



**UNIVERSAL PERIODIC REVIEW
SRI LANKA
3rd Cycle - 2017**

**SUBMISSION BY THE
UNITED NATIONS COUNTRY TEAM**

**Contributing Agencies –Senior Human Rights Advisor to the
United Nations Country Team, UNICEF, UNHCR, UNFPA, IOM,
WFP, UN WOMEN, UNDP**

Universal Periodic Review (UPR) SRI LANKA 2017 – 3rd Cycle Joint Submission - UN Country Team

1. Introduction

This submission collates human rights information available to the Sri Lanka UN Country Team for the purpose of contributing to the UN sources report to be considered as part of Sri Lanka's third cycle of the UPR in November 2017. It does not attempt to provide a comprehensive review of the situation in Sri Lanka but focuses on issues raised in previous reviews and provides an update on the current context.

2. Context

Following Presidential and Parliamentary elections in 2015 the resulting coalition government has embarked on a reform agenda that includes constitutional reform, governance and a Transitional Justice (TJ) agenda. In October 2015, the Human Rights Council (HRC) adopted with the co-sponsorship of Sri Lanka, Resolution 30/1 on promoting reconciliation, accountability and human rights in Sri Lanka. The Resolution outlined the commitments of the Government to advance the reform agenda, including TJ elements in the form of a truth commission, an accountability mechanism, an office for reparations and an office for missing persons. The Government further committed to other legislative and policy reforms. In March 2016, the Parliament adopted a resolution establishing itself as a constitutional assembly for the purpose of reforming the Constitution. A Public Representations Committee (PRC) received representations from the public on proposed constitutional changes. The PRC report was published in May 2016.¹ From February-November 2016 a Government-appointed civil society Task Force (CTF) conducted Consultations on reconciliation mechanisms. Their report was published in January 2017.²

In the second UPR Sri Lanka Sri Lanka received 204 recommendations, accepting 113 and rejecting 91 recommendations. Sri Lanka ratified the CRPD³ and the CED⁴. Corresponding domestic legislations, implementing the two conventions remain pending. Sri Lanka also ratified the Protocol to Prevent, Suppress and Punish Trafficking in Person, especially Women and Children supplementing the UN Convention against Transnational Organized Crime in 2015 (with reservations). Sri Lanka is not a signatory to the second optional protocol of the International Covenant on Civil and Political Rights (ICCPR), the Optional Protocol to the Convention against Torture (OPCAT), the Optional Protocol to the Convention on the Rights

¹ http://english.constitutionalassembly.lk/images/pdf/PRC_1.pdf.

² <http://www.scrm.gov.lk/documents-reports>

³ Sri Lanka ratified the Convention on the Rights of Persons with Disabilities on 08 February 2016.

⁴ Sri Lanka ratified the international Convention for the Protection of All Persons from Enforced Disappearance on 25 May 2016.

of the Child on a communications procedure, or the Rome statute of the International Criminal Court.

In December 2015 Sri Lanka extended standing invitations to all thematic special procedures of the HRC. There have been six country visits by thematic special procedures⁵ during the reporting period and four technical advisory visits by the Special Rapporteur on Truth, Justice, Reparations and Guarantees of Non-Recurrence.

Sri Lanka has enacted legislation on victim and witness protection⁶, which is in the process of being reviewed in order to bring it in line with international standards. Sri Lanka has made some initial progress in relation to TJ including the mentioned CTF public consultations on reconciliation mechanisms and passing legislation to establish an Office of Missing Persons.⁷

Sri Lanka has taken several steps to pass legislations ensuring more transparency and independence of the institutions, namely the Right to Information Act (RTI),⁸ passed in 2016 and entered into force in February 2017; the Nineteenth Amendment to the Constitution⁹ which gives effect to the appointment of a Constitutional Council that nominates members of independent commissions and recommends appointments to other high government positions with the objective of depoliticizing the public service and limit the powers of the President.

The National Human Rights Action Plan (NHRAP) for the period 2011–2016 encountered obstacles in its implementation. An Inter-Ministerial Committee was appointed to implement the plan (following the dissolution of the Ministry of Human Rights in 2010) but the lack of a dedicated Ministry to expedite action resulted in challenges to follow up. As such the implementation of the NHRAP was piecemeal and difficult to monitor. A new NHRAP has been drafted in 2016 for the period 2017-2022. While drafted in consultation with civil society, the finalised draft underwent revisions by Cabinet which reportedly lead to the removal of key action points related to decriminalization of same sex relations, the vagrancy ordinance and access to healthcare services for people living with HIV. As of March 2017, the Cabinet-approved NHRAP is not yet public.

In October 2015, the appointment of the Constitutional Council lead the way to the appointment of new Commissioners to the National Human Rights Commission (NHRC). The NHRC has since been outspoken issuing public notices on key issues. Proposed amendments to the Human Rights Commission Act, to strengthen the implementation of recommendations issued, are yet to materialize.

3. Implementation of Human Rights Obligations

1) Equality and Non – Discrimination

⁵Working Group on Enforced and Involuntary Disappearances (November 2015), Special Rapporteurs on Human Rights of Internally Displaced (December 2013); Human Rights of Migrants (May 2014); Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (April 2016); Independence of Judges and Lawyers (April 2016); Minority Issues (November 2016); Promotion of Truth, justice, reparation and guarantees of non-recurrence (four advisory visits in 2015 and 2016).

⁶ Assistance to and Protection of Victims of Crime and Witnesses Act No. 04 of 2015 -

http://www.srilankalaw.lk/gazette/2015_pdf/4%20of%202015.pdf

⁷ http://documents.gov.lk/files/act/2016/8/14-2016_E.pdf

⁸ http://www.media.gov.lk/images/pdf_word/2016/12-2016_E.pdf

⁹ <http://www.parliament.lk/files/pdf/constitution/19th-amendment-act.pdf>

The PRC report contains recommendations to reinforce Equality and Non-Discrimination through constitutional amendments. Specifically, the enactment of a Bill of Rights which includes clauses to ensure that the right to equality is guaranteed to every citizen and enforced by clearly establishing a hierarchy of fundamental rights over other legislation. This would require changing Article 16 of the Constitution that provides that all existing written and unwritten law shall be valid and operative notwithstanding any inconsistency with the Fundamental Rights Chapter of the Constitution.

2) Right to Life, Liberty and Security of a Person

The Constitution does not expressly guarantee the "right to life" but it is implicitly recognized through the other fundamental rights set out in its Chapter III.

In March 2014, the HRC, in Resolution 25/1, mandated the Office of the High Commissioner for Human Rights (OHCHR) to undertake a comprehensive investigation into alleged serious violations and abuses of human rights and related crimes by both parties in Sri Lanka between February 2002 and October 2011. In September 2015, the OHCHR presented its Investigation on Sri Lanka (OISL).¹⁰ The OISL noted that on the basis of the information obtained during the investigation there were reasonable grounds to believe that if established before a court of law, some of the acts, including unlawful killings, torture, abduction and sexual violence, may amount to crimes against humanity if committed as part of a widespread or systematic attack, and as war crimes if a nexus is established with the armed conflict. The OISL makes recommendations to address accountability and reconciliation. The mentioned Resolution 30/1 of 2015 builds on the OISL findings.

The Working Group on Enforced and Involuntary Disappearances (WGEID) visited Sri Lanka in November 2015. The WGEID's report,¹¹ noted the systematic way in which disappearances had been used in Sri Lanka for many years to suppress political dissent, counter-terrorist activities or in the internal armed conflict. It suggested that the extensive use of enforced disappearance and the almost complete lack of judicial accountability and of decisive and sustained efforts to secure the truth about the disappeared, in addition to the absence of a comprehensive reparation programme and social, psychological and economic support for the victims have left profound wounds on society. The WGEID annual report for 2016 records Sri Lanka as the second highest country for unresolved cases of disappearances with 5,758 cases registered with the WGEID pending in 2016.¹²

3) Rule of Law

The preliminary observations¹³ of the Special Rapporteur on the Independence of Judges and Lawyers (SRIJL) consequent to her country visit during April-May 2016, noted that reforms are necessary before the country can be considered to be on a path to sustainable democratization governed by the rule of law. The diversity of the population is not yet reflected in the composition of the judiciary, the Attorney General's office, or the police, or in the language in which

¹⁰ Report of the OHCHR Investigation on Sri Lanka (OISL) (A/HRC/30/CRP.2) available at <http://www.ohchr.org/EN/Countries/AsiaRegion/Pages/LKIndex.aspx>

¹¹ A/HRC/33/51/Add.2, Report of the Working Group on Enforced or Involuntary Disappearances on its mission to Sri Lanka. http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/33/51/Add.2

¹² A/HRC/33/51, Report of the Working Group on Enforced or Involuntary Disappearances

¹³ <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=19942&LangIE>

proceedings are conducted. The SRIJL identified the need for the administration of justice to be more transparent, decentralized and democratic and reinforce the way to give effect to the rights protected in international human rights treaties which have been ratified and which are in force. Among many concerns the SRIJL identified the need to legislate the access to a lawyer from the moment of arrest and other due process guarantees, and had concerns over the judicial delays and access to justice, in particular with respect to fundamental rights cases.

The Special Rapporteur on Torture (SRT) noted that the average delay for State Counsel to bring criminal cases before the High Court after remand ranged from 5-7 years¹⁴. He noted the serious violation of due process and the presumption of innocence and that this violates the principle of provisional detention as the exception and not the rule.

Delays in the justice system are recurrent. Children's cases, particularly crimes against children (e.g., child abuse) which in principle must be prioritised and expedited in the judicial system take an average of six years for indictment.

Levels of impunity are particularly high with respect to certain offences, for instance sexual violence. The Grave Crimes Abstract for 2015¹⁵ reflects that only one rape (which occurred in 2001) ended in conviction, though there were 1654 incidents of rape reported to the Police that year.

Notwithstanding international obligations, national legislation doesn't contain provisions granting children in the juvenile justice system the right to legal representation.

A National Legal Aid Policy was approved by the cabinet in April 2016 and a Strategic Action Plan to implement the same was also designed¹⁶.

In 2014, the Cabinet approved the Standard Operating Procedures for the Identification, Protection and Referral of Victims of Human Trafficking¹⁷ and the National Strategic Plan 2015-2019 to Monitor and Combat Human Trafficking.¹⁸

4) Freedom from Torture

The Constitution specifies that "*No person shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment*". Sri Lanka enacted the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment Act¹⁹ in 1994.

¹⁴ A/HRC/34/54/Add.2

¹⁵ http://www.police.lk/images/others/crime_trends/2015/grave_crime_abstract_for_the_year_2015.pdf

¹⁶ Source – UNDP, Sri Lanka

¹⁷ <http://srilanka.iom.int/iom/sites/default/files/IOM%20Standard%20Operating%20%20FINAL.pdf>

¹⁸

http://cabinetoffice.gov.lk/cab/index.php?option=com_content&view=article&id=16&Itemid=49&lang=en&ID=6554

¹⁹ Act 24 of 1994, <http://www.srilankalaw.lk/Volume-II/convention-against-torture-and-other-cruel-inhuman-or-degrading-treatment-or-punishment-act.html>

In November 2016 Sri Lanka was reviewed by the Committee against Torture (CAT), which expressed concern over consistent reports including the SRT²⁰ indicating that torture is “a common practice carried out in relation to regular criminal investigations in a large majority of cases by the Criminal Investigations Department (CID) and the Police, regardless of the nature of the suspected offence.”²¹ The CAT was concerned that broad police powers to arrest suspects without a court warrant had led to the practice of detaining people while conducting the investigations as a means to obtain information under duress.

The report of the SRT²² noted that a “culture of torture” persists; physical and mental coercion is used against suspects being interviewed, by both the CID in regular criminal investigations and by the Terrorism Investigation Division in investigations under the Prevention of Terrorism Act (PTA). The report also noted that Sri Lanka’s prison population was approximately 16,990 comprised of 7,496 convicted prisoners, 8,351 prisoners on remand and 1,134 prisoners whose cases were under appeal. The SRT found the prison conditions to be inhumane, characterized by deficient infrastructure and pronounced overcrowding which had an impact on medical treatment, recreational activities and educational activities.

5) Freedom of Movement

Freedom of movement is enshrined in the Constitution, under Article 14(1). Checkpoints and limitations of movement in the North were a common occurrence during the conflict until 2014. Since the 2015 change of Government, the situation has improved. Despite welcomed steps towards demilitarization, such as the removal of checkpoints, the military presence in the north and east remains heavy and a culture of surveillance and, in certain instances, intimidation and harassment, persists.²³ Former detainees released after rehabilitation and civil society groups working with victims continue to face regular security checks and questioning. Allegations of military involvement in economic activities in those regions persist, hampering the lives of residents in the area.

6) Freedom of religion or belief, expression, association and peaceful assembly, and right to participate in public and political life

The Constitution expressly guarantees freedom of thought, conscience and religion, freedom of expression and speech, including publication, freedom of association and peaceful assembly. The recently enacted RTI aims at promoting a society in which people would be able to more fully participate in public life through combating corruption and promoting accountability and good governance.

During the previous Government, there was a perceived increase in religiously motivated violence, particularly in 2013, when nationalistic Buddhist groups such as Bodu Bala Sena and Sihala Ravaya promoted hate speech and violence, with relative impunity. In June 2014, Anti-Muslim riots in

²⁰ A/HRC/34/54/Add.2, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment on his mission to Sri Lanka.

http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/34/54/Add.2

²¹ http://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/LKA/CAT_C_LKA_CO_5_25983_E.docx

²² A/HRC/34/54/Add.2

²³ See High Commissioner Reports to the Council, i.a.: A/HRC/34/20, A/HRC/32/CRP.4, A/HRC/30/CRP.2, A/HRC/30/61

Aluthgama left four people dead, many injured and caused widespread damage of property.²⁴ These violations remain insufficiently addressed.

While the change of government in 2015 has led to a decrease in organized and physical violence against religious minorities, there is continued discrimination as State actors continue to be complicit in violations of freedom of religion. 89 incidents were recorded against Christians and Evangelicals in 2016 alone²⁵ which included attacks and disruptions of prayer services and threats. Moreover, concerns remain with regard to targeted harassment and intimidation of Christian denominated clergy members. In relation to Muslims, during the period of November 2015 - June 2016,²⁶ 64 incidents of religious freedom violations in 13 districts across Sri Lanka were reported, mainly in relation to threats of violence and hate speech. It is alleged that those were mainly perpetrated by Buddhist nationalist groups. In late 2015 and early 2016 aggressive campaigns in social media and other forms (such as the “*Sinhale*” bumper sticker campaign) stoke nationalism against ethnic, religious and other minorities.²⁷ The intervention of the police in many of the above-mentioned cases has been inadequate, at times, even contributing to violations, including the disruption of the prayer service or the closure of the church.

There are substantial gaps in holding perpetrators of religiously related violence and discrimination accountable. Institutional responses to violations of religious freedom are insufficient. A bill aimed at amending the Penal Code to incorporate hate speech crimes was withdrawn in December 2015 as a consequence of concerns held by civil society organizations regarding the curtailment of freedom of speech, given that the bill reproduced verbatim sections of the PTA.

A number of exiled journalists were able to return to the country since 2015. The blocking of online media lessened to a great extent. However, despite constitutional guarantees, a number of laws and regulations in practice restrict this right, including the Official Secrets Act, Counter-terrorism legislation and laws on defamation and contempt of court. Since January 2015, the number of verbal and physical attacks on journalists reduced, but did not cease. In April 2015, Tamil-language media such as the Uthayan newspaper continued to feel restraints.²⁸

In relation to freedom of association and assembly, the Inter University Student’s Federation has raised concerns with regard a number of student protests that were met by aggressive crowd control practices from the Police.²⁹

In February 2017, it was reported that there would be new laws enacted with regard to protests, which would safeguard the people’s right of association and expression.³⁰

²⁴ A/HRC/30/61, para. 23

²⁵ National Christian Evangelical Alliance Sri Lanka, Incident Reports.

²⁶ Secretariat for Muslims, Sri Lanka. Incident Reports

²⁷ <http://roar.lk/editorial/time-stop-pretending-sinha-le-anything-racist/>

<http://thediomat.com/2016/06/lions-blood-behind-sri-lankas-sinha-le-movement/>

²⁸ <http://www.thesundayleader.lk/2015/04/12/cpj-questions-arrest-of-journalist/>

²⁹ <http://www.dailynews.lk/?q=local/iusf-convenor-decries-police-attack-students>

<http://www.iusfsl.org/> (Sinhala)

³⁰ <http://www.dailymirror.lk/123454/New-laws-allocating-separate-areas-for-protests>

7) Right to work and to just and favourable conditions of work

The right to work is not explicitly recognised in the Constitution except as a freedom to engage in a lawful occupation or profession, which includes the right to engage in trade union activities. However, guarantee of the right to work in the formal sector is arguably available as Sri Lanka in practice is compliant with relevant International Labour Organization (ILO) Conventions³¹ and is generally perceived to have a legal system within which the law favours the employee over the employer. Jurisprudence under the Fundamental Rights Chapter of the Constitution (cases filed under Article 12) has established over the years several obligations of the State as an employer. The Termination of Employment (Special Provisions Act)³² specifies that no person may be terminated from his services other than through his consent or by an application made to the Commissioner of Labour. Termination on the grounds of disciplinary grounds, can be challenged before the Labour Tribunal. These obligations have been extended to the private sector through the Commissioner of Labour who, as an agent of the state, is required to respect the right to equality in decision making. In the private sector, several rights of workers have been the subject of legislative policy such as maternity benefits, due process guarantees on termination of employment, and minimum wages. The judicial enforcement of these laws has upheld 'just and equitable' considerations and established a high threshold that needs to be met by the employer particularly in the area of the termination of employment. There are certain aspects of employment and work that have not been the subject of legislative policy. For instance, at present there is minimal protection against discrimination at the work place or protection for domestic workers.

In accordance with recommendations in the report of the Special Rapporteur on the Rights of Migrant Workers³³, Sri Lanka as the Chair-in-Office of the Colombo Process adopted the Colombo Ministerial Declaration at the Fifth Ministerial Consultation of the Colombo Process in 2016 emphasising the ethical recruitment of migrant workers of all labour sending countries including Sri Lanka.³⁴

8) Right to social security and to an adequate standard of living

The realization by all citizens of an adequate standard of living has been included as one of the Directive Principles of State Policy and Fundamental Duties in the Constitution³⁵. Sri Lanka accepted a UPR recommendation in relation to housing shortage (no 88) requesting the adoption of a national housing strategy. In addition, there were several accepted recommendations for enhancement of standard of living and poverty reduction (nos.100-107).

Though the Government has embarked in a process to return land that has been occupied by the military, the slow pace of release is a concern particularly in the High Security Zones in Jaffna and Mullativu, and also in Mannar. Though housing assistance is provided, livelihood grants are limited and the return package has shrunk. Agricultural land needs to be returned in order for IDPs to be able to resume their normal lives and livelihood opportunities. While there has been progress, a

³¹ http://www.ilo.org/colombo/whatwedo/projects/WCMS_126066/lang--en/index.htm?ssSourceSiteId=asia

³² Termination of Employment of Workmen Act, <http://www.srilankalaw.lk/Volume-VIII/termination-of-employment-of-workmen-special-provisions-act.html>

³³ http://www.ohchr.org/Documents/Issues/SRMigrants/A-HRC-29-36-Add.1_en.pdf

³⁴ <http://www.colomboprocess.org/about-the-colombo-process/message-from-the-chair-in-office>

³⁵ Article 27.

comprehensive mapping of land and clear benchmarks for this return to be completed are needed.³⁶

The previous government's Urban Regeneration Programme³⁷, continued by the current Government, is reportedly meant to beautify the city and create a slum free capital.³⁸ This raised concerns with regard to large scale evictions under the previous regime and subsequent relocation of low income families away from the city centre. The rights of affected persons were not sufficiently taken into consideration at the time of evictions, conducted largely by the previous government, and the impact on their lives, including lack of access to services, loss of shared community, increase in physical and material vulnerability, disruption of education and the loss or reduction in livelihood options, remain of concern. The lack of transparency and accountability in these processes was an overriding concern. There is a lack of a clear state policy that accounts for and seeks to serve the interests of those affected by the evictions. The lack of such policies compound problems arising out of a state-centric understanding of the power of the state to take over privately held land on the grounds of public interest, subject to payment of compensation (eminent domain), and expanding 'public purpose' in state acquisitions of land. There is an urgent need for the National Involuntary Resettlement Policy to be updated and enshrined in law.³⁹ The Consultation Task Force on Reconciliation Mechanisms has recommended the establishment of a National Land Commission in relation to legacy related cases.

The report⁴⁰ of the Special Rapporteur on Minority Issues (SRMI) reflected that according to all socioeconomic and health indicators including access to housing, health, education, literacy, sanitation and safe drinking water, Plantation Tamils are the most deprived group in the country. Landless and employed as daily labour, they have historically lived in complete isolation and are heavily dependent on the estates for their welfare and livelihood. A majority of Plantation Tamils (67.8 per cent) still live in so-called "line rooms" built during the colonial era, 20 per cent of which lack latrines.

Sri Lanka in recognition of its ageing population launched a *National Elderly Health Policy* in February 2017⁴¹. Although, there is specific reference to the principles of *Healthy Ageing*⁴², including the recognition of holistic elder care services, social security being made available to all senior citizens, there are no specific rights enshrined in this policy.⁴³

9) Right to Health

The right to health care is not included as a fundamental right in the Constitution but indirectly mentioned in Article 27 (2)(c) in the Chapter on Directive Principles. There are concerns with

³⁶ Source – WFP, Sri Lanka

³⁷ http://www.uda.gov.lk/index.php?option=com_content&view=article&id=2&Itemid=140&lang=en

³⁸ Centre for Policy Alternatives, *The Making of a World Class City: Displacement & Land Acquisition in Colombo*, available at: http://www.cpalanka.org/wp-content/uploads/2017/02/The-Making-of-a-World-Class-City_Final.pdf

³⁹ Ibid supra

⁴⁰ A/HRC/34/53/Add.3

⁴¹ http://www.health.gov.lk/enWeb/Pub_Opi/Elderly%20Policy%20new%20revision%20E4.pdf, National Elderly Health Policy in February 2017

⁴² http://www.who.int/ageing/active_ageing/en/, also referred to as Active Ageing, - is the process of optimizing opportunities for health, participation and security in order to enhance quality of life as people age. It applies to both individuals and population group

⁴³ Source – UNFPA, Sri Lanka

regard to accessing healthcare and medical treatment of good quality. Private healthcare is reportedly costly and lacks regulation.

The provision of universal free healthcare through an extensive network of public clinics and hospitals across the country, is financed mainly by the government with some private sector and limited donor funding. Sri Lanka has one of the world's fastest-growing ageing population: 9% of the population is recorded as being over 65 years of age and this is expected to double in 2030. Sri Lanka's total health-care expenditure as a percentage of total GDP is one of the lowest in the world at 3.5% in 2015. Patients receiving treatment at state run hospitals are required to obtain drugs and medical tests at their own expense. The demand for private health care largely depends on the rising per capita income, which would enable more people to afford paid healthcare. One of the key challenges for private-sector growth is the very low penetration of medical insurance.

Lack of availability of youth friendly health services for adolescents and youth is another concern. Sri Lanka currently has the largest ever adolescents' population (16.1% of the total population) and youth population (23.2% of the total population) in the country. Full implementation of circular issued by Director General of Health Services (01-25 12015) on 8 July 2015 across the country is one of the key steps in ensuring rights of adolescents for sexual and reproductive health.⁴⁴

Concerns have been raised that doctors and other medical staff are often unaware of, and insensitive to, the health needs of people from sexual minorities (LGBT people). Transgender people report that medical professionals tend to consider them as mentally ill. Very few doctors address issues such as access to hormones or sex reassignment surgery, and most of them are in large cities, like Colombo and Kandy. Identifying a doctor who is able and willing to work with transgender people is a significant barrier to health.

There are also concerns raised with regard to accessing professional mental health care, in the context of post war / reconciliation. The report of the CTF called for psychosocial services to be made available to those at affected community level before during and after their engagement with TJ mechanisms.

In 2013, the Government adopted a National Migration Health Policy which emphasises the right to health care for all mobile groups.⁴⁵

10) Right to Education

The constitution provides for education as a fundamental right, through the broad interpretation of the right to equality. A vast majority of Supreme Court cases that have been determined under Article 12(1) of the Constitution have been in relation to school admissions.

At the previous UPR, Sri Lanka accepted the recommendation for inclusion of human rights and peace education into the overall education system and for equal right to access education in areas affected by the conflict. Sri Lanka has developed a national policy on Education⁴⁶ and the Ministry of Education has taken the initiative to review its existing policy and develop a plan towards a revised policy, which is meant to promote social cohesion through education.

⁴⁴ Source – UNFPA, Sri Lanka

⁴⁵ Source – IOM Sri Lanka Country Strategy Paper,

<http://srilanka.iom.int/iom/sites/default/files/IOM%20Strategy%202014-2017%20FINAL.pdf>

⁴⁶Source - UNICEF, Sri Lanka

Young people often do not have access to accurate and youth-friendly sexual and reproductive health information, and sexual and reproductive health and rights education through the formal school system is limited. The government should take necessary action to include comprehensive sexuality education into national education policy.⁴⁷

In tertiary education, concerns have been raised by university academics and students, including through protests, with regard to deterioration of academic freedom and university autonomy. Reportedly, the foremost concern about State universities is with regard to financial and resource allocation and problems related to recruiting and retaining quality faculty staff. Universities are encouraged by the State to view the provision of education as a quality commodity that is economically feasible, which, in turn, has an impact on the provision of a quality education⁴⁸.

11) Cultural Rights

The Constitution recognises individuals' freedom to enjoy and promote their own culture and to use their own language.⁴⁹ The report of the SRMI⁵⁰ called for reform of the education system to be a long-term project that must be set in motion without delay. Highlighting that steps to achieve integration within the school system should be based upon dialogue and confidence-building across communities, and stressed that the school curriculum should be reviewed with a view to ensuring that children learn about the shared values and commonalities of their society, together with the history, culture, religion and identity of the others and not only of their own or the majority communities.

12) People with Disabilities

Persons with disabilities face significant challenges in their daily lives as there are no policies and practices that promote and protect their right to be included in the community, to study in the mainstream education system, to receive timely and quality health and social care services, while the state does not have a system on early identification of disability and early interventions. The current certification and registration of disabilities start at the age of five, effectively leaving thousands of children with disabilities out of reach of the social financial transfers and other benefits.

As mentioned before Sri Lanka ratified the CRPD and needs to incorporate enabling domestic legislation.⁵¹ In November 2016, the Cabinet tasked the Ministry of Social Empowerment and Welfare and the Legal Draftsman to proceed with the consideration of a draft bill in order to bring Sri Lanka into compliance with the Convention. Concerns have been raised with regard to lack of consultations with persons with disabilities for the preparation of the draft legislation.

13) Minorities and Indigenous people

The report of the SRMI⁵² suggested that apart from public consultations that were conducted in relation to constitutional reform and reconciliation, minorities feel excluded from areas of decision-making and power structures. The SRMI attributed this to the dominance of Sinhala as

⁴⁷ Source – UNFPA, Sri Lanka

⁴⁸ <https://www.colombotelegraph.com/index.php/current-issues-in-university-education/>

⁴⁹ Article 14 (1)(f)

⁵⁰ A/HRC/34/53/Add.3

⁵¹ Sri Lanka ratified the Convention on the Rights of Persons with Disabilities on 08 February 2016.

⁵² A/HRC/34/53/Add.3

the *de facto* sole language in institutions and bodies. She was of the view that institutions must be reflective of the society's ethnic and religious diversity which would increase participation, effectiveness and trust.

The SRMI recommended that the Government establish an independent commission on minorities under the Constitution which should have a clear mandate, powers, resources and autonomy and a diverse workforce that includes representatives of minority communities.

14) Migrants Refugees and Asylum seekers

Concerns with regard to Sri Lankan Tamil Asylum seekers, being tortured on their return to Sri Lanka, have been raised in the recent past.⁵³ This is in response to receiving countries adopting more stringent criteria for granting Sri Lankan nationals refugee status.

On 16 August 2016, the Cabinet adopted the *National Policy on Durable Solutions for Conflict-Affected Displacement (National Policy)*,⁵⁴ which paves the way to address durable solution needs for IDPs and refugee returnees, in accordance with international standards. Voluntary repatriation of Sri Lankan refugees, by means of UNHCR's facilitation, marginally increased in 2016 as a result of positive political transition and greater Government support towards return as one of the durable solutions. However, a number of Sri Lankan refugees abroad, particularly in India, remains significant and the Government's support to their voluntary repatriation continues to be essential as the problems related to access to land, housing, water and sanitation and, in some instances, personal/civil documentation and reinstatement of the nationality status continue to hamper reintegration efforts.

Asylum seekers from other countries claiming international protection and residing in Sri Lanka are recorded as mostly Pakistani and Afghanistan religious and ethnic minorities. In 2013 – 2014 UNHCR reported a nearly 780% increase in the number of Pakistani Asylum seekers since 2012. As of January 2017, there were 567 asylum-seekers and 604 refugees registered with UNHCR in Sri Lanka. In the absence of a national asylum framework asylum seekers and refugees are treated as irregular immigrants and maybe subject to arrest, detention, and deportation under the Immigrants and Emigrants Act.⁵⁵ The Government's accession to the *1951 Convention relating to the Status of Refugees* and its *1967 Protocol* and adoption of the national legal framework would help mitigate the existing protection risks. While the Government ensures minimum necessary asylum space and tolerates asylum-seekers and refugees' presence on its territory, the previous Government, in a bid to curtail the growing number of foreigners in the country, arbitrarily arrested, detained and deported large numbers of asylum-seekers and refugees in breach of the principle of *non-refoulement* (from June to November 2014). Concerns also remain with regard to children of asylum seekers not having access to public schools while their refugee claims are being processed, which may take up to two years. While refugee children education (at primary level only) is supported by UNHCR, both groups of children would benefit from access to education

⁵³ Human Rights Watch, World Report 2015, Sri Lanka, available at - <https://www.hrw.org/world-report/2015/country-chapters/sri-lanka>

⁵⁴ *National Policy on Durable Solutions for Conflict Affected Displacement* [Sri Lanka], adopted on 16 August 2016, available at: <http://resettlementmin.gov.lk/site/images/stories/pdf/final%20policy.pdf>.

⁵⁵ Sri Lanka: Immigrants and Emigrants Act No. 20 of 1948 [Sri Lanka], 1 November 1949, available at: http://www.hrsl.lk/PFF/Library_Domestic_Laws/Legislations_related%20to_Migrants_Workers/1948%20No%2020%20Immigrants%20and%20emigrants.pdf

in public schools. The inability to access public education hampers their rights and undermines potential for appropriate child development and dignified stay in Sri Lanka as a country of asylum.

In 2015, the Ministry of Foreign Affairs (MFA) endorsed a Plan of Action resuming the work of the National Coordination Committee for Readmission (NCCR) supporting the implementation of the EU Re-admission agreement for the smooth return and reintegration of the failed asylum seekers from the EU countries to Sri Lanka.⁵⁶

Refugees and asylum seekers are susceptible to arrest and detention if they engage in any income generating activities contrary to the Sri Lankan immigration regulation. Refugees' and asylum seekers' access to education and employment are important for their dignified stay in the country of asylum and will reduce their dependency on very limited remittance and private charities support; it will also allow them to contribute to the society that, ultimately, provides them with necessary protection.

15) IDPs

Housing, land and property issues in Sri Lanka are extremely complex as a result of long-term internal conflict and associated population movement, multiple pieces of legislation and a number of state institutions and ministries mandated to manage state owned land. Some IDP and refugee returnees remain unable to achieve durable solution as a result of landlessness.

Although significant areas of land have been released from military occupation in 2015 and 2016, a mapping of both private and public land under the control of the military, and a release plan with clear benchmarks and timelines, have yet to be presented to the public.

Concerns with regard to ad hoc amendments to land laws including the Land Acquisition Act, remain⁵⁷. Particularly, settlement of land disputes over militarization or post-war development should be done in consultations with public officers, affected communities and land rights advocates.

The actual implementation of the *National Policy*, in all its comprehensive aspects, is still pending and the Government is encouraged to capitalize on positive dividends achieved thus far. UNCT in Sri Lanka have internalized support to resettlement and durable solutions in its strategic planning related to Sri Lanka's broader peace-building transition and envisaged appropriate technical support to the Ministry of Resettlement to operationalize the implementation of the *National Policy*.

16) Gender equality

A multi-sectoral and comprehensive National Action Plan to end Sexual and Gender Based Violence was approved by Cabinet and formally launched in November 2016, and individual action plans formulated by nine sectoral ministries are moving forward.⁵⁸

The Local Authorities Election Amendment Act No.1 of 2016, allows for the appointment of 25% women to Local Authorities in order of priority from a closed list of women.⁵⁹

⁵⁶ Source: IOM Sri Lanka

⁵⁷ These land laws include Definition of Boundaries Ordinance, the Land Survey Ordinance, the State Lands (Claims) Ordinance and the State Lands (Recovery of Possession) Act.

⁵⁸ Source – UNDP, Sri Lanka

⁵⁹ Source – UNDP, Sri Lanka

Sex specific restrictions in relation to migration need to be lifted, by abolishing the requirement of a Family Background Report, (MFE/RAD/10/13) in line with the recommendations of the Convention on the Elimination of All forms of Discrimination against Women (CEDAW) Committee.⁶⁰

There is no official definition for the category of female headed households, one in four households are estimated to be female headed, and are experiencing challenges in accessing welfare, resettlement and other policies and programmes. In October 2016, the cabinet approved a National Plan for Women Headed Households, which prioritises 6 identified programming areas which is expected to be launched in 2017.⁶¹

The Ministry of Women and Child Affairs received cabinet approval to establish gender mainstreaming programme in every Ministry. Effective implementation of the programme needs to be ensured.⁶²

Discriminatory practices persist under the guise of cultural differences. The Muslim Marriage and Divorce Act of 1951 and the Qazi Courts put in place discriminatory practices which include child marriage, unfair divorce practices, marital rape, polygamy and limited access.

17) Discrimination against Children

Discrimination against children based on ethnic and economic basis persists, most particularly among minorities (Veddha, Muslim and Tamil communities), in estate areas, remote rural children, refugees and asylum-seekers, children of overseas workers, children in institutional care and children with disabilities. To address social cohesion, Sri Lanka has taken several measures since the end of conflict in 2009, including the development of the 2012 National Policy Framework for Social Integration. There is a National Youth Policy that has a focus on social integration and cohesion and a 2012-2021 National Plan for a Trilingual Sri Lanka.⁶³

18) Child Soldiers and Missing Children

The database of the family tracing unit (unaccompanied minors due to conflict) created in 2011 under the Department of Probation and Child Care Services has been completed and most children have been reunited with their families. There is a need to better understand missing children as part of the TJ and national reconciliation process. An estimated 600 children are still considered missing and there is little action to independently investigate these cases.⁶⁴

The database of children recruited during the conflict which was created in 2010 is completed and served to investigate cases. However, this process has been discontinued.

⁶⁰ CEDAW/C/LKA/CO/8

⁶¹ Source – UNFPA, Sri Lanka

⁶² Source – UNFPA, Sri Lanka

⁶³ Source – UNICEF, Sri Lanka

⁶⁴ Source – UNICEF, Sri Lanka