



**Submission to the UN Committee on Economic, Social and Cultural Rights  
By Minority Rights Group International (MRG), the International Movement  
Against All Forms of Discrimination and Racism (IMADR) and Women  
Development Innovators (WDI)**

**Sri Lanka**

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**Minority Rights Group International ('MRG')** is an international NGO working to secure the rights of ethnic, religious and linguistic minorities worldwide. MRG has consultative status with the United Nations Economic and Social Council (ECOSOC), observer status with the African Commission on Human and Peoples' Rights (ACHPR) and is a civil society organisation registered with the Organization of American States (OAS). MRG and its partners have researched and advocated for the rights of the ethnic minorities for many years.

**The International Movement Against All Forms of Discrimination and Racism ('IMADR')** is an international human rights NGO founded in 1988 by one of Japan's largest minorities, the Buraku people and devoted to eliminating discrimination and racism, forging international solidarity among discriminated minorities and advancing the international human rights system. IMADR is in consultative status with the United Nations Economic and Social Council (ECOSOC).

**Women Development Innovators ('WDI')** is a Sri Lankan NGO whose aim is to promote the women's rights, equality, participation and development of women in accordance to the following objectives: (i) Equality of all rights of women irrespective of their ethnicity, religion, economic and educational status, regional and cultural differences, (ii) Upholding all rights of women recognized at the national and international laws and instruments, (iii) Fostering the union of women and their empowerment across their ethnic, religious, regional and other divides, (iv) Opposition to all forms of policies and practices that influence or advocate discriminations against women, (v) Opposition to all forms of violence perpetrated against women, (vi) Fostering the equal participation of women in politics and public life, (vii) Upholding the proper, efficient and effective enforcement of laws and regulations to safeguard women against all forms of violence.

## I. Introduction:

1. This report focuses on the behaviour of the Government of Sri Lanka towards its minorities in light of its obligations under the International Covenant on Economic, Social and Cultural Rights ('the Covenant'). It provides an overview of the situation of the minorities – in particular, Tamils involved in the fisheries sector – in the Northern and Eastern provinces and updates the Committee on the economic and housing developments since the end of the Sri Lankan civil war. The report will then evaluate Sri Lanka's behaviour towards its minorities and residents displaced as a result of land grabbing.

## II. Overview of the Situation

2. In 2009, the three decade long civil war in Sri Lanka finally came to a close.<sup>1</sup> Despite the official halt in hostilities, the Northern and Eastern regions of the country remain heavily militarised,<sup>2</sup> and despite the recent transition that began with the election of Maithripala Sirisena in January 2015, there is little evident improvement in the lives of the people residing there,<sup>3</sup> particularly their enjoyment of economic, social and cultural rights. Notable is the loss of land and livelihood within the fishing communities in those regions. The fisheries sector constitutes 1.8 percent of GDP, with 535,050 metric tons of production in 2014 alone.<sup>4</sup> Currently, over one million people depend on fishing income provided by 272,140 active fishermen.<sup>5</sup> Despite post-war improvements in the fisheries sector, "[t]he proud fishing industry of old has disappeared" and is now considered a small-time affair.<sup>6</sup>
3. These small-time fishers are often part of indigenous communities and lower castes that place them in a disadvantaged position, both economically and socially.<sup>7</sup> The Constitution of Sri Lanka prohibits discrimination based on classifications such as caste, type of work and descent and, on the surface, the caste system in Sri Lanka appears to be nonexistent.<sup>8</sup> However, in practice, the caste system persists, with approximately 90 percent of the population recognising the caste system to some extent.<sup>9</sup>
4. Discrimination and classification exist on many different planes, a few of which will be discussed in detail here. First, there are divisions based on ethnicity and religion. A majority of the Sri Lankan population is Sinhalese (74.9%), followed by Tamils (including Up-

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<sup>1</sup> THE OAKLAND INST., *THE LONG SHADOW OF WAR: THE STRUGGLE FOR JUSTICE IN POSTWAR SRI LANKA* 3 (2015).

<sup>2</sup> An estimated 160,000 troops are still stationed in the Northern and Eastern provinces of Sri Lanka. *Id.* at 10.

<sup>3</sup> Nalini Ratnarajah, *Sri Lanka Tourism and Livelihood of Fishing Communities I* (Aug. 17, 2016) (unpublished manuscript) (on file with author).

<sup>4</sup> *Statistics: Fisheries*, MINISTRY OF FISHERIES AND AQUATIC RESOURCES DEV. OF SRI LANKA, <http://www.fisheries.gov.lk/content.php?enid=ststc> (last updated Aug. 30, 2016).

<sup>5</sup> *Id.*

<sup>6</sup> Maarten Baavinck, *Fishing Rights in Post-War Sri Lanka: Results of a Longitudinal Village Enquiry in the Jaffna Region*, 14 *MARITIME STUDIES*, no. 1, 2015, at 1, 4.

<http://maritimestudiesjournal.springeropen.com/articles/10.1186/s40152-014-0019-0>.

<sup>7</sup> Blake D. Ratner et al., *Fishing for Justice: Human Rights, Development, and Sector Reform*, 27 *GLOBAL ENVTL. CHANGE* 120, 121 (2014).

<sup>8</sup> Kalinga Tudor Silva et al., *Caste Discrimination and Social Justice in Sri Lanka: An Overview*, 3 *INDIAN INST. OF DALIT STUD.: WORKING PAPER SERIES*, no. 6, 2009, at 1, 15.

<sup>9</sup> *Id.* at 1.

Country Tamils) (15.3%) and Sri Lankan Moor (9.3%).<sup>10</sup> Other ethnic groups include Burghers, Malays and Sri Lankan Chetty, and indigenous groups are also present in the country, including Vedhhas.<sup>11</sup> The primary religious groups include Buddhists (70.1%), Hindus (12.6%), Muslims (9.7%), Roman Catholics (6.2%) and Other Christians (1.4%).<sup>12</sup> Sri Lanka is regarded as a case in which the overlap between ethnicity and religion is particularly strong, making it extremely difficult to disentangle the two, highlighted in particular by the Muslim minority, which is considered both an ethnic and religious group. Similarly, the majority of the Sinhalese population is Buddhist and the majority of Tamils is Hindu; however, there are those within each group who subscribe to different religious beliefs, for example Catholicism or Christianity. While ethnicity has been the dominant focus through which Sri Lankan society has been understood, religion has always been an important part of the subtext. Second, each community upholds its own system of classifications, based on livelihood, caste and/or heritage.<sup>13</sup> Therefore, some groups, particularly those who have traditionally adhered to a caste system, face the challenge of intersectional discrimination, which results from being within a lower caste and a part of one of the minority groups.<sup>14</sup> Historically, fishers have been classified as part of the Karaiyar caste.<sup>15</sup> This classification exists within the Sri Lankan Tamil minority group and is considered an intermediate caste.<sup>16</sup> Although it does not have untouchable or “Panchmar” status, it is not part of the land-owning, dominant Vellâlar caste, and has therefore been subject to caste discrimination over the years.<sup>17</sup> Agricultural workers have also traditionally been placed into the lower Padu caste.<sup>18</sup>

5. The Tamil fishing communities in the Northern and Eastern provinces have had their livelihoods disrupted by a variety of different factors. The protracted war displaced much of the local population and destroyed the infrastructure of the region, and the highly destructive tsunami in 2004 caused further physical damage and led to mass looting.<sup>19</sup> Together, these two events have deteriorated the local fishing market as well had major implications on the overall economy.<sup>20</sup> Additionally, the local fisheries continue to face further outside challenges today as set out below.

### III. Patterns of Land and Sea Grabbing in Sri Lanka

6. The Tamil population of the Northern and Eastern provinces of Sri Lanka currently faces a changing physical and demographic landscape. The communities that existed in the past have been dispersed due to a number of different factors. The first challenge comes from the Sri Lankan military, which works in tandem with commercial enterprises that have an

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<sup>10</sup> SRI LANKA DEP'T. OF CENSUS AND STATISTICS, CENSUS OF POPULATION AND HOUSING 4 (2012), <http://www.statistics.gov.lk/popousat/cph2011/Pages/Activities/Reports/SriLanka.pdf>.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* at 4–5.

<sup>13</sup> See generally Silva et al., *supra* note 8.

<sup>14</sup> *Id.* at 14.

<sup>15</sup> Ajith Balasooriya, *Issues at Own Backyard: Caste Based Socio-Economic Inequalities as “Unseen Hurdles” in Post-Conflict Northern Sri Lanka*, 19 J. OF INT'L DEV. AND COOPERATION, no. 3, 2013, at 15, 21.

<sup>16</sup> Silva et al., *supra* note 8, at 6.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.* at 4.

<sup>19</sup> Ratnarajah, *supra* note 3 at 1.

<sup>20</sup> *Id.* See also Baavinck, *supra* note 6, at 4 (“There is no market to speak of.”).

interest in acquiring and profiting from land in the North and East of the country.<sup>21</sup> Since the end of the civil war, the military has used The Land Acquisition Act of 1950 and the Strategic Development Projects Act of 2008 to bring land under their control, and away from the local Tamil population.<sup>22</sup> The Land Acquisition Act allows the Government of Sri Lanka to seize lands that will be used for a “public purpose”<sup>23</sup> while the Strategic Developments Project Act subsidises development projects that are deemed to bring economic and social benefit to the country.<sup>24</sup> However, the boundaries of the definition of “public purpose” have become blurred in light of recent commercial developments of the land.<sup>25</sup> The Sri Lankan Government issued a circular in 2013 that specified ways in which land could become “lost” and could subsequently be used for development activities.<sup>26</sup> However, the “lost” category in the circular is ambiguous and leaves open the possibility of land becoming “lost” due to development activities.<sup>27</sup> In, Sri Lanka, these vast tracts of land are often turned into high security zones (HSZs), and access to the land is limited to military personnel.<sup>28</sup> Even high-ranking Government officials must obtain permission from the Minister of Defence to gain access to these high security zones.<sup>29</sup> Furthermore, much of the land inside these enclosures is used for commercial activities. Satellite observation of the area has revealed that the army even participates in commercial activities like cultivating the fertile soil.<sup>30</sup> In other cases the land is seized and developed or sold to private businesses for development. This development mainly encompasses updates in infrastructure and the construction of new residential buildings and hotels.<sup>31</sup> Although this construction might benefit some sectors of the Sri Lankan economy, it displaces the local Tamils from their homes without the provision of adequate housing and employment elsewhere.

7. Allocations of land are mainly made for tourism and agricultural purposes, although land has also been allocated for salt production, mining, irrigation projects, energy and aquaculture.<sup>32</sup> The greatest number of projects have been initiated in the tourism industry.<sup>33</sup> The building of hotels is particularly damaging to the fishing communities because of the distribution of land along the coastline towards this type of development.<sup>34</sup> As a result, fishermen are forced to relocate and lose their access to the sea, preventing them from storing their equipment and from engaging in fishing activities.<sup>35</sup> Although the hotels themselves have not always been profitable, the Government profits in all cases from the renting or selling of land taken from the local population.<sup>36</sup>

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<sup>21</sup> THE OAKLAND INST., *supra* note 1, at 12–25.

<sup>22</sup> *Id.* at 23.

<sup>23</sup> *Id.*

<sup>24</sup> Strategic Development Projects Act, No. 14 (2008) GAZETTE OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA, SUPPLEMENT TO PART II (Feb. 29, 2008).

<sup>25</sup> THE OAKLAND INST., *supra* note 1, at 12–25.

<sup>26</sup> *Id.* at 23.

<sup>27</sup> *Id.*

<sup>28</sup> *Id.* at 15.

<sup>29</sup> *See id.* at 16 (stating that when the Chief Minister of the Northern Province tried to visit an HSZ on seized land, he was “politely told by the armed personnel to obtain permission from the Secretary of Defence”).

<sup>30</sup> *Id.* at 15.

<sup>31</sup> *Id.*

<sup>32</sup> SRI LANKA NATURE GRP. & PEOPLE’S ALL. FOR RIGHT TO LAND, UPROOTING PEOPLE FROM THE LAND: LAND GRABBING – CURRENT STATUS AND TRENDS IN SRI LANKA 14 (2012).

<sup>33</sup> *Id.*

<sup>34</sup> Ratnarajah, *supra* note 3, at 8–10.

<sup>35</sup> *Id.*

<sup>36</sup> *Id.* at 13.

The seizure of land has typically involved several steps. First, the military establishes a military base or outpost in an area that the Government plans to seize.<sup>37</sup> Subsequently, the areas around the outpost are occupied by the military, and the local people are displaced from their homes and land.<sup>38</sup> Large swaths of land are then fenced off from the public and turned into HSZs, at which point there is a lack of transparency in the Government's use of the land, with no outsiders allowed inside.<sup>39</sup>

8. A second challenge results from other minorities permanently settling on land previously owned by minorities who were displaced as a result of the war. Some of these settlements were formed spontaneously while others are formed by the Government, which has allocated land and housing grants to other internally displaced persons (IDPs).<sup>40</sup> These IDP transplants are sometimes placed into communities different from their own, which can in some cases lead to further tension.<sup>41</sup>
9. Additionally, fishermen face increasing competition from both Indian trawling boats from the Tamil Nadu region and Sinhalese fishers from the south of Sri Lanka.<sup>42</sup> While Indian fishers have built up mechanised fleets, the Sri Lankan fishers have not been able to develop their fishing equipment.<sup>43</sup> The incursion of Indian trawling boats has made it more difficult for Sri Lankan fishers to partake in their traditional occupation because of the risk of damage to their nets by trawling boats.<sup>44</sup> Sea cucumber diving, an activity prohibited by both the Indian and Sri Lankan Governments but carried out by people who migrated to the north from other parts of Sri Lanka,<sup>45</sup> is a further threat to the traditional fishing industry. Since the use of dynamite and bright underwater lights scares away fish, it interferes with the activities of local fishermen.<sup>46</sup>

#### **IV. Consequences of land and sea grabbing on marginalized groups**

10. The seizing of land by the Government for military purpose, tourism and industry development has caused widespread displacement and poverty among the minorities of Sri Lanka. The most direct impact on the displaced people has been the loss of their land and homes. Whole communities have been relocated to camps or welfare centres created especially for IDPs.<sup>47</sup> Although the residents of these camps were initially provided support, they now receive little to no help and continue to live in housing and communities that lack basic infrastructure.<sup>48</sup>

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<sup>37</sup> THE OAKLAND INST., *supra* note 1, at 15.

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> Baavinck, *supra* note 6, at 4.

<sup>41</sup> *See id.* (“[T]he village now counts Hindus and evangelical Christians next to Roman Catholics. Moreover, the war has left deep scars. As one village leader put it, ‘we are a wounded society.’”).

<sup>42</sup> *Id.* at 4–5.

<sup>43</sup> *Id.* at 7.

<sup>44</sup> *Id.* at 6–8.

<sup>45</sup> *Id.* at 8–9.

<sup>46</sup> *Id.* at 9.

<sup>47</sup> THE OAKLAND INST., *supra* note 1, at 15–19.

<sup>48</sup> *See id.* (describing the conditions in IDP camps such as a lack of electricity and shelter from the rain).

11. The loss of land has also led to the loss of the livelihoods of many people. Particularly hard-hit have been those whose occupations were centred on agriculture and fishing, and who therefore depended on their access to land and the sea to make a living. The new lands provided to IDPs are in many cases not suitable for agriculture and do not provide access to the coastline. Consequently, IDPs have had to seek work in other industries, often with little success. Although displaced persons are eager to find other employment, opportunities are scarce and salaries are not sufficient to lift families out of poverty and settle in areas outside of the camps.<sup>49</sup> Further, for many IDPs, their land was not only their source of income, but also their source of food, providing a buffer against seasonal hunger.<sup>50</sup> Restricted from continuing their work as fishers and farmers, and lacking access to other employment, disadvantaged small scale farmers and fishermen are also unable to meet their basic nutritional needs and those of their families.<sup>51</sup>
12. In addition, the displacement of people has altered the demographics of former communities.<sup>52</sup> Throughout decades of conflict, some villages were whittled down to a fraction of their core inhabitants, with newcomers settling in on housing and land grants.<sup>53</sup> This demographic change has impacted the informal structure of community control over fishing activities.<sup>54</sup> The social infrastructure of the community has changed with the State is a player in the allocation of fishing rights and other facets of society.<sup>55</sup> Tourism has exacerbated this demographic change, while contributing to unemployment within these communities. Tourism development projects initially promised to provide employment for local people; however, they have instead chosen to import their labour force from other parts of the country.<sup>56</sup>
13. The rapid development of the area has also affected the environment, both contributing to pollution and diminishing biodiversity. This continuing deterioration of the environment may also make it impossible for displaced people to return to their land and resume their occupation in fishing and agriculture.<sup>57</sup>
14. Largely, compensation has not been provided to those who have been displaced from their homes or their livelihoods.<sup>58</sup> In some cases, compensation was provided through the provision of stones or other materials necessary to build a home, although even in those cases many materials that are necessary for construction (such as cement) were not provided.<sup>59</sup>

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<sup>49</sup> A young family reports being able to make LKR 17,000 (\$127) on a good month. *Id.* at 19.

<sup>50</sup> Ratner et al., *supra* note 7, at 121–22.

<sup>51</sup> SRI LANKA NATURE GRP. & PEOPLE'S ALL. FOR RIGHT TO LAND, *supra* note 29, at 18.

<sup>52</sup> “The institutional edifice that [fishing communities] rebuild is largely invisible to the outside world. Until one happens to tread on it...[T]he difference between insiders and outsiders may run deeper.” Some residents of the fishing villages are of the viewpoint that once someone is an outsider, he will always be an outsider. Baavinck, *supra* note 6, at 13–14.

<sup>53</sup> Baavinck, *supra* note 6, at 4.

<sup>54</sup> *Id.* at 5.

<sup>55</sup> Ratnarajah, *supra* note 3, at 2.

<sup>56</sup> *Id.* at 7.

<sup>57</sup> See SRI LANKA NATURE GRP. & PEOPLE'S ALL. FOR RIGHT TO LAND, *supra* note 29, at 18 (“After the utilization of [target lands] for the development program the entire ecosystems will be lost.”).

<sup>58</sup> See THE OAKLAND INST., *supra* note 1, at 11, 18, 20, 23–24 (providing numerous examples of land grabbing without compensation).

<sup>59</sup> MINORITY RIGHTS GRP. INT'L, NO WAR, NO PEACE: THE DENIAL OF MINORITY RIGHTS AND JUSTICE IN SRI LANKA 9 (2011).

15. Communities also receive many services such as fuel subsidies, loans, insurance, and pensions through NGOs instead of the Government.<sup>60</sup> Many people cannot obtain these services from the Government due to eligibility criteria that are difficult to meet by conflict-affected people. Fuel subsidies require boat registration and documentation, which many small fishers do not have.<sup>61</sup> Loans, insurance and pensions often require good credit, stable income, or possession of adequate documentation, which are also difficult to meet requirements.<sup>62</sup> Additionally, fishing communities often lack adequate infrastructure such as lighthouses, harbours, ice rooms, market buildings, and rest rooms, further limiting their ability to engage in their occupation and protect their livelihood.<sup>63</sup>
16. Women engaged in the fishing industry have been disproportionately impacted by the civil war and subsequent challenges within the fishing industry. With the loss of lives of many of the male members of households, women have become the breadwinners of their families.<sup>64</sup> Despite their work in the fishing industry, whether they are engaged in fishing or in support activities like post-harvest or gathering mollusks and prawns, women are not recognized as active members of the fishing community.<sup>65</sup> This invisibility within the patriarchal fishing culture weakens their position within decision-making bodies and during negotiations, preventing them from protecting their livelihood.<sup>66</sup> Widows have also not been able to claim benefits or compensation for the death of their husbands due to lack of death certificates.<sup>67</sup> The Cabinet of Ministers has recently tried to remedy this situation by approving interim draft legislation that will allow the issuance of Certificates of Absence in place of death certificates.<sup>68</sup> These certificates will allow families of missing persons to transfer property ownership, apply for compensation, and claim benefit payments.<sup>69</sup>

## V. The displacement of minorities constitutes a violation of Article 2.2

17. Article 2.2 of the Covenant states that, “Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.” Differential treatment constitutes discrimination unless “the justification for the differentiation is reasonable and objective”, which includes looking at, “whether the aim and effects of the measures or omissions are legitimate, compatible with the nature of the Covenant rights and solely for the purpose of promoting the general welfare in a democratic society.”<sup>70</sup> It is further required that there be “a clear and reasonable relationship of proportionality between the aim sought to be realized and the measures or omissions and their effects.”<sup>71</sup>

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<sup>60</sup> Ratnarajah, *supra* note 3, at 3.

<sup>61</sup> *Id.*

<sup>62</sup> *Id.*

<sup>63</sup> *Id.* at 4.

<sup>64</sup> Ratnarajah, *supra* note 3, at 4–5.

<sup>65</sup> *Id.* at 5.

<sup>66</sup> *Id.* at 5.

<sup>67</sup> MINORITY RIGHTS GRP. INT’L, *supra* note 59, at 11.

<sup>68</sup> *Sri Lanka to Issue Certificates of Absence for Missing Persons*, LANKA BUS. ONLINE, June 8, 2016, <http://www.lankabusinessonline.com/sri-lankas-to-issue-certificates-of-absence-for-missing-persons/>.

<sup>69</sup> *Id.*

<sup>70</sup> UN Committee on Economic, Social and Cultural Rights (CESCR), *General comment No. 20: Non-discrimination in economic, social and cultural rights (art. 2, para. 2 of the International Covenant on Economic, Social and Cultural Rights)*, ¶ 13, U.N. Doc. E/C. 12/GC/GC/20 (Jul. 2, 2009).

<sup>71</sup> *Id.*



18. The Government of Sri Lanka has been initiating development projects on land in the Northern and Eastern provinces, which have been primarily the home of Sri Lanka's Tamil population, but also Muslims.
19. An assessment of proportionality – or whether an action has an unjustifiable disparate impact on a group – will involve a consideration of whether the measure being taken was necessary (for example, a 'pressing social need'), whether it is possible to achieve the same with less or no interference through alternative means, and whether the decision-making process behind the measure was fair. It is submitted that the actions of the Government of Sri Lanka in removing minorities from their lands without providing adequate compensation cannot be justified. There is no state of emergency or other pressing social need that can justify their actions. Although Sri Lanka was the site of a protracted civil war, the hostilities officially came to a close in 2009, whereas the discrimination faced by minorities living in the Northern and Eastern provinces continues today.
20. The Government continues to use national security as the justification for the continued military occupation of the north and east, with the Minister of Defense confirming soon after the election of Maithripala Sirisena "there is no change in that policy under any circumstances...nor does the government plan to scale down security arrangements."<sup>72</sup> In a further move towards militarization, police powers were briefly transferred to the armed forces in 2015, with the promise of transferring them back to the armed forces through the Prevention of Terrorism Act "if the situation arises".<sup>73</sup>
21. The Sri Lankan Government has also been carrying out this process of displacement forcibly, without consulting the local people in any capacity and without transparency. As this Committee's General Comment 7 states, "all feasible alternatives [shall] be explored in consultation with the affected persons, with a view to avoiding, or at least minimizing, the need to use force."<sup>74</sup> As shown above, the activities occurring within high security zones are not disclosed to the public, and access to these sites requires explicit permission from relevant Government authorities. Despite the forceful expulsion of locals from their lands, little to no compensation was provided. While some lands have recently been returned which should be welcomed, progress has been slow and a lack of community and transparency persist.
22. As a result, these displaced persons have lost their livelihoods, homes, or both. Many currently live in poverty and do not have the necessary skills to find other employment. The Government does not provide assistance to the welfare centres it created, leaving whole communities to subsist without proper nutrition, infrastructure, and education.

## **VI. The continued displacement of minorities constitutes a violation of Article 11**

23. Since the end of the civil war in Sri Lanka, the Government has initiated and supported projects which had the result of forcibly removing people in the Northern and Eastern

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<sup>72</sup> *Id.*

<sup>73</sup> *No Police Powers for Armed Forces*, THE SUNDAY TIMES, Apr.5, 2015, <http://www.sundaytimes.lk/150405/news/no-police-powers-for-armed-forces-143646.html>.

<sup>74</sup> UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 7: The right to adequate housing (Art.11.1): forced evictions, ¶ 13, U.N. Doc E/1998/22, (May 20 1997).

provinces from their homeland as set out in Sections 2 and 3 above. Additionally, these actions were performed with a lack of transparency.

24. In General Comment 4, this Committee provided that, “[the right to housing] should be seen as the right to live somewhere in security, peace, and dignity.”<sup>75</sup> This Committee notes that the full enjoyment of other rights such as the freedom of association, the freedom of expression, and the right to participate in public decision-making are “indispensable” if the right to adequate housing is not realized and maintained.<sup>76</sup> This Committee then concluded that forced evictions are *prima facie* incompatible with the Covenant.<sup>77</sup>
25. In General Comment 7, forced evictions are defined by this Committee as “the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection.”<sup>78</sup> Forced evictions do not just affect an individual’s economic and cultural rights. They may also result in the violation of civil and political rights, such as the right to life, the right to security of the person, the right to non-interference with privacy, and the right to the peaceful enjoyment of possessions.<sup>79</sup> A State must therefore avoid carrying out forced evictions and enforce the law against third parties who carry out forced evictions.<sup>80</sup>
26. States are expected to use “all appropriate means” to ensure the fulfilment of the rights contained within the Covenant. “[A]ll appropriate means” may include the adoption of legislative measures, which must also apply to all agents acting under the authority of the State or who are otherwise accountable to it.<sup>81</sup> The non-discrimination clauses of the Covenant, Articles 2.2 and 3, impose an additional obligation on a State to ensure that, where a forced eviction does occur, appropriate measures are taken to ensure that the eviction is executed “without discrimination of any kind”.<sup>82</sup> States are further obligated to, in consultation with the affected persons, explore all feasible alternatives before carrying out an eviction.<sup>83</sup>
27. The Government of Sri Lanka has forcibly displaced minority communities and has appropriated much of this land for commercial use. The eviction processes have been carried out without any transparency and did not involve the input or the meaningful participation of the communities whose land was being taken away. As a result, displaced persons now live in poverty, without adequate housing. This is in violation of art. 11(1) which, as detailed in General Comment 7, requires that “all feasible alternatives are

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<sup>75</sup> UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 4: The Right to Adequate Housing (Art. 11 (1) of the Covenant), ¶ 7, U.N. Doc E/1992/23, (Dec. 13 1991).

<sup>76</sup> *Id.*

<sup>77</sup> *Id.* at ¶ 18

<sup>78</sup> UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 7: The right to adequate housing (Art.11.1): forced evictions, ¶ 3, U.N. Doc E/1998/22, (May 20 1997).

<sup>79</sup> *Id.* at ¶ 4.

<sup>80</sup> *Id.* at ¶ 8.

<sup>81</sup> *Id.* at ¶ 9.

<sup>82</sup> *Id.* at ¶ 10.

<sup>83</sup> *Id.* at ¶ 13.

explored in consultation with the affected persons, with a view to avoiding, or at least minimizing, the need to use force.”<sup>84</sup>

28. Despite its obligations under the Covenant, the Government of Sri Lanka has not taken adequate measures to improve the living situation of the IDPs, who now live in poverty on lands unsuitable for their traditional livelihood. The Sri Lankan Government also did not provide adequate compensation to the IDPs, and it has not provided for the improvement in their housing, feeding, employment, healthcare and social needs. Therefore, the Government of Sri Lanka is in violation of Article 11.

**VII. The failure to provide displaced minority groups with an effective remedy and adequate compensation for their continued exile constitutes a violation of Articles 2 and 11**

General Comment 4, on the right to adequate housing (art. 11) provides:

*The Committee views many component elements of the right to adequate housing as being at least consistent with the provision of domestic legal remedies*

General Comment 7, on the right to housing and forced evictions (art. 11) states:

*States parties shall also see to it that all the individuals concerned have a right to adequate compensation for any property, both personal and real, which is affected. In this respect, it is pertinent to recall article 2.3 of the International Covenant on Civil and Political Rights, which requires States parties to ensure “an effective remedy” for persons whose rights have been violated and the obligation upon the “competent authorities (to) enforce such remedies when granted”*

29. The displaced minorities are currently barred from returning to their homelands. The presence of high security zones on what was previously their land prevents them from even visiting their lands. In the case of land being used for development, the original housing of displaced people has already been destroyed. Due to the lack of compensation and assistance from the Government of Sri Lanka, many such people are confined to welfare centres that lack basic infrastructure. Employment is hard to come by and the affected people cannot provide adequate food for themselves and their families. Further, access to education is undercut due to the lack of or inadequate facilities, or because reaching these facilities is challenging: at times on account of location, particularly for young girls and women, but also sometimes because children are required to contribute to their family’s livelihood for survival<sup>85</sup>. This will likely entrench the cycle of poverty into the next generation. Currently, displaced minorities do not have any clear legal recourse to their lands.

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<sup>84</sup> UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 7: The right to adequate housing (Art.11.1): forced evictions, ¶ 13, U.N. Doc E/1998/22, (May 20 1997).

<sup>85</sup> See, e.g., THE OAKLAND INST., *supra* note 1, at 19 (“We don’t have clothes for [the] children or bus money for them to go to school.”); COLIN POWELL SCHOOL FOR CIVIC AND GLOBAL LEADERSHIP, THE FOREVER VICTIMS? TAMIL WOMEN IN POST-WAR SRI LANKA (2015); UNICEF SRI LANKA, COUNTRY STUDY: OUT OF SCHOOL CHILDREN IN SRI LANKA, SUMMARY REPORT (2013)

30. The internally displaced minorities therefore have been deprived of an effective remedy and/or adequate compensation for their treatment by the government of Sri Lanka within the national judicial system, in violation of Articles 2 and 11.

### **VIII. Recommendations**

31. The authors of this submission respectfully request the Committee to inform the Sri Lankan Government of its obligations to those whose land rights have been violated, and to recommend to the Government that they facilitate and support the rights of minorities to return to their lands immediately or be provided adequate compensation.

32. To this end, MRG, IMADR and WDI specifically recommend that the Sri Lankan Government:

- conducts all land acquisitions and development projects with absolute transparency and adopt a consultation procedure so that the meaningful participation of minorities is obtained prior to the taking of land.
- recognises the activities of women as productive and allow women to have an active role in the decision-making within their communities so that their livelihoods are protected.
- integrates the displaced communities in the new development ventures by providing jobs and purchasing seafood directly from fishermen rather than through middlemen.
- puts in place a land policy based on environmental impact studies before allocating land for use in various development projects.
- provide adequate compensation for the loss of land during and after the civil war based on a comprehensive survey on the situation of land and property based on consultations with minority groups. Compensation should take various forms, including the restitution of land to legal owners as soon as possible, provision of land documentation, offering dispute resolution to address competing claims, providing support where land has been damaged, amongst others.