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Movement for Plantation Peoples' Land Rights (MPPLR)

Universal Periodic Review of Sri Lanka – 2022

Human Rights Situation of Malaiyaha Tamil Community in Sri Lanka

Joint Submission by Movement for Plantation Peoples' Land Rights (MPPLR)

Movement for Plantation Peoples' Land Rights is a network advocating for the rights of Malaiyaha Tamils, consisting of plantation people in the Central, Uva, Sabaragamuwa, Southern and Western provinces, civil society organizations, academics, Trade Unions, and other concerned people. MPPLR is primarily engaged in research, training, and policy advocacy to ensure land rights of Malaiyaha Tamil community, for a dignified life and equal status with other communities in the country.

together with

1. All Ceylon United Employee Foundation (ACUEF)
2. Centre for Social Concern (CSC)
3. Communist Worker's Union
4. Elbert Welfare Foundation
5. HARTS Organization
6. Hill Country Mass Movement for Social Justice
7. Leo Marga Asharam (LMA)
8. LIDS Social Development Centre
9. Midland Peoples' Forum
10. Movement for Protection of Loolekandura
11. Monaragala Peoples' Development Foundation (MPDF)
12. Navayugam Social Development Foundation (NSDF)
13. Organization for Sustainable Community Development (OSCOD)
14. Peoples' Movement for Social Justice
15. Social Cooperation Movement (SCM)
16. Social Institute for Development of Plantation Sector (SIDPS)
17. Theshiya Kalay Ilakiya Peravayie
18. United Plantation Workers Union (UPWU)
19. Upcountry Civil Society Collective (UCSC)

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Submission

Movement for Plantation Peoples' Land Rights (MPPLR)

This submission is an outcome of consolidated views represented by civil society organisations in Sri Lanka, including Trade Unions and other activists who have long experiences in creating awareness of human rights for the '*Malaiyaha Thamizh*' community, in five provinces of Sri Lanka. The focal point of the discussions was the Movement for Plantation Peoples' Land Rights (MPPLR).

Note: The '*Malaiyaha Thamizh*' community is also identified as 'Malaiyaha Tamils', 'Hill country Tamils', 'Indian Tamils', 'plantation community' in Sri Lanka.

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Introduction

The Indian Tamil plantation community was brought to Sri Lanka by the British during the colonial period to work in the tea plantations in the hill country. The community's history is full of discrimination and oppression through two centuries to date. The descendants of these communities were deprived of their citizenship in 1948 when Sri Lanka gained independence. Although the Hill Country Tamil community had their citizenship restored as a result of extensive political negotiations and law reform between the 1960s and early 2000sⁱ, these communities have been exploited for labour and continue to suffer from structural discrimination. To date, they remain one of the most economically, socially, and politically marginalized communities in the country.

The most recent all-island census of the population enumerates this group in 14 of the island's 25 districts: Nuwara Eliya, Badulla, Ratnapura, Kandy, Kegalle, Kalutara, Matara, Matale, Galle, Monaragala, Colombo, Kurunegala, Puttalam and Gampaha (in decreasing order).ⁱⁱ As per the last census, the 2nd and 3rd highest number of households in poverty by district are Badulla (28%) and Nuwara Eliya (23.9%) respectively.ⁱⁱⁱ

The tea sector in Sri Lanka is one of the largest employers with a direct and indirect workforce of over 2.5 million people, which accounts for 10 percent of the total population.^{iv} These workers continue to work in abysmal conditions in the plantations, fighting for a dignified life. The sector is still managed based on the Estate Labour (Indian) Ordinance Act No. 13 of 1889. Laws and regulations related to the plantation sector have not been amended in keeping with the evolving context, and is a contributory factor for the marginalization of the hill country community for centuries.

Malaiyaha Tamils are also isolated from mainstream livelihood programmes and have little or no access to alternative sources for earning extra income. Due to the denial of land and housing rights, they are unable to access government subsidy programmes for cultivation, assistance for small scale cottage industries, self-employment opportunities, loans for housing construction and

more. All these deprivations and violations has lead this community to abject poverty, malnutrition, poor performance in education as well as health and hygiene challenges.

1. **Discriminations in the allocation of resources and access to government services**

1.1 Section 12(2) of chapter III of the 1978 constitution of Sri Lanka states that, “No citizen shall be discriminated against on the grounds of race, religion, language, caste, sex, political opinion, place of birth or any one of such grounds.” Despite this enshrined fundamental right, *Malaiyaha Tamils* have continually been isolated from accessing public services through local government structures. As per government regulations, the Grama Niladhari (GN), Divisional Secretary (DS) and District Secretary are implementing various social development projects such as housing, health, infrastructure for citizens living in their administrative localities. However, none of these development projects reach the plantation community, as they have been denied access from government projects, and the number of residents in the respective localities are over and above the accepted number. For example, an average of 1,750 persons, or 350 families are provided public sector services in one locality. However, more than 4,000 persons or 1,000 families live in one Grama Niladhari Division (GND)^v in the plantation sector. There is a population of 10,150 (2,333 households) and 7,545 (1,805 households) living in the Kirkoswald Grama Niladhari Division (GND) and Ambagamuwa Divisional Secretariat Division (DSD) respectively, in the Nuwara-Eliya District. Therefore, plantation communities find it extremely challenging to access basic government welfare schemes, including Samurdhi allowances.

1.2 Government of Sri Lanka decided to demarcate these large DS divisions and a gazette (No. 2147/28) was issued on 29.10.2019. Accordingly, fully fledged divisional secretariats were established in the South of Sri Lanka. However, the gazetted divisional secretariats are yet to be instituted in the plantation areas, where it is absolutely essential.

1.3 The ‘New Villages Development Authority’ was established on 25th of June 2018 under Parliamentary Act No. 32 of 2018, to implement ‘New village concept’, and ensure inclusion of the plantation community in the designated areas into the social mainstream by socio, economic, cultural and infrastructure development in the plantation region. However, in the absence of political will for the functioning of this important Authority, since its inception, it hasn’t been provided with sufficient budgetary allocations, and thus is

defunct.

Recommendations:

1. Ensure proper devolution of power for local authorities and Provincial Councils through the new constitution of Sri Lanka. Provide constitutional recognition for Malayaha Tamilar community as a separate national ethnic group.
2. As per the gazette notification No. 2147/28, establish fully fledged Divisional Secretariat Divisions in Nuwara Eliya District, to delineate administrative divisions based on the population, and allocate adequate resources to facilitate effective and efficient reach of government services.
3. Ensure appropriate allocation of government welfare schemes to *Malaiyaha Tamils*, including Samurdhi allowances, disaster relief, and other government benefits without any discrimination.
4. Ensure active functioning of the New Villages Development Authority with sufficient resource allocations.
5. Jointly design a national plan of action for the political, economic, social and cultural development of the *Malaiyaha Tamil community*, and ensure its immediate implementation with regular oversight and monitoring.

2. Poverty wages, hazardous and unfair working conditions

2.1 The plantation workers demanded to increase their daily wage from LKR 700 to LKR 1,000 (approximately US\$ 2.8). The demand was put forward in 2016 and was agreed to be implemented only in 2021. However, the estate management imposes various conditions for the payment of this increased wage, and thus it is not paid. As per a recent study by Save the Children, more than half (51.2%) of labourers who were interviewed, work 8 hours or longer per day, and based on the number of days of work, earn less than LKR 10,000.^{vi}

2.2 With the present hyper-inflation condition in the country, workers are struggling to face the increasing cost of living. As a result, many workers have been pushed to scoop up with great difficulty and struggle to meet their daily needs. The poverty rate increased the most in places where it was already high before the pandemic. Across districts, Kandy and Ratnapura - which are plantation areas, had the largest number of pre-pandemic poor - also account for a large share of the new poor.^{vii}

2.3 Plantation management violate labour laws and collective bargaining agreements. The labour department does not actively monitor the proper adherence of laws and regulations.

2.4 Young men and women from plantation areas are forced to migrate to urban areas due to poverty, low wages, lack of employment opportunities, limited access to services and infrastructure. Particularly women and young girls end up as domestic servitude through agents / brokers, undergo arduous work and are vulnerable to harassment and sexual abuse. Young men and boys end up in informal sectors, with low wages, and sans any job security or legal protection.

Recommendations:

6. Revise the daily wage structure of plantation workers according to the increasing cost of living. Provisions of collective bargaining agreements, and existing labour laws should be enforced.
7. Ensure payment of all legally permitted allowances to retired workers without any further delay.
8. Ensure the application of all labour laws and regulations to those employed in informal industries.
9. Guarantee adequate occupational health and safety measures for workers in compliance with national and international labour standards, and sound monitoring by the department of labour.
10. Enact comprehensive legislation covering domestic workers, taking into consideration ILO conventions and international best practices, and the introduction of sound and systematic mechanisms for the full and fair implementation of the law.

3. Harassment of women workers

3.1 Gender-based violence is one of the most tolerated human rights abuses in the world of work. Analysts report that violence and harassment in the Sri Lankan plantation sector are somewhat difficult to understand and the plantation workers, who work in these estates, are subjected to such predicaments because the factories, children's crèches, medical clinic centres, and housing lines are all contained within the working estate areas. Their work environment starts in estate areas, but does not end at the factories.^{viii} Women in tea estates who toil to earn the much needed foreign exchange for the country, have been forced to work continuously under such poor conditions in a

discriminatory environment for many generations. They are insulted with bad language, treated shamefully in public, physically harassed, and treated in a degrading manner overall.

3.2 The International Labour Organization (ILO) Convention No. 190 (C190) relates to the elimination of violence and harassment in the world of work. Sri Lanka has taken steps to recognise and has shown commitment to taking action towards legislating the principles of C190 as law. Former Minister of Labour submitted a Cabinet paper in March 2021, to ratify C190.

Recommendations:

11. Sri Lanka to ratify ILO Convention No. 190, take appropriate steps and enact laws to incorporate it into our legal system, to prevent violence and sexual harassment in workplaces.

4. Denial of land and housing rights

4.1 The lands in which this community has been living for generations are being encroached by several means. Denial of land rights has had severe consequences on the plantation community – impact on livelihoods without any other alternative economic means, difficulties to obtain government services, resettlement assistance for natural disasters, etc.

4.2 The line houses are in appalling conditions - older than 150 years, badly neglected, needs extensive renovations and basic facilities such as proper sanitation. The poor living conditions results in non-infectious and infectious diseases to spread fast.^{ix}

4.3 Various housing initiatives have not been effectively implemented in the plantations, including the projects sponsored by the Indian Government and other aid agencies. The process was slow and moreover, these housing schemes are contradictory to the national housing policy. Only a few had received land ownership documents which are also not legally acceptable.

4.4 The government introduced single housing schemes to the plantation community in 1994. Since then, only 35,000 houses have been constructed to date. The rest of the community still live in line housing and have not received land titles. Diverse demands made to successive governments for land ownership has not been successful.

Recommendations:

12. Provide a minimum of 20 perches of land with clear title deeds, joint ownership or equal entitlements for women and men, for each household to ensure an adequate single house and livelihood development of the plantation community, including non-worker families.
13. Uncultivated and abandoned lands should be distributed among unemployed youths in plantation areas and necessary support should be given to build their agriculture based livelihoods.
14. Equal implementation of the national housing policy in estate areas without any discrimination, and housing programmes with basic amenities that ensures decent, dignified habitats, in compliance with housing standards stipulated by the United Nations.
15. Implement safe drinking water projects in the plantation regions and integrate with national water supply scheme.

5. Food insecurity and livelihood challenges

- 5.1 While there is some progress in the nutrition and food security situation in Sri Lanka, there exist “high levels and disparity of malnutrition and micro-nutrient deficiencies.”^x As per a recent study by the World Food Program (WFP), war-affected districts, estate sector, and some areas in the South East “represent the worst levels of under nutrition.”^{xi} Chronic food insecurity is found amongst poor households in most parts of the plantation sector, which has been exacerbated by the recent pandemic and economic crisis.
- 5.2 The plantation community is solely dependent on the tea industry for their livelihood, and they do not have any other sources of alternative incomes. Limited land availability is a major obstacle for their livelihoods. Thus, there is a huge challenge to fulfill healthy food needs.

Recommendations:

16. The mid-day meal programme in government schools should be extended beyond Grade 5, and nutritional supplements for children should be extended beyond the pre-school age of 5 years, in order to improve nutrition of older children, and as an incentive for the continuation of education.
17. Support the expansion of home gardens within the estates to grow vegetables, fruits, as well as engage in dairy and poultry farming to ensure food sovereignty and increase access to nutritional food.

6. **Structural discrimination leading to limited access to quality health services**

- 6.1 Structural discrimination of *Malaiyaha Tamil* communities by successive governments is evinced through extremely limited health facilities. The sector also reports issues related to malnutrition, infant mortality, low birth weights, maternal health, decreased life expectancy and other health issues. (Please refer annexure 2 - Human Development Indicators) The percentage of underweight children (30%), low weight births (31%) and maternal malnutrition (33%) are high in comparison to urban and rural areas.^{xii}
- 6.2 The health system in some estates continue to function under the estate administration. This structural arrangement deprives the community of fully obtaining quality health services that are generally accessible to other citizens.

Recommendations:

18. Implement an affirmative national programme to constructively address health issues in the plantation sector, including malnutrition, stuntedness, wasted and underweight infants, anemia, low birth weights, maternal health complexities, etc.
19. Take necessary steps to upgrade estate hospitals with sufficient specialties and to bring them under the national health care system.

7. **Challenges in access to quality education**

- 7.1 The children from plantation communities demonstrate a high school dropout rate due to poverty and unsuitable learning environments as families reside in line-houses. A recent Save the Children study indicated that 6.2% of surveyed school age children (6 – 17 years) are not in school.
- 7.2 Schools in plantation areas are continuously faced with issues of recruiting and retaining teachers, particularly for key subjects such as English, science, information technology and mathematics. The COVID-19 pandemic has further aggravated the situation of the plantation children's right and access to education.

Recommendations:

20. Improve access to and quality of education through equitable resource allocations for qualified teachers, classrooms and playgrounds, science laboratories, IT facilities, toilets,

etc.

21. Establish a Hill Country University specially focused on plantation management, historical and cultural studies of Malaiyaha Tamils.

8. **Violation of language rights**

8.1 The failure to recognize and uphold language rights of the Malaiyaha Tamil community has adversely impacted the enjoyment of full and equal citizenship, meaningful reconciliation, national unity, and effective governance.

8.2 Inadequate human resources with required language competencies have led to the poor implementation of the official languages policy in most government institutions in plantation areas, restricting access to quality health, education and other government services.

Recommendations:

22. Full and fair implementation of the official languages policy, including sufficient resource allocations.

9. **Cultural rights**

9.1 The Malaiyaha Tamil community's heritage includes unique cultural practices, descending from South India and transmitted over two centuries. However, state authorities at local and central levels have not provided any support to propagate this cultural heritage, which has been a medium of educating and popularising aspects of the religion and history of the plantation community. The cultural events have not been recognized and therefore not supported by the Ministry of Education nor by the Ministry of Cultural and Religious Affairs. The plantation community lacks the infrastructure and resources to sustain and reproduce these practices for future generations beyond their annual religious or temple festivals (*Tiruvila*).

Recommendations:

23. Ensure allocation of sufficient resources to the Ministry of Education and Cultural Affairs to promote the traditional culture and heritage of Malaiyaha Tamils.
24. Establish a National Cultural Center for Hill Country Tamil Community, to preserve their identity and cultural heritage.

10. **Microfinance debt trap**

10.1 The plethora of economic issues faced by the plantation community including lack of employment opportunities in the estate sector and limited self-employment opportunities has forced them to obtain large amounts of loans from microfinance companies with exorbitant interest rates and unrealistic terms and conditions. Particularly women have ended up in the vicious debt trap and continue to face harsh consequences, entangling them in an eternal debt bondage.

Recommendations:

25. Take constructive measures to release the burden of debt of plantation communities.

11. Reprisals faced by Human Rights Defenders and civil society groups

11.1 In April 2021, Ganeshalingam from Hatton, Central Province, was summoned to the Special Crime Investigation Division (SCID) in Hatton, in relation to his human rights work in the estates. The questioning was based on a complaint made by the estate management, falsely accusing him of mobilizing people against the management. He also received phone calls from intelligence officers during the visit of the UN Special Rapporteur on contemporary forms of slavery in November 2021, due to his support / meetings with the Special Rapporteur. Ganeshalingam continues to get phone calls from intelligence units regarding press statements he makes on land and wage issues in the up-country as well as his whereabouts.

11.2 Freedom of association is a fundamental right enshrined in the constitution. However, entry of trade unions and civil society organizations are restricted by the private companies that administer estates, and thus civil society is unable to function freely. Particularly, mobilization of estate workers, and implementation of projects are challenging in these areas. Civil society activists are under continuous scrutiny by various intelligence authorities.

11.3 The estate elites request permission to possess guns in the name of personal security to threaten workers. They have also requested the presence of the army in estate areas. This creates tension and fear amongst women and men, and further disrupts the civil administration in the plantations.

Recommendations:

26. Guarantee the fundamental right to freedom of association and expression, enshrined in the constitution, and immediately stop unnecessary influence by intelligence and security forces.

ⁱ Hill Country Tamils of Sri Lanka – Towards Meaningful Citizenship, August 2019, https://files.institutesi.org/Hill_Country_Tamils_Of_Sri_Lanka_Report.pdf

ⁱⁱ Census of Population and Housing 2012, Department of Census and Statistics, <http://www.statistics.gov.lk/Population/StaticInformation/CPH2011/Census2012ResultsPopulationHousingBased5Sample>

ⁱⁱⁱ Poverty indicators – 2019 – Department of Census & Statistics; <http://www.statistics.gov.lk/Poverty/StaticInformation/PovertyIndicators-2019>

^{iv} Child Rights Risk Assessment – Tea Industry Supply Chain in Sri Lanka, Save the Children Sri Lanka, 2020, https://srilanka.savethechildren.net/sites/srilanka.savethechildren.net/files/library/Child%20Right%20Risk%20Assessment%20Report%202_3rdProof_0.pdf

^v Grama Niladhari Division (GND) at the village level and Divisional Secretariat Division (DSD) are grassroot level government administrative units in Sri Lanka.

^{vi} Child Rights Risk Assessment – Tea Industry Supply Chain in Sri Lanka, Save the Children Sri Lanka, 2020, https://srilanka.savethechildren.net/sites/srilanka.savethechildren.net/files/library/Child%20Right%20Risk%20Assessment%20Report%202_3rdProof_0.pdf

^{vii} World Bank. 2021. Sri Lanka Development Update 2021 : Economic and Poverty Impact of COVID-19. World Bank, Washington, DC. © World Bank. <https://openknowledge.worldbank.org/handle/10986/35833> License: CC BY 3.0 IGO

^{viii} C190: Convention to eliminate violence and harassment in the workplace – The Sunday Morning, July 10, 2022; <https://www.themorning.lk/c190-convention-to-eliminate-violence-and-harassment-in-the-workplace/>

^{ix} House Ownership for Plantation Workers in Sri Lanka by **Dr. A.S.Chandrabose**, 14 May 2017, <https://dbsjeyaraj.com/dbsj/archives/52998>

^x National Strategic Review of Food Security and Nutrition: Towards Zero Hunger, Feb 2017, World Food Programme, Govt. of Sri Lanka and SAPRI, p. x. Available at https://www.wfp.org/sites/default/files/NSRFSNZH_FINAL.pdf

^{xi} *ibid*

^{xii} Institute of Policy Studies Study, <https://www.ips.lk/wp-content/uploads/2017/02/Can-People-in-SL-Estate-Sector-Break-Away.pdf>