especially (a) with regard to infrastructure and provision of security of tenure; (b) vesting ownership of living quarters and home garden to estate residents; and (c) ensuring minimum of seven perches to each household for new housing units.*

Article 12: Right to Adequate Health

112. The Constitution of Sri Lanka does not recognise the right to health. Neither is there any reference to the right to health in the Directive Principles of State Policy. However, Article 27 (2)(c) of the Directive Principles acknowledges the State's commitment to environmental health which includes 'the continuous improvement of living conditions' which may be regarded as an aspect of the broader concept of the right to health.

113. Under the Penal Code, the unlawful or negligent⁶⁵ or malicious spreading⁶⁶ of any infectious disease dangerous to life is a punishable offence. Other legislation pertaining to regulation of medicine, administration of health care, control and treatment of diseases and subsidiary legislation on the right to health is also to be found in abundance within the national legal system.

114. Poor implementation of these laws; the almost three decade long war; the 'open economy' policies promoting privatisation of health-services; rising levels of external debt and debt-servicing and so on, has led to a decline in the quality of health care.

115. In 2009, the total health budget of the government was Rs. 71.4 billion which was about 1.5 per cent of gross domestic product.⁶⁷

Table 3.8		Salient Features of Health Services	
Item	2008	2009(a)	
Government			
Hospitals (practicing Western medicine) (No.)	619	555 (b)	
No. of beds	65,835	68,897	
Primary Healthcare Units (No.) (c)	411	475	
Total no. of doctors	13,026	13,633	
Total no. of assistant medical practitioners	1,229	1,198	
Total no. of nurses	22,996	25,549	
Total no. of attendants	7,184	8,301	
Private			
Hospitals (practicing Western medicine) (No.)	220	n.a.	
No. of beds	8,850	n.a.	
Total no. of Ayurvedic doctors (d)	19,054	19,529	
Total government expenditure on health (Rs.bn)			
Current expenditure	55.9	58.8	
Capital expenditure	18.7	12.7	

(a) Provisional
 (b) Under the re-categorisation in 2009, 64 government hospitals were re-named as Primary Healthcare Units
 (c) Central dispensaries were re-named as Primary Healthcare Units and 64 government hospitals were re-categorised as Primary Healthcare Units
 (d) Registered with the Department of Ayurvedic Commissioner

Sources: Ministry of Healthcare and Nutrition
 Department of Ayurveda
 Ministry of Finance and Planning
 Central Bank of Sri Lanka

Source: Central Bank, Annual Report 2009, p16

⁶⁵ Section 262, Penal Code.

⁶⁶ Section 263, Penal Code.

⁶⁷ Central Bank, Annual Report 2009, p16

116. At present, the private sector provides services to around 5 per cent of in-patients and around 53 per cent of out-patients annually.

117. Health services and adequacy relative to population and need can be evaluated through the following Central Bank statistics: There are 555 government hospitals with 68,897 beds in the country which amounts to 3 beds per 1,000 persons. There are 13,633 qualified doctors, 1 doctor for every 1,500 persons and 25,549 qualified nurses, 1 nurse for every 800 persons.⁶⁸

118. In late 2009, Sri Lanka faced one of its worst outbreaks of dengue in years. The National Dengue Prevention Unit of the Ministry of Health reported 33,856 cases with 277 deaths.⁶⁹ Between January and April of 2010, dengue-flu infected 13,500 people, causing 76 deaths.

119. As dengue is prevalent in Sri Lanka with 88 deaths alone in 2004, the indifference towards this problem by state and local authorities and their lethargic response until very recently is sheer negligence and dereliction of their duty to safeguard the health and lives of people.

120. The WHO Essential Drugs and Medicines Policy is designed to help save lives and improve health by ensuring the quality, efficacy, safety and rational use of medicines, including traditional medicines, and by promoting equitable and sustainable access to essential medicines particularly for the poor and disadvantaged.⁷⁰ In pursuance of this objective, the WHO began listing what it considered a list of essential medicines.

121. The government's policy failure has resulted in the inflow of quality-failed and expensive drugs into the island. The pharmaceutical market is full of drugs bearing brand instead of generic names, which confuses consumers and encourages them to buy branded drugs at a higher rate than equally good generics. Some people risk their lives, through their failure to purchase medicines because of prohibitive cost. Sri Lanka has not implemented a national medicinal drugs policy to ensure safe, affordable, effective and appropriate medicine for all.

122. Patients' rights groups elaborated a National Medicinal Drugs Policy (NMDP) through a multi-stakeholder process in 2005. The NMDP's objective is to make available quality drugs at affordable prices, and the draft

⁶⁸ Central Bank, Annual Report 2009, p16

⁶⁹ "Sri Lanka: Dengue Outbreak", Disaster Relief Emergency Fund (DREF) Operation Update, International Federation of Red Cross and Red Crescent Societies, 11 March 2010, <http://www.ifrc.org/docs/appeals/09/MDRLK00102.pdf>

⁷⁰ WHO, Essential Medicines and Pharmaceuticals Policy, <http://www.emro.who.int/emp>

received official approval in October 2005.⁷¹ Unfortunately, the policy has not been formally adopted by the government.

123. Patients' rights groups elaborated a National Medicinal Drugs Policy (NMDP) through a multi-stakeholder process in 2005. The NMDP's objective is to make available quality drugs at affordable prices, and the draft received official approval in October 2005.⁷² Unfortunately, the policy has not been formally adopted by the government.

124. An aspect that has improved in the health sector is the cardio-vascular units, which is a prime need given the country's increasing number of heart patients. However, most government hospitals do not have enough cardiologists. The shortage of qualified staff plagues almost every hospital in the state sector. The lack of trained nurses, medical laboratory technologists and pharmacists are major causes for concern.

125. Sri Lanka is one of the few countries in the Asia and Pacific region with a low level of HIV prevalence. Recent figures reveal that transmission through homosexual and bisexual acts amount to 11%, and it is estimated that the country has a population of 24,000 – 37,000 men who have sex with men, considered to be at greatest risk.⁷³

126. Much needs to be done to address the absence of policies which reflect the needs of persons of different gender identities and the criminalisation of same sex orientations render it difficult for people from these communities to access public health services in a manner that is open and informative about their medical and personal histories. Thus, services which are available to people living with HIV/ AIDS are accessed by those who are willing to face stigmatisation or have to hide their sexual orientation.

127. Additionally, the needs of transgendered people should be understood in a supportive manner. As the existence of transgendered persons is not considered, there is a lack of information and services made available for medical services such as sex reassignment operations by public health providers. In Sri Lanka, health services are provided by public hospitals free of charge or at subsidised rates. However, services on sex reassignment are not made available in these hospitals.

128. Women's reproductive health rights are a matter of extreme concern as abortion is illegal, and as there are allegations of involuntary sterilisation of women in the estate sector.⁷⁴ It is estimated that every day there are 1000 induced abortions⁷⁵ despite its criminalisation and unregulated 'back-street' provision.

129. Off-estate national health services are not easily accessible to estate residents and on-estate health services are not up to national standard. There is severe lack of qualified medical personnel and drugs. Pregnant women and seriously ill patients have to travel long distances to get medical care. On some occasions patients die on the way to the hospital. Pregnant women are conveyed in the lorry used for transport of green-leaf and have delivered in them too endangering their lives and those of their newborn.

130. At present, there are 50 estate hospitals, 179 maternity wards and 266 dispensaries catering to the resident population of 934,313 on estates under 20 Regional Plantation Companies, the Janatha Estate Development Board, and the State Plantations Company, and Elkaduwa Plantation Company. However due to the inadequate services being provided to the estate population by plantation management, the GoSL has taken over 23 hospitals and the balance 27 are in the process of being taken over.⁷⁶ A shortage of health personnel and facilities⁷⁷ remains an issue as no proper appraisal was carried out before the take-overs. Also, estates have historically been excluded from being Medical Officer of Health (MOH) areas owing to non-availability of funds and staff. This has led to a severe lack of public health inspectors and midwives in the estate sector.

131. From 10,000 schools in the country, 3,658 did not have sufficient sanitation facilities while 2,373 did not have safe drinking water, according to a census conducted in 2007. In a 2010 survey in the Matara district, out of 350 schools, only 224 had water supply to toilets, and only 289 had sanitation facilities.⁷⁸

⁷¹ "Healthcare Doctored", *The Nation*, 27 June 2010, <http://www.nation.lk/2010/06/27/eyefeal.htm>.

⁷² "Healthcare Doctored", *The Nation*, 27 June 2010, <http://www.nation.lk/2010/06/27/eyefeal.htm>.

⁷³ Partnership for HIV prevention in Sri Lanka", *UNAIDS*, 3 August 2010, http://www.unaids.org/en/KnowledgeCentre/Resources/FeatureStories/archive/2010/20100803_SriLanka.asp.

⁷⁴ P. Logeswary and Bastien Fillon, *Study on the Right to Health of Plantation Women in Sri Lanka*, Human Development Organisation, Kandy, www.asianruralwomen.net/themes/health_001.doc.

⁷⁵ "Anti-abortion law spurs abortions", *Sunday Times*, 3 November 2009, <http://sundaytimes.lk/031109/plus/4.htm>; *Sri Lanka Shadow Report to the Committee on the Elimination of All Forms of Discrimination Against Women*, (facilitated by the Women and Media Collective), July 2010, p. 23, www2.ohchr.org/english/bodies/cedaw/docs/ngo/WMD_SriLanka48.pdf.

⁷⁶ *National Plan of Action for Social Development of the Plantation Community 2006-2015*, p. 7.

⁷⁷ This includes qualified practitioners, nurses and other medical staff, medicines, OPD buildings, clinic rooms, wards, mortuaries, ICUs, blood banks, furniture and equipment, electricity and water supply, ambulances, telephones etc.

⁷⁸ "Deplorable sanitary facilities in Matara schools, survey reveal", *Sunday Times*, 22 August 2010, http://sundaytimes.lk/100822/News/nws_20.html.

132. The main legislation governing mental health and disability arising out of mental illness is an antiquated law, namely the Mental Diseases Ordinance of 1873 which has not been amended thereafter. Its long title is the “care and custody of persons of unsound mind and their estates”. Therefore new legislation that takes a rights-based and community approach to mental illness (and disabilities arising thereof) is highly necessary.

133. The Draft Mental Health Act of 2007 is in conformity with modern concepts and treatment. Its long title states “An Act to protect the rights of persons with mental illness, provide for the care, treatment, continuing care, rehabilitation of persons with mental illness”.

134. Some of the salutary features of this draft act are the elimination of offensive terminology and replacement of terms in line with rights discourse; and provisions and mechanisms to deal with promotion, prevention, rehabilitation is given unlike the existing Ordinance which only deals with institutionalisation. However, it remains in draft and therefore has had no impact on policy.

135. In Sri Lanka, considerations on Occupational Safety and Health was confined to mines and machinery, and later extended to factories. It is now also covered by the Workmen’s Compensation Ordinance. However, Occupational Health and Safety protection continues to be weak in Sri Lanka in the absence of overarching legislation on safety and health at work and poor implementation of existing laws.

136. Every year about 3,500 accidents are reported to the Industrial Safety Division of the Department of Labour. Out of these 50-60 accidents are fatal. It is observed that there is an increasing trend in fatal accidents since year 2000. About 30 percent of the fatal accidents occur in the construction industry.⁷⁹

137. Even though the Ministry of Healthcare and Nutrition was involved in drafting a Patient's Charter in 2008 with inputs from several civil society organisations, the Charter is yet to be finalised and therefore implemented.⁸⁰ The draft Charter⁸¹ was to include: the right to access to healthcare services and humane treatment, right to information and consent, right to privacy and confidentiality, right to complain, right to compensation, right to preventive measures, as well as the responsibilities of the patient.

⁷⁹ “Incidence of fatal accidents in workplaces on the rise — Athauda”, *The Island*, 13 October 2008, <http://www.island.lk/2008/10/13/news12.html>.

⁸⁰ “Patient’s Charter to ensure safety and rights of patients”, *The Official Government News Portal of Sri Lanka*, 8 July 2008, http://www.news.lk/index.php?option=com_content&task=view&id=6391&Itemid=44.

⁸¹ “Healthcare Doctored”, *The Nation*, 27 June 2010, <http://www.nation.lk/2010/06/27/eyefea1.htm>.

Case Study: Safe Drinking Water and Health

Pipe-borne water coverage in Sri Lanka was estimated to be around 34% in 2008, with the remainder of the population relying on other sources such as wells and surface water.

The contamination of water sources and supply through agricultural waste, fertilisers and industrial effluent is believed to be a major cause of water-related health problems.

High levels of cadmium that is found in toxic fertilisers used by paddy and coconut cultivators may explain the high incidence of chronic kidney disease in the farming regions.

In 2003, in Anuradhapura District there were 1098 cases and 143 deaths while in Polonnaruwa, 291 cases and 55 deaths. The North Central Province contributed 22% of cases and 17% of deaths nationally -- a very high per capita level. The population of the province is only 6% of the total population of the country.

In 2005, the Anuradhapura Teaching Hospital alone reported 742 live discharges and 140 deaths due to chronic kidney disease. It is postulated that there is a strong regional bias and that paddy farmers are at high risk.

Source: *Asian Legal Resource Centre, Hong Kong*, 30 August 2010, ALRC-CWS-15-11-2010.

Questions

- When will the government adopt the national medicinal drugs policy to ensure safe, effective drugs at affordable prices?
- Will the government reallocate military expenditure to social welfare sectors including health?
- When will the government enact the Mental Health Act which has been pending since 2007?

Recommendations

- Right to Health should be constitutionally protected; National Medicinal Drugs Policy and Patients Rights Charter should be adopted and incorporated into national laws and health policy in both public and private sectors.
- The plantation sector health services should be integrated with National Health Service system. The estate community should have easy access to the state national, provincial and district health services.
- Health service providers and medical professionals should be sensitised to treat all patients regardless of gender, ethnicity, class and sexual orientation without discrimination. Principles of confidentiality should be adopted, protected and ensured by medical service providers at all levels.

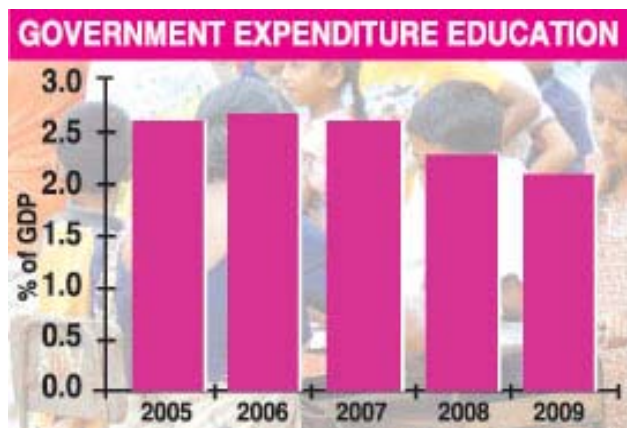
Articles 13 & 14: Right to Education

138. Although Sri Lanka's education system has been comparatively better than in other countries of the South Asian region, the quality of services is under threat due to the diminishing budgetary allocations of the State.

139. The public education expenditure as a proportion of the government budget is much lower in Sri Lanka in relation to the status of other middle income nations. In India the allocation for education is around 4% of the GDP. In Bangladesh the education budget is 2.4% of the GDP. In Nepal, it is 3.4% while Maldives has been maintaining an allocation of 7.5%.⁸² In South Asia, almost all countries excepting Afghanistan, where latest relevant statistics are unavailable, and Pakistan, spend more on education than Sri Lanka.

140. In its 2009 budget, the Sri Lankan government allocated only 2.1% of GDP to the education sector. As stipulated in the Appropriation Bill of 2010, the capital expenditure in the national budget for education indicates a 42% drop in funds over the last three years.⁸³

141. Government expenditure on Education as a percentage of GDP from 2005 to 2009 is displayed below:⁸⁴



142. The graph clearly illustrates the allocation of funds being below 3% from 2004 whereas according to UNICEF the national budget allocation for education in terms of world standard is at least 6% of the GDP. 2010 budget proposals state that despite the end of the civil war with the total military annihilation of the Liberation Tigers of Tamil Eelam, the government has increased the defence allocation to a record Rs202 billion. This

⁸²Transparency International Sri Lanka, *Education Budget – India 4%, Nepal 3.4%, and SL 2.1% of GDP*, <http://www.tisrilanka.org/?p=5113>.

⁸³ Transparency International Sri Lanka, *Education budget cut by 42% over 3 years: DNA*, <http://www.tisrilanka.org/?p=5098>.

⁸⁴ "Education Budget cut by 42% over 3 years: DNA", *Daily Mirror*, 20 May 2010, <http://www.dailymirror.lk/print/index.php/news/front-page-news/11070.html>.

figure surpasses last year's defence allocation by over Rs26 billion. The magnitude of the hike in the budgetary allocation can be seen in comparison to the allocation for education which is Rs27 billion and the budget for higher education which is Rs20 billion.

143. Pre-school and early childhood development ought to be priorities of any education system. The government has an obligation to ensure pre-school education provision for children under the age of five, according to the 'National Policy on Early Childhood Care and Development' of 2004 developed by the then Ministry of Women's Empowerment and Social Welfare. Since 1987, responsibility for care and development of children is transferred to the provincial councils, where there are concerns over its monitoring and resourcing.⁸⁵

144. There are widening disparities in the quality of education between schools located in main towns and those in remote areas, creating several issues. For example, in the context of the admission of students to grade one in the primary level of education, the popular schools with better facilities have unmanageable demand whilst many rural schools with poorer facilities do not receive any applications for grade one admission.⁸⁶

145. Consequently, the Ministry of Education stated in July 2010 that around 2000 grade one students were still not attending schools even after more than six months since they had not been given placement in the schools of their choice due to severe competition.

146. The lack of national policy on school admission to the primary level of education has become a serious issue to the extent of it reflecting as a social problem. Therefore, each year students who have not gained admission at the beginning of the year are admitted to schools in the final term which deprives them two terms of the first year in school.

147. Inequalities in provision of facilities (teacher cadre, science and IT, sports facilities etc.) between urban and rural and across regions are glaringly obvious but cannot be enumerated in the absence of disaggregated statistics and barriers of access to information.

⁸⁵ National Protection and Durable Solutions for Internally Displaced Persons Project, Human Rights Commission, Sri Lanka, *The concept paper for early childhood care and development of Northern Province of Sri Lanka*, p.

http://www.idpsrilanka.lk/Doc/GeneralDocuments/The_Concept_Paper_ECCD_of_Northern_Province_NPDS%20Project_HRCSL.pdf.

⁸⁶ "Education Budget cut by 42% over 3 years: DNA", *Daily Mirror*, 20 May 2010, <http://www.dailymirror.lk/print/index.php/news/front-page-news/11070.html>.

148. The Ministry of Education has announced that a new programme will be launched from 2011 to develop 1000 schools with secondary level education spending Rs60 billion. Under this four year programme, a network of such schools surrounded by at least three schools with primary level education will be developed. Basic facilities such as classrooms, libraries, computer laboratories, science laboratories etc. will be developed in these schools.
149. Recent media reports have pointed out that since 1997, a total of 948 schools have been closed in Sri Lanka.⁸⁷ According to the Ministry of Education, the number of government schools island-wide has declined from 9662 to 9601. However, the number of students has increased from 3,929,234 in 2008 to 3,933,521 in 2009. The cause behind the situation can be easily identified as the government's failure to restructure the education system in terms of providing facilities to the schools.⁸⁸
150. The schools in the plantation sector were under the purview of the estate management for decades until the 1970s. Despite the gradual takeover of schools by the state between the period 1977-1991, the quality of education in the plantation schools have not been on par with the national standards. A survey conducted by Transparency International Sri Lanka has revealed that the school dropout rate before completing five years is significantly high at 8.4% in the plantation schools.⁸⁹
151. Early childhood education remains within the purview of the plantation management. The crèches – a centre which provides custodial care for the children while the mothers are at work – is another area which needs much attention with regards to the related issues such as the exploitation of the crèches attendants, appointment of non-qualified pre-school workers, and recruitment of non-Tamil speaking employees to work in crèches and pre-schools.
152. There are 15 government universities in Sri Lanka.⁹⁰ The student-teacher ratio in 2009 was 16.2. The percentage eligible for university admission through qualification in the GCE Advanced-Level examination in 2008 and 2009 were 61.27% and 62.78% respectively. However, admissions as a percentage of the eligible group were only 16.53% and 16.01% respectively. These statistics lucidly illustrate the larger percentage of youth who are qualified to enter the universities and the miniscule percentage that is admitted to the universities. For the 2008/9 intake the total student enrolment to the 38 Technical Colleges in Sri Lanka was 31251.⁹¹ A total number of 4898 students from various fields graduated from the 2007/8 intake.⁹²
153. University students and students in other higher educational institutes are eligible to apply for the *Mahapola* scholarship where their parents' combined annual income does not exceed Rs300000. A monthly allowance of Rs2500 is paid to the students for a maximum of ten months of an academic year. However, with depreciation of currency the allowance has gradually decreased in its monetary value. On the other hand the number of those eligible has also rapidly risen even though only a small percentage of them are selected for the scholarship.
154. In the higher education sector the National Education Commission (NEC) has drawn up a proposal for a National Policy Framework on higher education. With the backing of the government plans are underway to open the university education sector to private commercial interest.⁹³ It seems that the crisis created by the slash of state investment in education is being addressed through liberalisation of tertiary education provision.
155. Due to the slow progress in the resettlement of internally displaced people in the Northern province, 60,000 children are estimated to have been deprived of schooling.⁹⁴ With the commencement of the first school term for 2010, the Government Information Department announced that a total of 897 schools have opened for studies in Mannar, Kilinochchi and Vavuniya Districts in the Northern Province from January 04, 2010. At the beginning of the year, 6051 students from Mannar, Kilinochchi and Madhu have begun attending school.
156. The widespread destruction of school buildings, lack of supplies and transport difficulties for students and teachers, are key constraints regarding the education sector in resettlement areas. 172 schools have reopened

⁸⁷ "Education Budget cut by 42% over 3 years: DNA", *Daily Mirror*, 20 May 2010

<http://www.dailymirror.lk/print/index.php/news/front-page-news/11070.html>

⁸⁸ "Education: dilapidated and in urgent need of reform", *Daily Mirror*, 3 June 2010, <http://www.dailymirror.lk/print/index.php/opinion/1/12124.html>

⁸⁹ "Student drop-out rate in estate schools alarming" *Daily Mirror*, 23 August 2010,

<http://www.dailymirror.lk/print/index.php/news/news/19252.html>

⁹⁰ University Grants Commission – Sri Lanka, *Educational Indicators 1980-2009*, <http://www.ugc.ac.lk/en/statistics/educational-indicators.html>

⁹¹ Ministry of Youth Affairs, Department of Technical Education and Training, General Information – "Student Enrolment", http://www.techedu.gov.lk/web/index.php?option=com_content&view=article&id=99&Itemid=125&lang=en

⁹² Ministry of Youth Affairs, Department of Technical Education and Training, Industry Job Placement – "List of Passed out Students", http://www.techedu.gov.lk/web/index.php?option=com_content&view=article&id=105&Itemid=129&lang=en

⁹³ "Sri Lanka to open tertiary education; set up regulatory agency: official", *LBO Online*, 17 June 2010, <http://www.lankabusinessonline.com/fullstory.php?nid=1401781048>

⁹⁴ "No schooling for 60,000 children in North", *Daily Mirror Online*, 21 May 2010, <http://www.dailymirror.lk/print/index.php/news/front-page-news/11149.html>

in the resettled areas catering for 27,160 children as of 31 May, 2010, according to the United Nations Office for the Coordination of Humanitarian Affairs.⁹⁵

157. Official data indicate a total student population of 82,000. The government and UNICEF have provided furniture supplies sufficient for only 40,000 students. According to UNICEF⁹⁶, basic support for subsistence needs to be provided to these people in addition to schooling for the children.

158. It is appropriate to mention here that significant issues such as reproductive health and rights, sexual rights as well as gender and related topics are inadequately represented in the curricula of the Sri Lankan education system including higher education which has resulted in poor awareness and even poorer understanding of most of these issues.

159. The rigid religious interpretations and traditional social perspectives have been thrusting patriarchal and heteronormative values on children preventing them from discussing these 'social taboos' openly for a greater tolerance and understanding. Consequently, the harsh attitude extending to phobia towards different sexual orientations has led to physical and mental harassment and discrimination, resulting in dropping out from school, and even leading to suicide.

160. Corporal punishment is lawful in Sri Lanka. Some teachers and parents continue to believe in its appropriateness despite Education Ministry Circular ED/01/12/01/04/24 that discourages physical punishment in schools.⁹⁷ The assault of children for misbehaviour or even minor infractions, leading to their hospitalisation is not unknown, and is widely tolerated by education and police authorities.

Questions

- *What measures are the government taking to ensure that children in conflict-affected areas, especially those recently displaced, are reintegrated into the education system including through provision of non-formal education and through prioritisation of the rehabilitation of school facilities and provision of water, sanitation and electricity in those areas?*
- *What measures are the government taking to ensure that primary education is in fact free and compulsory to all children; including ensuring that education is at all times available, accessible, acceptable, and adaptable?*

Recommendations

- *Include human rights education as part of the school curriculum from primary through to pre-university.*
- *Formulate a national education policy with monitoring mechanisms to ensure the relevance and quality of education at primary, secondary, tertiary as well as technical and vocational level.*

⁹⁵ "Sri Lanka Humanitarian Snapshot June 2010", [http://www.reliefweb.int/rw/RWFiles2010.nsf/FilesByRWDocUnidFilename/MDCS-86QEW6-full_report.pdf/\\$File/full_report.pdf](http://www.reliefweb.int/rw/RWFiles2010.nsf/FilesByRWDocUnidFilename/MDCS-86QEW6-full_report.pdf/$File/full_report.pdf).

⁹⁶ UNICEF Humanitarian Action 2010 Sri Lanka, http://www.unicef.org/har2010/files/HAR-MYR2010_SRI_LANKA.pdf.

⁹⁷ Asian Human Rights Commission, *Sri Lanka: Another alleged assault of a 14-year-old student by the principal*, Hong Kong, 30 April 2007, <http://www.ahrchk.net/ua/mainfile.php/2007/2358>.

Article 15: Cultural Rights

161. Sri Lanka is multi-ethnic, multi-religious and multi-cultural. However, numerically small minorities such as Malays, Telugus, Malayalees and *adivasis* have not received state recognition of their linguistic and cultural identity, including in statistical measures.

162. Religious intolerance has been on the rise in tandem with Sinhala nationalist sentiments. Christian places of worship have been attacked, burned and demolished with impunity for these actions enjoyed by perpetrators and cheerleaders.⁹⁸

163. Proposed legislation on unethical conversions is regarded by some groups as an attempt to restrict freedom of religious belief.⁹⁹ Religious minorities complain of undue restrictions on construction and/or expansion of their places of worship of religious minorities.

164. Tamil has been recognised as an official language, through the 13th and 16th Amendments to the Constitution as far back as 1987, but some 23 years later, the official languages law is respected only in the breach outside of the North and East,¹⁰⁰ including in divisional secretariats expressly designated as bilingual administrative divisions.¹⁰¹

165. Tamil speakers, particularly outside of the North and East, continue to complain of inability in transacting official business with authorities in the Tamil language, either through correspondence or in person; signage and information materials in Tamil are still not uniformly available in public institutions.

166. The Official Languages Commission is under-resourced, unable to adequately inspect and monitor implementation of the official languages law, and unwilling to take action against recalcitrant public institutions.¹⁰²

167. Public Administration Circulars No. 3 and 7 of 2007 promoting bilingualisation of the public service is to be

welcomed but will take decades to bear fruit unless reinforced by other supportive actions such as recruitment of Tamil-language speakers to central and provincial government outside of the North and East.

168. *Adivasis* have faced official harassment for speaking in their own language. In 2003, eight members of the community were detained for over six hours at Mahiyangana police station for not speaking in Sinhala.¹⁰³ The recent statement by a cabinet minister of willingness to discuss official recognition of the *Veddah* language, including through its instruction in state schools is to be welcomed and must be implemented.¹⁰⁴

169. State support is provided for out-of-school Buddhist education (*daham pasal*) but has not been extended to other religious faiths such as Hinduism, Islam and Christianity.

170. Previously separate departments of state were established for the four main religions practised in Sri Lanka. However, the abolition of these departments has increased anxieties among religious minorities as to the protection of their respective faiths.

Questions

- *What measures are being taken to ensure that bilingual division secretariats truly deliver services in Tamil; and to increase the number of bilingual secretariats in areas with Tamil-speaking communities?*
- *Will the government strengthen the Official Languages Commission so that it performs its statutory duties more effectively?*

Recommendations

- *A National Cultural Council for Indian Origin Tamils should be established for the purposes of protection of their linguistic and cultural rights as well as heritage.*
- *Recognise and protect other languages spoken in Sri Lanka such as Malay, Veddah, Telugu and Malayalam through state resources.*

⁹⁸ US Department of State, *International Religious Freedom Report 2008 – Sri Lanka* <http://www.state.gov/g/drl/rls/irf/2008/108506.htm>;

⁹⁹ Report submitted by the Special Rapporteur on freedom of religion or belief, Asma Jahangir – Mission to Sri Lanka (2-12 May 2005), E/CN.4/2006/5/Add.3, 12 December 2005.

¹⁰⁰ Foundation for Co-Existence, *Language Discrimination to Language Equality: Report of an Audit on the status of the implementation of the Official Language Policy in Sri Lanka*, Colombo 2006.

¹⁰¹ Paras. 2.5 & 2.6, *Memorandum of Recommendations*, Official Languages Commission, Rajagiriya 2005, p. 5. In 1998, 29 divisional secretariats including five in the majority Indian-Origin Tamil Nuwara Eliya district were declared bilingual, but in practice there has been little or no improvement in services to Tamil-speakers.

¹⁰² Official Languages Commission, *Annual Report 2005*, Rajagiriya 2006, p. 21.

¹⁰³ “Veddah complains of discrimination”, *The Island*, 4 June 2004, <http://www.island.lk/2004/06/04/news06.html>.

¹⁰⁴ “State recognition for Veddah language”, *Daily Mirror*, 27 July 2010, <http://www.dailymirror.lk/print/index.php/news/front-page-news/16797-state-recognition-for-veddah-language.html>.

Rights of Northern Muslim Internally Displaced Persons¹⁰⁵

171. Contrary to the state report, the LTTE's expulsion of 90,000 Northern Muslims took place in October 1990 and not 1991. Secondly, Muslims were expelled from all five districts in the Northern Province (including Mannar, Mullaitivu, Kilinochchi and Vavuniya), and not only the Jaffna peninsula. Further, while close to 6000 families are benefiting from housing assistance, it should be noted that this is for new houses and partially completed houses, and not "partially damaged" houses as reported to the Committee.

172. In the current context, with the defeat of the LTTE many Northern Muslims are returning to their homes. The government's emphasis on the resettlement of the new (Vanni) IDPs – itself fraught with problems – has meant that no attention is paid, and no resources allocated for the return of the Northern Muslims.¹⁰⁶

173. Some families are poor, some are female headed households; these persons cannot conceive of return under current conditions given that no proper housing, infrastructure facilities are available especially in villages in the Mannar district. Safety and security remains a problem. Some female-headed households are barely surviving in Puttalam and do not have the financial means to consider moving back. The concerns and needs of the community that may remain in Puttalam too should be addressed.

174. The numbers of family members have changed due to natural increase over the past 20 years, and therefore many do not have houses in the North to go back to. Many have returned with the hope of receiving assistance in the future. Their return is spontaneous and ad-hoc. They face difficulties due to landmines, wild elephants, snake infestation etc.

175. There are difficulties with livelihood activities, restrictions on fishing, difficulty in restarting businesses in the Jaffna peninsula due to space and usage issues. Traditional tenants are not given their old shops back. IDPs are compelled to cancel food rations in Puttalam in order to claim rations in the North. However, the rations are not immediately resumed in the place that

they go to: in at least once instance, there was a delay of six months.¹⁰⁷

176. Returnee Muslims uniformly report unease and fear about their reception by the local (Tamil) community. Many have said that the state administrative mechanism (divisional secretariats etc.) is unwelcoming and unsympathetic.

177. There are many complicated issues with regards to land. Many Muslim returnees have permits to land but find that it has been redistributed in their absence, for example the LTTE allocated Muslim-owned properties to families of its cadres.

Questions

- *What measures are being taken to ensure the resettlement of those displaced before 2008?*
- *What measures are being taken to facilitate the return of Northern Muslims who were expelled by the LTTE in 1990?*
- *What measures are being taken to include Northern Muslims' aspirations and concerns when undertaking development planning for the north?*

Recommendations

- *The government must recognise the right of Northern Muslims to return, and facilitate their return through providing resettlement assistance.*
- *The government should establish a land commission, with participation of all communities, to resolve issues of access to land for Muslim returnees and their natural increase.*
- *The government should recognise that Muslims are returning to areas that have been virtually mono-ethnic for twenty years; all state employees and institutions must facilitate the reestablishment of Muslim communities in the areas.*
- *The government should take measures to ensure adequate representation of Muslims within the administrative service in the Northern Province.*
- *The government should formulate a compensation scheme taking into account the different experiences of displacement.*

¹⁰⁵ This chapter is based upon a submission prepared by Dr Farzana Haniffa (*Citizens Commission on the Expulsion of Northern Muslims*).

¹⁰⁶ The non-governmental *Citizens Commission* is in possession of a letter from the Ministry of Resettlement to the Jaffna Government Agent dated 03.06.2010 stating, *inter alia*, that the cash allowance that resettled persons are entitled cannot be provided for Muslim IDPs. "We regret to inform you that this Ministry is not in a position to provide the allocation required for the payment for Rs5000 allowance since it is funded by UNHCR for the IDPs displaced only after September 2008".

¹⁰⁷ Testimony at the *Citizens Commission* sitting in Mannar on 25 March 2010.

1. All Ceylon Plantation Workers Congress (ACPWC)
2. Arising Sun Community Development Organization (ASCO) – Nuwara Eliya
3. ATCFOAM
4. Bhikku Organisation for Protection of Natural Resources
5. BRIT, Badulla
6. Centre for Housing Rights and Evictions (COHRE), Sri Lanka
7. Centre for Human Resource Development (CHRD) – Mattala
8. Centre for Human Rights and Community Development, Rideegama
9. Centre for Social Concern (CSC) – Hatton
10. Centre for Sustainable Agriculture Research and Development (SARD)
11. Ceylon Plantation Worker Union (CPWU)
12. Christian Workers Fellowship (CWF) – Hatton
13. Cultural and Environment Society (CES)
14. Devesarana Development Center, Kurunegala
15. Environmental Cooperative Assembly (ECA)
16. Equal Ground (EQ)
17. Free Trade Zones & General Services Employees Union (FTZGSEU)
18. Future in Our Hands, Badulla
19. Government Printers Union
20. Hatton Tamil Sangam (HTS)
21. Home for Human Rights (HHR)
22. Human Need Action (HNA) – Badulla
23. INFORM Human Rights Documentation Centre
24. Institute of Social Development (ISD) – Kandy
25. Inter-Religious Peace Foundation (IRPF)
26. Isuru Jeewithodaya Foundation (IJF)
27. Janawaboda Kendraya (JK), Negambo
28. Kandukara Development Foundation, Monaragala
29. Kandurata Women's Foundation (KWF)
30. Lanka Estate Workers Union (LEWU)
31. Law & Society Trust (LST)
32. Movement for Land and Agricultural Reforms (MONLAR)
33. National Farmers' Assembly (NFA)
34. National Fisheries Solidarity (NAFSO)
35. National Union of Workers (NUW)
36. Navodaya Foundation (NF) – Ratnapura
37. New Environmental Resource Alliance, Hambantota
38. Organization for the Protection of Human Resources, Monaragala
39. Pahala Uva Community Development Institution, Monaragala
40. Pahala Uva Women's Development Organisation (PUWDO)
41. Penn Wimosana Gnanodayam (PWG) – Hatton
42. People's Health Movement (PHM)
43. Plantation Rural Education Development Organisation (PREDO) – Kandy
44. Plantation Women Development Society (PWDS) – Kegalle
45. PREDO People's Forum
46. Pulse Sri Lanka
47. Rural and Community Development Corporation (RCDC)
48. Savistri
49. Social Democrats Collective (SDC)
50. Social Development Society – Hatton
51. Social Economic Technical Institution (SETI)
52. Social Welfare Mandram (SWM) – Norwood
53. Society for Welfare, Education and Awareness Training (SWEAT) – Hatton
54. Sri Lanka Human Rights Foundation (SLHRF)
55. Sri Lanka People's Peace Foundation (SLPPF)
56. Sustainable Agriculture Welfare Organization, Welimada
57. Swashakthi Development Foundation, Mahiyanganaya
58. United Federation of Labour (UFL)
59. United Welfare Organisation (UNIWELO) – Nawalapitiya
60. Up-Country People's Front (UPF)
61. Up-Country Social Action Centre (UPSAC) – Dickoya
62. Up-Country Workers Information Development Foundation (UWIDF)
63. Uva Farmers' Collective for Poison-Free Agriculture (UFCPFA)
64. Uva Workers Development Foundation (UWDF) – Badulla
65. Uva-Wellassa Peasant Women's Organisation (UVPWO)
66. V & R Peoples Foundation (VRPF)
67. Wave Women's Network (WWN)
68. Women and Media collective
69. Women's Resource Centre (WRC), Kurunegala
70. Women's Support Group (WSG)
71. Women's Development Foundation, Badulla
72. Workers' Liberation Front (WLF)

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