



Submission No 7

**Inquiry into Australia's Human Rights Dialogues with China
and Vietnam**

Name: Director

Organisation: Australian Tamil Congress

Australian Tamil Congress

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2nd August 2011

Committee Secretary
Joint Standing Committee on Foreign Affairs, Defence and Trade
Department of House of Representatives
PO Box 6021
Parliament House
CANBERRA ACT 2600.

Dear Secretary

[REDACTED] welcomes the Minister for Foreign Affairs, The Hon. Kevin Rudd's, inquiry into and report on *Australia's Human Rights Dialogues with China and Vietnam* .

In this context we wish to bring the recent screening of "Sri Lanka's killing fields" in ABC 4 Corner Program on 4 July 2011. While watching the program the Foreign Minister sent on twitter ""UN Human Rights Council can't simply push this to one side. Action needed. K Rudd". Subsequently, our Foreign Minister Kevin Rudd said "I believe their deliberation on it was inadequate and I would call upon - as does the Australian Government through its mission in Geneva - the Human Rights Council to revisit this matter and to examine once again whether their original findings can any longer be regarded as well founded," he added "Australia believes fundamentally in human rights, international human rights law." "No-one watching this program could emerge from that undisturbed and we don't either."

We wish this Joint Committee to consider the latest Channel 4 news release - <http://www.channel4.com/news/sri-lanka-war-crimes-soldiers-ordered-to-finish-the-job> which further strengthen to look at possible actions against **war crimes and crimes against humanity in Sri Lanka and for a need for Australia's Human Rights dialogue with Sri Lanka, like that of China and Vietnam**. We present our case as below for the Committee consideration:

SRI LANKA – NEED FOR HUMAN RIGHT DIALOUGE

Sri Lanka with many years of economic mismanagement, armed conflicts, natural disasters and human rights violations, is indisputably one of the world's most controversial countries in the eyes of the international community. We believe that the time has come for Australia to examine carefully whether as a member of the international community as well that of Commonwealth, its own strategy of "soft approach" has in fact promoted greater openness and democratic/human rights development in Sri Lanka whereas Australia's traditional friends such as USA, UK and EU have gradually escalated and hardened their attitude towards Sri Lanka as a repeat offender.

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The Government of Sri Lanka (GoSL) continues to maintain an adversarial approach to International Community's request to examine the issue of accountability with regards to any alleged violations of international human rights and humanitarian law during the final stages of the conflict with LTTE in 2009 based on UN Panel of Experts Report released in April 2011. Further reports by following International Non-Governmental Organisations, among others are without exception and unequivocally critical of human rights issues in Sri Lanka:

Amnesty International: Sri Lanka - Amnesty International Report 2010

<http://www.amnesty.org/en/region/sri-lanka/report-2010>

International Crisis Group: Reconciliation in Sri Lanka: Harder than Ever

<http://www.crisisgroup.org/en/regions/asia/south-asia/sri-lanka/209-reconciliation-in-sri-lanka-harder-than-ever.aspx>

The Elders: The Elders call on Sri Lankan government to protect rights of civilians displaced by conflict

<http://www.theelders.org/media/mediareleases/elders-call-sri-lankan-government-protect-rights-civilians-displaced-conflict-do>

Sri Lanka Campaign for Peace and Justice: The Breakdown of the Rule of Law in Sri Lanka: An Overview

<http://www.scribd.com/doc/39143344/The-Breakdown-of-the-Rule-of-Law-in-Sri-Lanka-an-Overview>

The on-going HR issues in Sri Lanka are reported by **Sri Lanka Guardian** in March 2011 under the caption **Guardian Human Rights situation in Sri Lanka** is given below:

1. Lack Institutional Mechanisms for Human Rights Protection

No Minister for Human Rights was appointed to the Cabinet of Ministers following the Parliamentary elections of April 2010.

Failure of the Parliamentary Committee process mandated with the nomination of members to the Human Rights Commission undermined the capacity of that institution to act independently and to intervene on behalf of victims of human rights abuse. The downgrading of the Sri Lankan Human Rights Council by the International Coordinating Committee on National Human Rights Institutions (ICC-NHRIs) in March 2007 remains in place. There have been recent reports in the media about new appointments to the Commission by the government, but opposition parties have as yet failed to respond. The five persons nominated by the government are not known for their knowledge or expertise in human rights.

In the absence of a Ministry or equivalent mechanism on human rights, the Attorney General's Department undertook the creation of a National Human Rights Action Plan (NHRAP). Although selected civil society actors were invited to be a part of the process in the initial stages, most of



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them withdrew after finding that the final draft document did not contain any of their contributions.

Emergency Regulations and the Prevention of Terrorism Act (PTA)

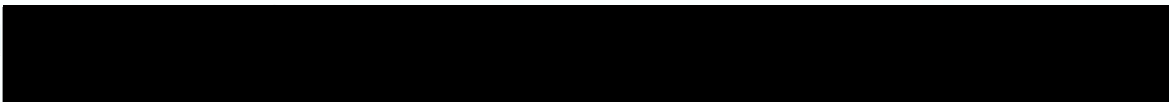
The Emergency Regulations and the Prevention of Terrorism Act remain in force and even in late 2010. There were used to arrest and detain those suspected of having links with the LTTE as well as those belonging to the opposition parties and generally propagating views critical of the government. In addition, these laws are used to harass and intimidate persons on the basis that they and their actions constitute a threat to national security. The PTA legitimizes detention in unauthorized locations, and is also used to acquire property of persons linked to the LTTE; in January 2010, Gazettes were issued regarding forfeiture of property in the Colombo suburbs of Pamankada and Pita Kotte.

Media Freedom and Freedom of Expression

There continues to be a severe crackdown on the publication and dissemination of dissenting views, which is both systematic and deliberate, targeting a broad range of groups and individuals as well as encompassing a various forms of dissent. Members of the government have been very frank in expressing their views as to the suppression of dissent. On 30 May 2010, for example, the Media Minister went on record in the Irida Lankadeepa, a Sinhala newspaper, saying that he doesn't want exiled journalists to return as they are anti-Sri Lankan. This hostile environment has led to over thirty journalists and media personnel leaving the country since 2009. Among the recent cases of victimization of media persons are:

* on 31 January 2011, the offices of Lanka E-News, a news website critical of the government were set on fire and completely destroyed

Media persons working in the North and East have also been subject to attack and intimidation, including for exposing corrupt practices within the government structures. For example, the office of the Eastern Province Tamil newspaper 'Vaara Ureikkal' was attacked in September 2010 and its editor attacked in February 2011; in January 2011, a journalist working in the Amparai District was assaulted while on his way to report on the distribution of aid to flood victims when he refused demands by a local politician for favorable coverage; in December



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2010, a journalist of the Thinakaran newspaper in Batticaloa was assaulted; in July 2010, a journalist and human rights defender in Mannar, was attacked.

Tamil newspapers in the Northern Province have complained of threats and intimidation against their journalists and staff.

, has publicly warned the editor of Yarl Thinakural a Jaffna-based Tamil newspaper and its administrative manager for having published front page news about an attack on an election meeting

In the immediate aftermath of the January 2010 Presidential Election, several state media workers who campaigned against the misuse of state media resources, were assaulted, threatened, and had their services terminated or were interdicted. One person was forced to flee overseas, but even after he left, his family was subjected to intimidation.

In July 2009, the government officially reactivated the Press Council Act of 1973, which includes powers to fine and/or impose punitive measures including lengthy prison terms, proscribed the publishing of articles that discussed internal communications of the government and cabinet decisions, military matters affecting national security, and details of economic policy that could lead to artificial shortages or speculative price increases.

Freedom of Association and Restrictions on NGOs

In June 2010, the NGO Secretariat along with other key state institutions such as the Attorney General's Department, were brought under the Ministry of Defense (MoD). All NGOs are required to register under the Secretariat and thereby subject themselves to monitoring by the MoD.

There is an active campaign in the state and private media against NGO workers and civil society activists who are continually blamed for bringing the country to disrepute and for acting in an anti-national manner. This was particularly so with reference to individuals and groups linked to the campaign against the extension of the GSP+ tax privileges by the EU and those seen to be involved with the campaign for bringing the government and the LTTE to account for alleged 'war crimes'. The Secretary to the Ministry of Defense, the President's brother, is among those public figures who have openly threatened human rights defenders and journalists.

Access to the North remains restricted for foreign nationals, even for those engaged in humanitarian work. Many international NGOs face problems with procuring visas and work permits for expatriate staff. For example, in 2010,

and senior staff members

had their visa extensions refused and were ordered to leave Sri Lanka at short notice.



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Human rights defenders in the North and East have been subject to intimidation arrest and detention for their work, including monitoring human rights violations and carrying out training in human rights. In December 2010, a human rights defender in the North, who has been helping to organize families of disappeared people received threatening calls, was subjected to surveillance and questioning by intelligence agents. Another defender in the North documenting human rights violations also received threatening phone calls and was questioned at the airport. In the East, a human rights defender was threatened and was compelled to leave the country in 2010, while in February 2011, a priest from Batticaloa, well known for his work on child rights was arrested along with five of his staff. Also in the East, women human rights defenders who had attended a training were questioned by police officers.

On 3 October 2010, the Divayina, a Sinhala daily newspaper, disclosed details of a training on UN Human Rights Complaints Mechanism and Special Procedures conducted for 13 defenders from Mannar and Vavuniya. The article identified the Law and Society Trust, Colombo as having collaborated with the Non Violent Peace Force (NPSL) in the training, and accused NPSL of engaging in anti-government activities and of prompting local human rights defenders in the North to report on human rights violations to the UN. On 22 October 2010, the English sister paper Sunday Island online carried a follow up article stating that the military intelligence were investigating 13 human rights defenders who were accused of submitting false complaints regarding human rights violations against Tamil civilians in the North to the UN. On 2 January 2011, the Sunday Divayina carried a further article in which it disclosed the names of the human rights defenders. Again, on 15 January 2011, the Dinamina (a State controlled Sinhala daily newspaper) accused NPSL of engaging in secret anti-government activities and also disclosed information regarding the relocation of the NPSL office in Colombo. The Sunday Divaina carried a further article attacking NPSL on 23 January 2011.

On 10 December 2010, the Vice Chancellor of the University of Colombo reportedly refused permission for a well known Sri Lankan human rights defender to speak at an event to be held on the campus of Colombo University and co-hosted by the Law Faculty's Centre for the Study of Human Rights Centre and the UN's Human Rights office in Colombo.

Local mobilizations against government policies and practices have also come under intimidation. Fisheries Union leaders who protested against the proposal to establish a landing zone for 'sea planes' in the Negombo lagoon were arrested and charged with conspiring against the government while a farmer's summit organized by an opposition party was also obstructed. Several protests by the Inter University Student's Federation (IUSF) have been crushed by state forces and student representatives have been attacked or detained. Campaigners fighting

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against forced evictions in the Colombo district have been threatened and repeatedly harassed by pro-government thugs. In December 2010, two human rights defenders who worked to promote citizen's action and participation against government policies were threatened and forced to leave the country. In May 2010, displaced persons who were protesting during a visit by two government Ministers about the takeover of their land by the Navy were detained and threatened. Later in 2010, a religious leader who supported efforts by a community organization to organize a peaceful protest regarding water facilities was threatened by the military.

Lessons Learned and Reconciliation Commission (LLRC)

The LLRC was established in response to a worldwide call for an independent investigation into allegations of war crimes committed by both the LTTE and the government during the last stages of the military conflict in April/May 2009. The mandate of the LLRC however focused largely on the Ceasefire Agreement and its collapse, and did not address the issue of reconciliation in a forceful manner.

Although the LLRC hearings held in the North and East provided a rare opportunity for civilians to voice their grievances and report violations, in the absence of a Witness Protection Act or any mechanism to protect those who came forward to give testimony, they also provided the context for threats and intimidation of witnesses and intimidation of human rights defenders observing proceedings. A woman who gave testimony about her husband's disappearance after he surrendered to the Army, had the military visiting her residence and also received threatening phone calls. In Jaffna, there were reports of a systematic campaign to discourage residents from appearing before the LLRC. Human rights defenders who attended some hearings were photographed, questioned and warned not to share information with foreign media. In Mannar, a soldier had made witnesses nervous by taking photographs. In addition, access of the foreign media to hearings of the LLRC in the Vanni was restricted, and the lack of infrastructure and systems created problems for the large numbers who came to give testimony in the North and the East. Weaknesses in translation have led to Tamil speakers to point out that key ideas put forward by witnesses have been omitted.

An interim report of the LLRC was released in September 2010; this does not appear on the LLRC's own website, but according a "leaked" version, the recommendations are constructive and draw on some long standing civil society demands. While there have been some steps taken to implement some of the recommendations, such as a Task Force set up to inquire into detainees, this is not a transparent process nor is there any monitoring mechanism built into the system.

The Situation in the North

Former military officers belonging to the majority Sinhala community are Governors in both the North and East. This means that the highest Provincial offices continue to operate from a



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military perspective. NGOs and community leaders have, for example, received instructions that no events or functions should be organized without the presence of the military and of government politicians.

Travel restrictions to the North restrict information about abuses being shared, at both national and international levels, and deny war-affected people opportunities to get assistance from donors and well-wishers. One reporter who managed to go to Vanni reported that she was told by Ministry of Defense that “clearance is required in order to prevent journalists from reporting bad things on what is happening in Jaffna and Vanni”.

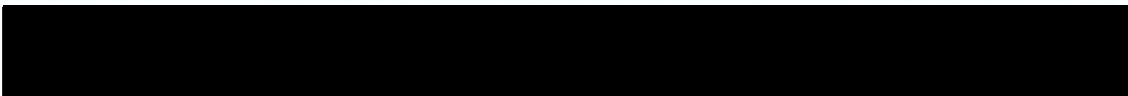
There has been recent concern about the law and order situation in Jaffna following a number of killings, extortions and acts of intimidation reported from different parts of the peninsula in December 2010 and January 2011. Around 40 incidents of killings, disappearances, rape and threats and intimidations have been reported. On 26 December 2010, a Tamil Deputy Director of Education in Jaffna was shot dead, after he had opposed the singing of the National Anthem of Sri Lanka in the majority language of Sinhalese. On 31 December 2010, an activist who had campaigned against environmental damage due to sand excavation in Jaffna was shot dead.

Those who had been detained by the government and subsequently released continue to face persecution, in way of threats and intimidations. Women in newly returned villages are extremely vulnerable to sexual exploitation and abuse. Many of these abuses go unreported due to lack of confidence in existing protection mechanisms, lack of victim and witness protection, and fear of reprisals. There is evidence of the involvement of the military in some incidents while the complicity of the military is also evident in other incidents given the large presence of military in the North. Only in one case of rape in Viswamadu has there been arrest and detention of members of the armed forces implicated in the incident. The establishment of checkpoints and registration of civilians by the military and police in a manner that is not done in other areas of the country has also raised fears of continued militarization of the North.

On the humanitarian side, some internally displaced persons are still unable to go back to their own villages due to military occupation of their lands, such as in Mullikulam in Mannar district and some areas in Jaffna. Most of those who have returned have inadequate housing, livelihood, food, healthcare and education facilities.

Reconciliation and Development

Development in the war affected areas is limited to large scale physical infrastructure projects, such as roads and bridges, but this is not accompanied by any process of consultation with affected communities regarding their futures and with no constructive effort to promote reconciliation and build bridges between the different communities on the island.



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On the contrary, any potential for reconciliation is constantly challenged by the failure of the state and the political leadership of the ruling parties to address the genuine concerns of the affected communities with regard to their security and their future. The refusal to acknowledge the deaths and disappearances of large numbers of Tamil civilians as well as the concerns for the safety of those detained for prolonged periods constitute major obstacles to reconciliation. Among the symbolic denials of the equality of Tamils in Sri Lanka have been the attempts to stop them singing the national anthem in Tamil. The destruction of monuments to Tamil militants, the obstruction of commemorative events to remember those Tamils who died during the conflict is coupled with the building of monuments for war 'victories', building of Buddha statues and Buddhist monuments in areas which are predominantly occupied by Hindu, Christian and Muslim communities, displaying sign boards in Sinhala only and giving Sinhalese names to roads and places in the north all have the effect of alienating the minorities.

<http://www.srilankaguardian.org/2011/03/human-rights-situation-in-sri-lanka.html>

Australia and other countries have a vital message for Sri Lanka. What will it take to get GoSL to listen and to show respect for minorities and universal human rights? How best Australia can persuade Sri Lanka to follow a path of respecting human rights? The answer, we believe, is to take a broad approach through the similar dialogue mechanism that it adopts with China, Vietnam and others.

At the same time Australia must set clear demands, we must also make it clear that developments in Sri Lanka have direct impact on Australia and its boarder security. GoSL's move in the right direction will be met in a constructive way by the international community. The Sri Lankan authorities are at a crossroads. If Sri Lanka chooses to be a true democracy in which all citizens are equal and the state respects human rights and international law, then the international community in turn will strengthen its political and economic cooperation with the country. This is what Australia wants to happen. We must therefore consider whether our current gentle persuasion approach is having the desired effect and whether it is fostering the desired change in the light of recent revelations of extensive abuses since 2009.

