



பிரித்தானிய தமிழர் பேரவை

British Tamils Forum

COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN

CEDAW SUBMISSION – SRI LANKA

An Overview

The past 30 years of civil war resulted in widespread violations of rights of women in Sri Lanka. It created many single parent families in the North East of Sri Lanka. Families headed by conflict affected widows are facing many hardships under the existing laws in Sri Lanka which creates gender based discrimination. Therefore, both conflict affected widows and disabled women are still being subjected to grave violation of human rights.

War affected widows, disabled women and single female parent in Sri Lanka continue to experience grave violations of their human rights; particularly single female parent is being subjected to various form of discrimination and violence, such as sexual abuses by the Sri Lankan armed forces. Substantive equality is a significant challenge to Sri Lanka's women in general: particularly in relation to the right to be free from gender based violence; gender stereo typing; political representation and the right to employment. Racial discrimination and gender based violence against Tamil women in Sri Lanka requires immediate and focused attention of the committee particularly in war affected and rural Sri Lanka where they experience discrimination in relation to applicable laws; Welfare

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programmes should be implemented due to gender based violence, within the family and in the community, lack of access to justice; and also due to the lack of inclusivity in transitional justice. Notably, during the final phase of civil war in Sri Lanka, it is evidenced that grave sexual violence had taken place against female combatants and war victims in Sri Lanka.

Lack of effective protection under existing Laws

The scope for seeking a remedy for the violation of the right to equality of a woman under the Sri Lankan Constitution is narrow. The Sri Lankan Constitution recognises the right to equality as a fundamental right and includes sex as a prohibited ground of discrimination. The violation or imminent violation of a fundamental right by executive or administrative action or omission can be challenged before the Supreme Court within 30 days of such violation. To date however, the Supreme Court has not made a decision on gender discrimination under this fundamental rights application. The fundamental rights jurisdiction is vested exclusively in the Supreme Court, which makes it inaccessible for women from rural and war affected communities.

Rape is a criminal offence which is prohibited by Chapter XVI of the Penal code. Under the Penal code, rape victims are not required to provide evidence of physical injuries to the body in order to prosecute rape perpetrators. There is limited data to assess the extent of sexual and gender based violence against women in Sri Lanka. According to the US Department of State, the police recorded 900 incidents of rape during the first six months of 2012, but this number was an unreliable indicator of the degree of this problem because many victims were unwilling to file reports. A 2010 Asian Human Rights Commission report on the state of human rights in Sri Lanka reported long delays in

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court proceedings, concluding that the impunity enjoyed by the perpetrators has contributed to the de facto decriminalization of rape.

Particularly, no proceeding has been recorded for the rape committed against war victims and Tamil women during the final period of civil war. Even after the conclusion of war many incidents have been recorded which evidenced sexual violence, forced pregnancy and rape against war victims while they were held in detention. These are still being continued. However, no action has been taken by the Sri Lankan government to identify the perpetrator nor to prosecute them under penal code.

Instead of ensuring that allegations of sexual violence are fully investigated and any perpetrators brought to justice, as required under international law, the Sri Lankan Government has consistently sought to deny or play down the gravity of the allegations of rape and other forms of sexual violence by its security forces.¹ While acknowledging it was aware of allegations of sexual abuse, the government denied large-scale abuse and even discredited and demeaned the victims.

For instance, the Government of Sri Lanka, in its statement to the 24th session of the Human Rights Council, highlighted that a survey covering the period 2007-2012 had revealed that of the reported incidents of sexual violence in the North a large majority were carried out by close relatives/neighbours and only a very few could be attributed to the Security Forces. It again claimed that in all

¹ “Sky News has been told women are being raped in Sri Lankan camps set up for Tamils who have fled the country's war zone. There are numerous reports of sexual assaults in the government-run camps, and claims that groups of young men are being rounded up and taken away.” <http://news.sky.com/story/694545/claims-of-abuse-in-sri-lankan-refugee-camps>.

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cases involving security forces disciplinary and legal action had been taken. “The military has taken strict action to either discharge or award other punishments to these personnel. Furthermore, cases have been filed in civil courts, some of which are pending in Courts and with the Attorney-General’s department.” In its response to the High Commissioner’s report to the Human Rights Council in March 2014, the Government reiterated that “there exists no basis for concerns as expressed by the High Commissioner with regard to presence of the security forces contributing to the vulnerability of women to sexual violence in the North. The Government deplores all acts of violence against women and girls and has taken concrete action against reported cases and will continue to do so”.²

Moreover, according to the Report of the OHCHR Investigation on Sri Lanka (OISL), “Eighteen out of thirty victims of sexual violence (eight male and ten female) informed OISL that they were raped, by bodily parts and/or by objects inserted into the anus. Statements taken by other sources also indicate high rates of rape in detention. Much of the rape described did not appear to have taken place in the context of interrogation sessions. According to a number of consistent testimonies, detainees, both male and female, were also forced to perform oral sex on their captors and sperm ejaculated in the mouth or over their bodies”.

There is also further evidence that many of the former detainees interviewed who had been subjected to some kind of sexual violence during interrogation were also raped. The purpose of the actual rape was not directly to obtain information in many of these cases, but a combination of sexual gratification, degradation and humiliation of the victims, and instilling of fear through degrading abuse of the detainees who were at the mercy of their captors and had no power to

² Comments received from the Permanent Mission of Sri Lanka on the draft report of the Office of the United Nations High Commissioner for Human Rights on promoting reconciliation and accountability in Sri Lanka (A/HRC/25/23), para 14.

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protect themselves. The humiliation element was compounded by the fact that detainees were constantly treated in a derogatory manner, such as being called “Tamil dogs” during the acts of sexual violence. The rape also added to the pressure constantly exerted over the detainees to provide information and/or sign “confessions”.

Despite Government assertion either denying sexual violence or alleging that all cases by security forces have been prosecuted, a review of the information supplied by the Government on such cases shows that this is not the case and that perpetrators continue to enjoy impunity. A Government report to the Human Rights Committee in September 2014 refers to 39 cases of sexual violence by the security forces before the courts. Subsequent information obtained by OISL shows that most of these cases involved sexual abuse of children (female). While it is positive that such cases are followed up in some way, even in these cases, not one member of the security forces has been convicted.³

Most of the abuses were politically motivated and targeted against a community

"Rape was one of the unlawful tools used by the military and police against suspected LTTE members or supporters to gather intelligence during the fighting and immediately after the conflict ended in May 2009 to obtain information about any remnants of the LTTE since then, whether in Sri Lanka or abroad," it says¹. In one of the accounts, a woman said she was raped just over a year ago in the Colombo office of the Criminal Investigation Department.

Based on the witness accounts, those behind the sex crimes are thought to have included members of the Sri Lankan army, police, and pro-government Tamil paramilitary groups.

³ CCPR/C/LKA/Q/5/Add.1, 2 September 2014

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"In all of the cases documented, the acts of rape and sexual violence were accompanied by other forms of torture and cruel, inhumane, and degrading treatment by state security forces," the report says.

"The continued large-scale deployment of the armed forces in former LTTE areas of northern Sri Lanka, coupled with increased surveillance of civil society groups, has stymied community responses to rights abuses including sexual violence."

Human Rights Watch (HRW) says sex crimes committed by government security forces "sharply increased" following a ceasefire breakdown in 2006.

Local remedy

Women victims do not have faith in Sri lankan authorities. They are scarred and reluctant to make complaints against security forces or para military. There are no meaningful structural changes taken place to have confidence in the state authorities. Many abuses were not reported or documented due to the heavy military presence and intelligence network. There is no sign of improvement in the above situation in the foreseeable future and seeking local remedy has produced negative results in many incidents.

Non recurrence

Many violence perpetrated against Tamil women and children in the past and present have not been investigated and those found guilty were not taken through criminal justice process and punished. Culture of impunity prevails in Sri lanka. There is no guarantee in the state mechanism to protect the vulnerable groups in the society. Political leaders including the President and Prime Minister are

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openly denying any involvement of the security forces for the gross violations committed in the past and dismissing any investigation with the inclusion of international judges. Leaders of the country find ways and means to get away from the international attention.ⁱⁱ This approach by the top decision makers of the country questions the ability of the state to ensure the non-recurrence through structural reforms.

War widows

Abuses by the security forces or others against Tamil women and children in surrounding military camps are widely reported. Troops still have a large presence in the north and east and keep a close watch on the local Tamil population enabling continuance of human rights violations even seven years after the end of the war. Compounded with these challenges, women headed family, especially the young women face economic hardships to bring up their children. As Sri Lanka has no welfare system and state sponsored empowerment programmes to support their livelihood, sufferings of women and children go unattended.

Many other issues effecting women such as coerced birth control, prostitution, use of hard drugs, disability, war trauma counselling and increased rate of suicidal tendency have not been dealt with seriously by the state. Tamil Women are left at the mercy of the perpetrators who committed serious crimes against them. Political will and structural changes are required for any improvement in the human rights conditions of Tamil women in Sri Lanka. International community's continued involvement and swift action is required.

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ⁱ <http://www.bbc.co.uk/news/world-asia-21577866>

ⁱⁱ (Sri Lanka's President Maithripala Sirisena has asked Donald Trump to pressure the UN Human Rights Council to drop war crimes allegations against the country's troops.

(<http://indianexpress.com/article/india/india-news-india/sri-lanka-maithripala-sirisena-seeks-donald-trumps-help-to-drop-war-crimes-charges-4398564/>)

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