

EUROPEAN CENTER FOR CONSTITUTIONAL AND HUMAN RIGHTS



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EUROPEAN CENTER FOR
CONSTITUTIONAL AND
HUMAN RIGHTS e.V.

—
ZOSSENER STR. 55-58
AUFGANG D
10961 BERLIN, GERMANY

—
PHONE +49.(030).40 04 85 90
FAX +49.(030).40 04 85 92
MAIL INFO@ECCHR.EU
WEB WWW.ECCHR.EU

Oral Statement to the Subcommittee on Human Rights

Brussels, 28 November 2012

„Exchange of views on the Universal Periodic Review of Sri Lanka“

In association with the Delegation for relations with the countries of South Asia

**Madam Chairperson,
Distinguished members of the Subcommittee,
Ladies and Gentlemen,**

First of all I want to thank you for the opportunity to address the Subcommittee.

My name is Anna von Gall and I am coordinating the work on gender and human rights at the Berlin based European Center for Constitutional and Human Rights. ECCHR engages in innovative strategic litigation, using inter alia European law to enforce human rights and to hold state and non-state actors accountable for egregious abuses. The gender and human rights program at ECCHR looks for ways to pursue gender-specific legal action in order to dismantle fixed gender stereotypes and the discrimination they facilitate.

I. ECCHR's work on Sri Lanka

In June 2010 ECCHR published a report on accountability for war crimes in Sri Lanka, documenting war crimes incl. sexual violence of the last phase of the conflict. It has further written dossiers on different high- ranking suspects of the Sri Lanka Armed Forces, promoted to the diplomatic service,

and interventions at German, Swiss and British ministries of foreign affairs. These interventions led to the withdrawal of two high-ranking singhalese major generals from Europe. ECCHR continues in strategic litigation to bring perpetrators from the Sri Lankan military and government to justice for war crimes committed in the conflict.

In January 2011 ECCHR submitted a report during the 48th Session of the CEDAW Committee on women and conflict in Sri Lanka. ECCHR has remained consistently informed about the ongoing gender-based violence in the Northeast of the country and develops, together with local groups and activists, further ways of holding perpetrators accountable and preventing grave violations of women's human rights. For the second cycle of Universal Periodic Review (UPR) on Sri Lanka to be reviewed in November 2012 ECCHR prepared a submission to the UN High Commissioner for Human Rights and kindly asked the OHCHR to consider the submission within the stakeholder summary and to reiterate its condemnation of grave violation of grave women's human rights, particularly in the North and the East of Sri Lanka. Since the end of the civil war in Sri Lanka in mid-May 2009, there has been an increased military presence in northern and eastern parts of the country. The number of assaults on women and girls in these regions has simultaneously risen with and is attributable to the increased number of military and police members.

In its complaint, ECCHR pointed out the extent to which gender-based violence and ongoing impunity are closely linked to the anti-terrorism law called the Prevention of Terrorism Act (PTA). This law from the 1970s, modified in 2011, makes it easier for police and military members to carry out body inspections and 'searches' without having to justify doing so. These searches are often carried out alongside sexual harassment and violence that is specifically of a sexual nature.

The northern and eastern regions of the country are swamped with checkpoints and military stations. Women generally have to pass by these points alone and therefore run the risk of exposing themselves to harassment, threats and assault by the military. Furthermore, the military are increasingly taking over police duties, meaning that women and girls would have to address complaints directly to the perpetrators. As a result, women and girls avoid speaking out due to fear of stigmatization, threats and possible further attacks. Prosecution therefore fails to take place.

According to the United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW Convention), it is internationally recognized that violence on the grounds of gender is a form of discrimination. Sri Lanka ratified this agreement and is thus currently disregarding the obligation it undertook to fight any forms of discrimination and to ensure the effective prosecution of perpetrators of gender-based violence. It is therefore required to repeal all laws that may lead to direct or indirect forms of discrimination.

ECCHR requested the United Nations to remind Sri Lanka of its obligations under international law with regard to gender-specific violence against women and girls in ‘investigations’ by Sri Lankan state employees, and to encourage Sri Lanka to reconcile the Prevention of Terrorism Act (PTA) with the CEDAW Convention.

II. 2nd Cycle of the Universal Periodic Review November 2012

On November 1st Sri Lanka presented its statement to the UPR Working Group. In its statement the Government of Sri Lanka addressed several issues which had been raised in our submission, including the high militarization and the situation of the women in the North and the East of Sri Lanka. We welcome Sri Lanka’s written undertaking to prevent gender-based violence and to combat impunity as well as the establishment of a special Women’s Protection Unit and Women’s Centers in the IDP camps.¹

However Sri Lanka still fails to strengthen its approach for a broad and joined-up response to the impact of the conflict on women.

Firstly, the Government of Sri Lanka ignores its obligation to report on the gender-based violence which takes and took place in the context of the past conflict and in detention centers, to take adequate and effective measures to protect their civilians, and to investigate and prosecute gender-based crimes. Sri Lanka not only subsequently failed to analyze the numbers of reported sexual offences in the North (perpetrators, monitoring system) which it presented to the Working Group on the Universal Periodic Review, but also failed to address the issue of cases of sexual violence which went unreported due to the safety and stigmatization fears of the victims.

Secondly, the Government of Sri Lanka did not provide any explanations as to why any correlation between military presence and sexual violence is unfounded.²

Thirdly, the Government of Sri Lanka refutes that there is any intrusive military presence impacting on civilian life and points out the facilitation of livelihood assistance by the Army.³ The militarization of civil administration is at its highest ever level and all NGO’s are required to register with the Ministry of Defense. However the offered livelihood assistance lacks gender-specific opportunities and mechanisms to empower women and girls affected by the conflict. Female ex-combatants continue to face harassment by the military and the Criminal Investigation Division and are still required to report to the local military/police station once a month.

¹ Human Rights Council, Draft report of the Working Group on the Universal Periodic Review – Sri Lanka, November 2012, A/HRC/WG.6/14/L.14, para. 17.

² Human Rights Council, Draft report of the Working Group on the Universal Periodic Review – Sri Lanka, November 2012, A/HRC/WG.6/14/L.14, para. 17.

³ Ibid, para. 16.

And fourthly, although the Government of Sri Lanka reiterates that it has responded to the concluding observations of the CEDAW⁴ it still failed to implement them. In particular, the CEDAW Committee urged Sri Lanka to “promptly investigate, prosecute and punish all acts of violence including sexual violence” which have arisen during the last stages of the conflict and in the post conflict phase.⁵ It reminded Sri Lanka of its obligations to respect, to protect, and to fulfill women’s human rights. This has been reiterated by the Committee against Torture.⁶ Although some women gave testimonies to the LLRC, there is still no effective mechanism for guaranteeing the women’s full access to justice.

With great concern we noticed that recommendations made specifically by Canada, Denmark, Australia and USA did not enjoy the support of Sri Lanka. Neither the recommendation to remove oversights of humanitarian and NGO activities from the purview of Ministry of Defence to a civilian body and to reduce the instructiveness of military presence on civilian life in the North (Canada)⁷, nor the recommendation to reduce and to take action to eliminate all cases of abuses by police and security forces (Australia)⁸, nor the recommendations to end impunity for human and international crimes (USA/Sweden)⁹ and to conduct impartial investigations and prosecutions against members of the security forces, regardless of rank, implicated in violations of human rights and international humanitarian law, including sexual violence (Denmark)¹⁰. Last but not last it did not accept any recommendations made in regard of the Prevention Terrorism Act.

III. European Parliament

In summary, the Government of Sri Lanka ignores the link between militarization, anti-terrorism legislation and gender-based violation and does not fulfill its obligation to prevent from and to investigate in military-related gender-based violence. As the UN Special Rapporteur of Violence against Women¹¹ already mentioned here at the Subcommittee in October, significant obstacles to investigating and prosecuting conflict-related killings of women have been identified.

⁴ Ibid, para. 17.

⁵ CEDAW Committee., CEDAW/C/LKA/CO/7, para. 41.

⁶ CAT Committee, CAT/C/LKA/CO/3-4, para. 22.

⁷ Human Rights Council, Draft report of the Working Group on the Universal Periodic Review – Sri Lanka, November 2012, A/HRC/WG.6/14/L.14, para. 129.46.

⁸ Human Rights Council, Draft report of the Working Group on the Universal Periodic Review – Sri Lanka, November 2012, A/HRC/WG.6/14/L.14, para. 129.66.

⁹ Ibid, para. 129.76, 129.77.

¹⁰ Ibid, para. 129.86.

¹¹ Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo, Annual Report 23 May 2012, A/HRC/20/16, Recommendations, para. 111: „International humanitarian law proscribes gender-based violence and extrajudicial executions of women during armed conflict. It also forbids attacks on their personal dignity, in particular humiliating and degrading treatment. Significant obstacles to investigating and prosecuting killings of women have been identified. These include the failure of police intervention, a lack of implementation of security measures for women, repeated attacks on law-enforcement officials and women’s rights advocates, and inaccessible detention locations in areas under the control of insurgents and other illegally armed groups. Institutional

Referring to the Security Council Resolutions 1325, 1820, 1888 and 1890 and the recent 1960 the EU has an obligation to respect and implement various international agreements on protection from (sexual) violence during armed conflicts, and its foreign policy must be consistent with these international obligations. The EU Guidelines violence on against women and girls and combating all forms of discrimination against them, and the EC-UN Partnership on Gender Equality for Development and Peace list several operational objectives and approaches as to how to gender-mainstream its external relation and how to implement these UN Resolutions.

Therefore we call on the Subcommittee to reaffirm Sri Lanka's obligation to report on the gender-based violence, which takes and took place in conflict-affected areas and detention centers, to take adequate and effective measures to protect their civilians, and to investigate and prosecute gender-based crimes.

Thank you for your attention.

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weakness results in impunity in cases of gender-related killings of women, as a lack of respect for the rule of law, corruption and poor administration of justice are the norm.“