

## **UNIVERSAL PERIODIC REVIEW**

### **SRI LANKA**

**Joint stakeholders report submitted by:**

- **World Evangelical Alliance (WEA), an NGO with special consultative status since 1997.** WEA is a network of churches in 129 nations that have each formed an evangelical alliance and over 100 international organizations joining together to give a world-wide identity, voice, and platform to more than 600 million evangelical Christians worldwide. WEA was founded in 1846 in London.  
[www.worldevangelicals.org](http://www.worldevangelicals.org)
- **Asia Evangelical Alliance (AEA),** founded in 1983 is a network of national alliances representing 16 Asian nations and 11 associate members.  
[www.asiaevangelicals.org](http://www.asiaevangelicals.org)

**Submission date: 30th March 2017**

## EXECUTIVE SUMMARY

Sri Lanka is a pluralistic society made up of diverse ethnic, religious and cultural communities. Following a period of nearly 30 years of polarising civil war, Sri Lanka transitioned into a period in which flagrant human rights abuses were common-place under the repressive presidency of Mahinda Rajapakse. During the reporting period from 2012 to 2015, there emerged a number of ultra-nationalist groups such as the *Bodu Bala Sena* and the *Sinhala Ravaya* groups that led increasingly violent attacks against Christians and Muslims with impunity.

In 2015, Sri Lanka's political climate underwent change through an electoral process that was widely hailed as democratic and transparent. The current coalition government led by President Maithripala Sirisena and Prime Minister Ranil Wickremesinghe adopted a number of appreciable policy and legal changes in an effort towards democratisation; namely: the passing of the 19<sup>th</sup> Amendment to the Constitution on 15<sup>th</sup> May 2015, which introduced a number of long overdue reforms; the ratification of the International Convention for the Protection of All Persons Against Enforced Disappearances (CED) on May 26<sup>th</sup>, 2016; and the introduction and passing of the legislature on the Office on Missing Persons (OMP) on 23<sup>rd</sup> August, 2016.

Ultra-nationalist violence receded with the change of administration in 2015, but extremist Buddhist groups continue to exert a significant level of influence. Notably, in 2016, even after the change of government and steps towards democratization, a nationalist campaign entitled *Sinha Le* surfaced, attempting to promote the notion of a pure Sinhala-Buddhist nation. The situation of religious freedom thus continues to be disconcerting for minority religious communities (in particular, the Evangelical Christian and Muslim communities) in the country.

The Evangelical Christian community in Sri Lanka is a minority within a minority and thus, faces myriad violations, including violent attacks, in contravention of their right to religious freedom or belief. Denial by government agencies to acknowledge their legitimate existence has resulted in the violation of their right to enjoy freedom of religion or belief as enshrined in Article 18 of the International Covenant on Civil and Political Rights (ICCPR)<sup>1</sup> and wider democratic freedoms.

At Sri Lanka's most recent UPR on 1 November 2012, three recommendations put forward by the Holy See,<sup>2</sup> Italy<sup>3</sup> and Spain<sup>4</sup> on promoting freedom of religion enjoyed the support

---

<sup>1</sup> General comment No. 22 of the Human Rights Committee: 'The freedom to manifest religion or belief in worship, observance, practice and teaching encompasses a broad range of acts. The concept of worship extends to ritual and ceremonial acts giving direct expression to belief, as well as various practices integral to such acts, including the building of places of worship, the use of ritual formulae and objects, the display of symbols, and the observance of holidays and days of rest... In addition, the practice and teaching of religion or belief includes acts integral to the conduct by religious groups of their basic affairs, such as the freedom to choose their religious leaders, priests and teachers, the freedom to establish seminaries or religious schools and the freedom to prepare and distribute religious texts or publications'.

<sup>2</sup> Recommendation 127.56

<sup>3</sup> Recommendation 127.57

<sup>4</sup> Recommendation 128.91

of the Government of Sri Lanka (GoSL).<sup>5</sup> Furthermore, the GoSL also committed to enacting specific legislative amendments to the Penal Code, to ensure that the rights of ethnic and religious minority women are safeguarded.<sup>6</sup>

Furthermore, as part of an ambitious reform agenda, the Government of Sri Lanka (GoSL) co-sponsored resolution 30/1 at the UN Human Rights Council (UNHRC) in September 2015, mandating reconciliation and transitional justice mechanisms. At present Sri Lanka is undergoing a process of transitional justice, with the GoSL pledging to implement four mechanisms to facilitate transition. Nevertheless, an effective implementation of these mechanisms is yet to be realized as the entire process is currently in its embryonic stages, which has meant that war-affected communities have felt little change.

This report will highlight procedures and policies followed by local law enforcement, government authorities and institutions that breach the fundamental freedoms of the Evangelical Christian minority, including the issue and use of discriminatory circulars<sup>7</sup> that are applied disproportionately against religious minorities. However, this report will also highlight the violations and infringements of the rights of other minority religious groups in the country.

Furthermore, this report will also deal with wider human rights issues to be addressed through the Transitional Justice process currently underway in Sri Lanka.

## **FREEDOM OF RELIGION OR BELIEF**

### **SRI LANKA CONSTITUTIONAL & LEGAL FRAMEWORK**

1. Article 9 of the Sri Lankan Constitution accords Buddhism “the foremost place” and makes it “the duty of State to protect and foster the Buddha Sasana, while assuring to all religions the rights granted by Articles 10 and 14(1)(e)”, granting Buddhism which is the majority religion special protected status and State patronage.
2. Article 10 guarantees “every person is entitled to the freedom of thought, conscience and religion, including the freedom to have or to adopt a religion or belief of his choice.” Article 14(1)(e) guarantees that, “Every citizen is entitled to the freedom, either by himself or in association with others, and either in public or in private, to manifest his religion or belief in worship, observance, practice or teaching”.
3. Article 12 of the Constitution guarantees equality before the law and stipulates that no citizen shall be discriminated against on the grounds of race, religion, language, cast, sex, political opinion, place of birth or any one of such grounds.

---

<sup>5</sup> United Nations, General Assembly, *Report of the Working Group on the Universal Periodic Review, Sri Lanka*, A/HRC/22/16, (18 December 2012), available from [http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/AHRC2216\\_English.PDF](http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/AHRC2216_English.PDF)

<sup>6</sup> Recommendation 128.28

<sup>7</sup> Circular 2008 issued by the Ministry of Religious Affairs and Moral Upliftment, which calls for the registration of new constructions of religious worship places.

4. Article 3 of the ICCPR Act No. 56 of 2007 states that “no person shall propagate war or advocate national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.”
5. Article 27 of the Directive Principles of State Policy and Fundamental Duties for the Sri Lankan Constitution places a burden upon the State to ensure the full realization of the fundamental rights of all persons.

## **INTERNATIONAL HUMAN RIGHTS OBLIGATIONS**

6. Sri Lanka recognizes the Universal Declaration of Human Rights (UDHR) and is a party to the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Elimination of Racial Discrimination (CERD), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), International Convention for the Protection of All Persons from Enforced Disappearances (CED), and the Convention on the Rights of the Child (CRC) and its two first optional protocols.

## **VIOLATIONS OF THE FREEDOM OF RELIGION AND BELIEF**

### **a. Denial of Recognition and issues related to Registration (based on the 2008 Circular):**

7. While the majority of the population is Buddhist (ethnic Sinhalese); Hindus (Tamil) comprise approximately 14%, Muslims 8%, Roman Catholics 7% and Protestant Christians 1% of the population.<sup>8</sup>
8. The Christian communities comprise of three main bodies: the Roman Catholic Church, the National Christian Council (NCC) and the National Christian Evangelical Alliance of Sri Lanka (NCEASL). The Catholic Church and the more traditional protestant Christian denominations represented by the NCC are ‘recognized’ by the government (in practice) as ‘legitimate’ Christian churches. Christian denominations, which are outside these two groups, are not accorded recognition.<sup>9</sup> Thus, member churches of the NCEASL - established in 1952 and representing the country's evangelical protestant community - including churches incorporated as legal bodies by

---

<sup>8</sup> *Department of Census and Statistics-Sri Lanka. (2017). Statistics.gov.lk. Retrieved 23 March 2017, from <http://www.statistics.gov.lk>*

<sup>9</sup> For instance, the Director of the Department of Christian Religious Affairs issued a letter on 13th February 2016 to 11 members of the NCEASL, requesting information on their branch churches and the status of their registration with the government: The Society of the Apostolic Church of Sri Lanka, New Living Flame Church, Calvary Church, New Life Church, The Sanctuary Fellowship, Believer’s Church, Gospel Grace Church, Back to the Bible, The Christian Centre, Healthcare Christian Fellowship of Lanka, and the Colombo Theological Seminary.

acts of parliament, are not accorded State recognition. This includes two of the largest Christian denominations in Sri Lanka.<sup>10</sup>

9. This withholding of ‘recognition’ by the State deprives thousands of Christian citizens of their fundamental rights, including the freedom of thought, conscience and religion. It has created a situation where the State confers legitimacy and recognition on some while denying the rights of others, based on arbitrary and discriminatory grounds.
10. Sri Lankan law does not require the registration of places of worship or religious bodies with the State. Some religious groups voluntarily sought incorporation by an Act of Parliament, solely for the purpose of attaining legal personae in order to hold property, engage in banking transactions etc. however; the door to this option was closed, subsequent to 3 determinations of the Supreme Court,<sup>11</sup> including the matter of the ‘Sisters of the Holy Cross of the Third Order of St. Francis in Menzingen’ where the Supreme Court denied the right of incorporation of a Catholic order on the reasoning that “the propagation and spreading on Christianity...would not be permissible as it would impair the very existence of Buddhism ...<sup>12</sup>”
11. In September 2008, the Ministry of Religious Affairs and Moral Upliftment<sup>13</sup> issued a circular requesting all future construction of any place of worship as subject to prior permission of the Ministry. The Ministry instructed Provincial Councils and Divisional Secretariats (local government bodies) to comply with this requirement and seek prior approval from the Ministry before approving applications for construction of places of worship.
12. The procedure prescribed by this Circular itself is inconsistent with principles of equality, non-discrimination and justice in that it exempts “traditional religions” from submitting documentary evidence required by the Ministry to prove their bona-fide<sup>14</sup> but fails to specify what “traditional religions” are. Ministry and local government officials make decisions to grant or deny permission based on their own understanding or biases.<sup>15</sup>
13. Evangelical Christian churches, prayer meetings, and religious worship activities are regularly denied permission to function, by the misapplication of this Circular which claims they are not recognized or accepted by the Ministry. As such, evangelical Christians face routine infringements of their right to religious freedom as enshrined in the Constitution of Sri Lanka.

---

<sup>10</sup> The Salvation Army, Christian Reformed Church

<sup>11</sup> Supreme Court Determination 2/2001; Supreme Court Special Determination 2/2003; Supreme Court Special Determination 19/2003

<sup>12</sup> Supreme Court Special Determination 19/2003

<sup>13</sup> Also designated as the Ministry of Buddha Sasana and Religious Affairs

<sup>14</sup> Application form for new construction of a place of worship, page 2.

<sup>15</sup> See comment §33, Report of the Special Rapporteur on freedom of religion or belief, Heiner Bielefeldt presented to the Human Rights Council 19<sup>th</sup> Session, 22<sup>nd</sup> December 2011.

14. The requirement for the Ministry's approval of proposed construction, in fact, has become a vehicle by which 'legitimacy' is bestowed on religious institutions by the State.
15. Voiding the purview of the Ministry of Buddha Sasana and Religious Affairs to oversee the affairs of other religious bodies, in 2015, the government appointed separate ministries as representative bodies and overseers of the four major religious groups in the Sri Lanka.
16. Moreover, since this Circular has no founding in parliamentary legislature, it has no legal validity. However, local government authorities and law enforcement officials continue to utilise the 2008 Circular to curtail the rights of religious minorities and subject them to harassment.<sup>16</sup>
17. Evangelical Christian churches are facing increasing pressure and harassment by local government bodies to stop worship activities or close down if they are not 'recognized' or 'registered' with the government. While this Circular only calls for new constructions and does not have retrospective effect, it is misapplied and used by government officials to close down existing churches. Since 2015, 49 Protestant Christian churches have either closed down or have been instructed to close down by government authorities.<sup>17</sup>
18. The GoSL committed to promote interreligious dialogue as a tool to foster tolerance and peaceful coexistence as per a recommendation<sup>18</sup> presented during Sri Lanka's previous UPR cycle. This recommendation is yet to be fully implemented, since the Evangelical Christian community is never consulted or invited to partake in interreligious forums organized by the government.<sup>19</sup>
19. These violations and the Ministry's instructions are clearly discriminatory against some religious minorities, particularly Evangelical Christians.

#### **b. Weak law enforcement responses to FoRB violations**

20. Law enforcement officials are often reluctant to take effective action against persons who infringe on the liberties of minority religious groups, as a result of undue influence and pressure exerted by local Buddhist monks, government officials and politicians. Protestant Evangelical Christians have also been victims of false allegations and police

---

<sup>16</sup> On 7<sup>th</sup> December 2016, a pastor of the Assemblies of God Church in Medirigiriya was questioned by the local Divisional Secretary (DS) regarding his worship activities and the construction of his home; which she held was, in fact, a place of worship and not his residence. The DS then instructed the National Water Supply and Drainage Board and the Ceylon Electricity Board to deny the pastor his water and electricity supplies.

<sup>17</sup> NCEASL Incident Reports 2015 & 2016. Accessible via: <https://slchurchattacks.crowdmap.com>

<sup>18</sup> Recommendation 127.57

<sup>19</sup> Evangelical Christian groups were not invited to attend an interreligious meeting convened by President Sirisena on 6 December 2016. However, representatives of the Bodu Bala Sena attended this meeting.

officers have been known to compel Protestant Evangelical Christian pastors to discontinue religious worship activities.

21. As at February 2017, no one has been prosecuted in relation to the attacks instigated by the extremist group BBS on the Muslim community in Aluthgama in June 2014. This attack killed four and injured 80.<sup>20</sup>
22. A pastor whose place of worship suffered a mob attack in 2012 filed 3 cases regarding the incident: two in the Walasmulla Magistrate's Court<sup>21</sup>, implicating some members of the mob; and the other in the Supreme Court<sup>22</sup> citing police inaction during the event. Both these cases filed in 2013 are yet to reach a just conclusion, with the victim having received no relief. Moreover, the State Counsel assigned to the cases at the Walasmulla Magistrate's Court (a representative of the Attorney General's Department, is willfully mishandling the proceedings of the case. This matter was referred to the Attorney General himself in a letter dated 10th December 2016 for which no action has yet been taken.
23. On the 29<sup>th</sup> of February 2016, a pastor was informed of an ongoing case at the Wennappuwa Magistrate's Court against his worship activities. This case was filed by local law enforcement officials who failed to follow criminal law and penal code procedure and send notice to the pastor of the case filed against him. The police obtained an interim order in this instance against the pastor's religious worship activities.
24. Based on recent trends it appears that the Supreme Court tends to use a procedural approach when determining outcomes that protect minority religious rights. This approach fails to substantively contribute to the expansion of jurisprudence on the State's role to protect, promote and fulfil an individual's right to the freedom of religion.<sup>23</sup>

### **C. Broader FORB issues faced by religious minorities**

25. Circular 2008, discrimination and bias by the local government officials and ministries supported by government bodies which violate fundamental human rights<sup>24</sup> of a particular community further encourages subversive acts of violence by mobs and strengthens the hand of ultra nationalist Sinhala Buddhist elements. The Christian and

---

<sup>20</sup> United Nations, General Assembly, *Comprehensive report of the Office of the United Nations High Commissioner for Human Rights on Sri Lanka*, A/HRC/30/61 (28 September 2015), available from [http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session30/Documents/A\\_HRC\\_30\\_61\\_ENG.doc](http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session30/Documents/A_HRC_30_61_ENG.doc)

<sup>21</sup> Case numbers: 29372 and 29373.

<sup>22</sup> SCFR 19/2013.

<sup>23</sup> Esufally, S. (2017). *Judicial Responses to Religious Freedom: A Case Analysis* (p. 18). NCEASL.

<sup>24</sup> Fundamental Rights which are declared by the Constitution shall be respected, secured and advanced by all the organs of the government and shall not be abridged, restricted or denied except to the manner and extent provided for within the Constitution - Article 4 (d) of the Constitution of Sri Lanka.

Muslim communities have been victims of organized violent attacks at the hands of such elements.

26. Hindu places of worship have been subject to destruction, robbery, and vandalism and in some cases, have been known to be replaced by Buddhist shrines. This is regarded by many (especially those in the North and East) in the post-war context as symbolic of Sinhala-Buddhist power projection, and has a significant ability to play into ethnic insecurities.<sup>25</sup>
27. Since 2012 faith based human rights groups have documented over 450<sup>26</sup> acts of violence against Christians including physical assault, arson, demolition and desecration of churches, intimidation and displacement from homes. The majority of attacks go unpunished and the victims have no recourse to compensation.
28. Moreover, since 2012, Buddhist nationalists have become increasingly active in their dissemination of anti-Muslim propaganda through a range of public platforms, including social media.<sup>27</sup> Sporadic acts of violence and discrimination targeting Islamic places of worship have been recorded from 2009 onwards by various sources, the most notable being the 2012 attack on the Masjidul Kairiya mosque in Dambulla by a large mob who claimed it had been illegally constructed on sacred Buddhist land. Following the violence, the then Prime Minister and Minister of Religious Affairs D.M. Jayarathne ordered the 50-year-old mosque to be relocated. However, the worst incidents of violence targeting the Muslim community in recent years were the mob attack on the Masjid Deenul Islam mosque in Grandpass in 2013 and rioting centered around Aluthgama in 2014 – widely attributed to BBS instigation, through inflammatory anti-Muslim rhetoric uttered at a public rally just before violence erupted. The Aluthgama riots left four dead, many injured and displaced, and resulted in significant property damage.
29. January 2016 saw the upsurge of a new Sinhala nationalist movement entitled *Sinha Le*. The ideology of the movement and its calls to establish a Sinhala-Buddhist State translated into acts of hate speech and aggression targeting minorities and particularly Muslim communities. There has also been a sudden proliferation of ‘Sinha Le’ bumper stickers, including on police patrol vehicles and graffiti in Colombo and other areas. The movement, which has attracted a large following on social media, has specifically targeted the Muslim community.
30. Children belonging to the Evangelical Christian minority experience difficulty and discrimination when applying to State schools, in direct contravention of the provisions

---

<sup>25</sup> Centre for Policy Alternatives,. (2013). *Attacks on Places of Religious Worship in Post-war Sri Lanka*. Retrieved from <http://sangam.org/wp-content/uploads/2013/03/Attacks-on-Religious-Places-CPA-March-2013.pdf>

<sup>26</sup> NCEASL Incident Reports 2012-Present

<sup>27</sup> Centre for Policy Alternatives,. (2014). *Liking violence: A study of hate speech on Facebook in Sri Lanka*. Retrieved from <http://www.cpalanka.org/wp-content/uploads/2014/09/Hate-Speech-Final.pdf>



of the Constitution<sup>28</sup>. Furthermore, a Circular for Grade 1 School Admission 23/2013 section 3.2 explicitly states that all schools which were taken over by the government under Assisted Schools and Training Schools (Special Provisions) no. 05/1960 and Assisted Schools and Training Schools (Supplementary Provisions) no. 08/1961 should maintain the same proportion of children belonging to different religions when taken over by the State. If the number of applications received is less/no applications received than the number of vacancies set apart for that category, the balance vacancies shall be proportionately divided among other religions. This specification is, however, not adhered to.

31. Restriction of legitimate, non-religious activities by Christian citizens, violates their fundamental rights to equal treatment such as the right to burial of the dead<sup>29</sup> but also other rights such as the right to engage in a lawful occupation or enterprise.<sup>30</sup>

## **RECOMMENDATIONS TO THE GOVERNMENT OF SRI LANKA**

32. **The government should ensure that all government officials including members of law enforcement bodies respect principles of religious freedom and do not discriminate on the grounds of religion or belief<sup>31</sup>, and that they are provided with training on human rights including religious freedom standards.**
33. **The government should not discriminate against certain religious minorities and impede their legitimate exercise of religious freedom by not according them equal recognition as other religious groups and should ensure that all citizens,**

---

<sup>28</sup>Article 12 of the Constitution of the Democratic Socialist Republic of Sri Lanka: “All persons are equal before the law and are entitled to equal protection of the law.”

<sup>29</sup> In January 2016, an Officer-in Charge of the local police station in Serukele (Puttalam District), coerced a pastor into signing a letter stating that no Christians would be buried in the local public cemetery. In March 2016, a pastor in Mandur, Batticaloa was obstructed by a mob of around 300 villagers, including a Hindu priest, from performing the burial rites of a deceased Christian according to the Christian tradition. The police from whom the pastor had sought assistance, concurred with the villagers and declared that only Hindu burial rites could be performed at that particular public cemetery.

<sup>30</sup> The Baby Bright Montessori, the construction of a new building for the Baby Bright Montessori in Bulathkohupitiya was referred by the local authority to obtain permission from the Ministry of Religious Affairs. The applicant replied that the Montessori in question is a reputed pre-school which has been functioning in the region for several years and sought clarification as to why the construction of an educational institution requires prior permission from the Ministry of Religious Affairs. On 25<sup>th</sup> May 2010, the chairman of the *Pradeshiya Sabha* requested the applicant to forward a duly completed application as per the 2008 Circular to the Ministry of Religious Affairs. The Ministry in return has written to the *Pradeshiya Sabha* that there are complaints that this building is being used for religious services and to inquire into it. However, this allegation is unfounded, as the building was not yet constructed. The blatant misapplication of the Circular and harassment in this instance is due to the fact that the Montessori in question is being run by the wife of a Christian clergyman who pastors a church in the same region. The matter remains unresolved. The Local government officials up to date have refused to give permission for the construction of this new building.

<sup>31</sup> “States should instruct members of law enforcement and other State agencies that religious activities of non-registered religious or belief communities are not illegal, as the statute of freedom of religion or belief prevails over any acts of state registration” Recommendation §73 \*c), by the former Special Rapporteur on freedom of religion or belief, Heiner Bielefeldt presented to the Human Rights Council 19<sup>th</sup> Session, 22<sup>nd</sup> December 2011.

**irrespective of their religious affiliation are afforded equal treatment under the law and by the State.**

- 34. The Ministry of *Buddhasasana* and Religious Affairs should withdraw the Circular issued in September 2008 pertaining to the construction of places of worship.**
- 35. The government should urgently implement an effective mechanism along the lines of an inter-religious body, which is inclusive of and adequately represented by all religious groups to deal with any issues of religious tensions.<sup>32</sup>**
- 36. The government should take steps to improve and promote religious freedom literacy, to combat the various misconceptions and misperception regarding the specific content of this right, and to address issues of chronic intolerance and violent extremism.**

#### **WIDER HUMAN RIGHTS ISSUES: SRI LANKA'S TRANSITIONAL JUSTICE PROCESS AND ITS MECHANISMS**

37. While there have been some steps taken by the government towards implementing transitional justice mechanisms the progress has been slow. Moreover, the unwillingness on the part of the government to address issues of justice and impunity continues to highlight the need - as pointed out by the High Commissioner for Human Rights -<sup>33</sup> for international participation in any proposed judicial mechanism, including a special counsel, foreign judges, and defence lawyers, and authorized prosecutors and investigators.
38. The co-sponsored resolution of the UNHRC mandates the establishment of four mechanisms designed to address and provide redress for mass human rights violations that occurred in Sri Lanka's past; before, during and after the armed conflict<sup>34</sup>. These instruments are namely an Office on Missing Persons, and Office of Reparation, a Commission for Truth, Reconciliation and the Guarantee of Non-Recurrence, and a special judicial mechanism.
39. The Government has created several ad hoc bodies, including the Secretariat for Coordinating Reconciliation Mechanisms (SCRM),<sup>35</sup> and the Office for National Unity and Reconciliation,<sup>36</sup> and several technical working groups tasked with drafting blueprints for the accountability and reconciliation mechanisms to be established. These bodies, however, are yet to present a sufficiently convincing or comprehensive

---

<sup>32</sup> Also see Recommendation by Special Rapporteur on freedom of religion or belief, Asma Jahangir (E/CN.4/2006/5/Add.3, §128)

<sup>33</sup> 34<sup>th</sup> session of the Human Rights Council

<sup>34</sup> Promoting reconciliation, accountability and human rights in Sri Lanka, A/HRC/RES/30/1, 14 October 2015

<sup>35</sup> See: [www.scrm.gov.lk](http://www.scrm.gov.lk).

<sup>36</sup> See: [www.onur.gov.lk](http://www.onur.gov.lk).

transitional justice strategy to overcome the legacy of mistrust and skepticism left by a number of inconclusive ad hoc commissions and procedures.

40. Legislation to establish the Office on Missing Persons was passed on 23<sup>rd</sup> August 2016, even before the conclusion of a series of public consultations on the proposed mechanisms. While this piece of legislature was seemingly expedited through parliament, the Office is yet to be established. The other mechanisms, as sequenced by the Secretary General of the SCRMM at an open dialogue with civil society, are yet to be considered.
41. 65,000 persons are still reported to be missing after Sri Lanka's legacy of civil war and insurrections. While the GoSL has taken seemingly positive measures last year to establish an office with investigative powers to inquire after these disappearances (the OMP), the government approved a final amendment to the OMP Act in February of this year, to restrict the Office of its power to enter into agreements in order to achieve its mandate.<sup>37</sup>
42. Tamils suspected of links with the LTTE continue to be detained under the Prevention of Terrorism Act (PTA), which the government of Sri Lanka pledged to repeal in 2015 and replace with a legislature that complied with international standards. The PTA extends administrative detention and shifts the burden of proof on to detainees who allege ill treatment and torture. The government's commitment to repeal the PTA has not been implemented to date. In fact, a draft policy and legal framework for replacement legislation presented to Cabinet in October 2016, retained many of the provisions of the PTA and constituted the use of vague language.

## **RECOMMENDATIONS TO THE GOVERNMENT OF SRI LANKA**

43. **The government should ensure that law enforcement bodies follow due process as prescribed by existing laws when conducting investigations, apprehending and detaining suspects.**
44. **The government should set up a timeline, detailing its plans for the implementation of the proposed mechanisms in line with UNHRC Resolution 30/1 and its commitments in Resolution 34/1.**
45. **The government should follow through on its commitments to implement its proposed mechanisms in full, including the setting up of a Truth and Reconciliation Commission and a functional Office on Missing Persons.**
46. **The government should take steps to ensure the representation of members from victim communities in the Office of Missing Persons.**

---

<sup>37</sup> *ibid*

47. **The government should immediately repeal the Prevention of Terrorism Act and replace it with legislation that is in conformity with international human rights law.**
48. **The State should ensure that each and every existing and new complaint made about a missing person is properly registered and investigated by the police, and immediately adopt a comprehensive policy to search for all of those who disappeared.<sup>38</sup>**

---

<sup>38</sup> As per recommendations made by the Report of the Working Group on Enforced or Involuntary Disappearances on its mission to Sri Lanka; A/HRC/33/51/Add.2, 8 July 2016, pg 18 & 19:  
<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/146/63/PDF/G1614663.pdf?OpenElement>