
ADVANCE UNEDITED VERSION

Human Rights Committee

Concluding observations on the fifth periodic report of Sri Lanka

1. The Committee considered the fifth periodic report submitted by Sri Lanka (CCPR/C/LKA5/) at its 3098th and 3099th meetings (CCPR/C/SR3098 and CCPR/C/SR3099), held on 7 and 8 October 2014. At its 3126th meeting (CCPR/C/SR3126), held on 27 October 2014, it adopted the following concluding observations.

A. Introduction

2. The Committee welcomes the submission of the fifth periodic report of Sri Lanka and the information presented therein. It expresses appreciation for the opportunity to renew its constructive dialogue with the State party's delegation on the measures that the State party has taken during the reporting period to implement the provisions of the Covenant. The Committee is grateful to the State party for its written replies (CCPR/LKA/Q/5/Add.1) to the list of issues (CCPR/LKA/Q/5) which were supplemented by the oral responses provided by the delegation and for the supplementary information provided to it in writing.

B. Positive aspects

3. The Committee welcomes the following legislative and institutional steps taken by the State party:

(a) The Corporal Punishment (Repeal) Act No. 23 of 2005 which repeals corporal punishment in prisons;

(b) The amendment of Section 360(C) of the Penal Code in 2006;

(c) The amendments to Act No. 28 of 1996 on the Protection of the Rights of Persons with Disabilities in 2008; and,

(d) Adoption of the National Plan of Action for the Promotion and Protection of Human Rights 2011-2016.

4. The Committee welcomes the ratification of, or accession to, the following international instruments by the State party:

(a) The Convention on the Rights of Persons with Disabilities in 2007; and,

(b) The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography in 2006.

C. Principal matters of concern and recommendations

Constitutional, legal framework and independence of judiciary

5. The Committee is concerned by the 18th Amendment to the Sri Lankan Constitution which, inter alia, discontinues the Constitutional Council and empowers the President to dismiss or appoint members of the judiciary and other independent bodies. Furthermore, it is concerned at the impeachment of the former Chief Justice in January 2013 under circumstances that raised serious doubts about its consistency with basic principles of due process and judicial independence. (arts. 2 and 14)

The State party should:

- (a) Repeal the 18th Amendment to the Constitution;**
- (b) Take legislative and other measures to ensure transparent and impartial processes for appointments to the judiciary and other independent bodies; and,**
- (c) Take concrete measures to ensure the protection of members of its judiciary from improper influences, inducements, pressures, threats or interferences, including those of the executive and/or legislature of the State party.**

In taking the above measures, the State party should take into full account the Committee's general comment No. 32 on Right to Equality before Courts and Tribunals and to Fair Trial (2007), the UN Basic Principles on the Independence of the Judiciary, and the Paris Principles (General Assembly resolution 48/134, Annex).

Views under the Optional Protocol

6. The Committee is concerned at the State party's failure to fulfil its obligations under the Optional Protocol. In particular, it is concerned about a lack of cooperation from the State party on all submissions provided to it under the Optional Protocol procedures in the aftermath of the decision of the Supreme Court in the *Singarasa* case in which the court found that the State party's accession to the Optional Protocol was unconstitutional. (art. 2)

The Committee urges the State party once again to review its position in relation to Views adopted by the Committee under the Optional Protocol to the Covenant and establish appropriate procedures to implement them, in order to comply with article 2, paragraph 3 of the Covenant which guarantees a right to an effective remedy and reparation when there has been a violation of the Covenant.

Non-discrimination

7. The Committee is concerned about discriminatory provisions against women in domestic legislation, including on rights of succession in respect of land permits and grants and the disposal of immovable property. It is also concerned about the low rates of participation by women in political and public life, perpetuated by the persistence of stereotypes regarding the roles, responsibilities and identities of women and men in all spheres of life. (arts. 3, 23 and 26)

The State party should strengthen its efforts to guarantee de jure and de facto equality between men and women. In this respect, the State party should:

- (a) Undertake a comprehensive review of its domestic laws, including those governing rights of succession in respect of land permits and grants, the disposal of**

immovable property, and the lack of a minimum age of marriage under Muslim law, in order to bring them into full conformity with articles 3, 23 and 26 of the Covenant;

(b) Intensify its efforts to increase the participation of women in political and public life, including by considering temporary special measures for women in political structures at local, regional and national levels; and,

(c) Undertake measures to raise awareness on women's rights.

8. While noting the State party's confirmation that article 12 of its Constitution prohibits discrimination on grounds of sexual orientation and gender identity, the Committee remains concerned at the continued applicability of Penal Code sections 365, 365A and 399 to criminalise LGBTI conduct and the widespread discrimination and stigmatisation of persons on the basis of their sexual orientation and gender identity. (arts. 2 and 26)

The State party should amend sections 365, 365A and 399 of its Penal Code to ensure full compliance with articles 2 and 26 of the Covenant. The State party should also consider amending article 12 of its Constitution to explicitly state that sexual orientation and gender identity are prohibited grounds for discrimination. It should also strengthen measures to protect against violations of LGBTI rights and strengthen awareness-raising and training measures on such rights.

Violence against women

9. While welcoming the State party's adoption of the Prevention of Domestic Violence Act, the Committee is concerned about the persistence of socio-cultural values condoning domestic violence resulting in it remaining widespread and subject to impunity. Furthermore, it is concerned about allegations of sexual violence against women in the context of detention, resettlement and other situations which require contact with security forces. (arts. 2, 3, 6 and 7)

The State party should adopt a comprehensive approach to preventing and addressing violence against women in all its forms and manifestations. It should adopt specific legislation that explicitly prohibits domestic violence and marital rape, regardless of judicial acknowledgement of separation. It should also ensure that cases of domestic violence and marital rape as well as allegations of sexual violence by the security forces are thoroughly investigated and that the perpetrators are prosecuted, punished with commensurate sanctions, and the victims adequately compensated. Furthermore, it should provide training for State officials, in particular judges, prosecutors and security forces, in order to ensure that they are able to respond effectively and appropriately to all forms of violence against women.

Abortion and maternal mortality

10. The Committee is concerned at the criminalization of abortion, including in cases of rape or incest, which compels pregnant women to seek clandestine abortion services that put their lives and health at risk. (arts. 3 and 6)

The State party should revise its legislation on abortion by making further exceptions to the ban on abortion, including for therapeutic reasons and cases when the pregnancy is the result of rape or incest. It should ensure that reproductive health services are accessible to all women and girls in every region of the country. It should strengthen education and awareness programmes at the formal level (in schools) and at the informal level (through the media and other means of communication) on the importance of using contraceptives and on sexual and reproductive health rights.

Counter-terrorism

11. The Committee is concerned that notwithstanding the lifting of the emergency regulations, provisions similar to that of the emergency regulations continue to be applied within the framework of the Prevention of Terrorism Act, including restrictions on freedom of expression and association, arbitrary searches and arrests, prolonged detention without charge or trial, and the reversal of the burden of proof when detainees allege that they have made confessions as a result of torture or ill-treatment. (arts. 4, 7, 9, 14, 19 and 22)

The State party should take all measures, including amending its legislation, to ensure that all security measures comply with the provisions of the Covenant and contain clear prohibitions against arbitrary arrest and detention as well as clear safeguards against torture and protections of the rights to freedom of expression and association. Furthermore, it should try those arrested under emergency and/or counter-terrorism laws by independent and regularly constituted courts with adequate safeguards.

Former combatants

12. While noting the measures taken by the State party for the rehabilitation and reintegration of former combatants, the Committee remains concerned at reports of arbitrary surveillance, torture, detention, enforced disappearances and sexual violence against them. (arts. 6, 7, 9, 10 and 17)

The State party should ensure that former combatants are provided with effective protection against human rights violations, including sexual violence, through the effective application of procedural safeguards and prosecution and punishment of perpetrators of such violations. It should also adopt national legislation that clearly and narrowly defines the exceptional conditions under which former combatants could be subject to monitoring and surveillance. Furthermore, it should further strengthen its rehabilitation and reintegration support measures for former combatants, including gender-neutral livelihood programmes within the framework of a government policy that is transparent and non-discriminatory.

Internally displaced persons

13. While noting the measures taken by the State party to address the situation of internally displaced persons, the Committee is concerned that there continues to be a significant number of persons in such situations which is exacerbated by the acquisition of land for military purposes. (arts. 12 and 26)

The State party should further strengthen its measures to address the needs of internally displaced persons, which, in addition to durable housing solutions, should provide support for local integration and sustainable income generating opportunities in situations of resettlement, including for women. It should also ensure voluntary return or resettlement. Furthermore, it should accelerate the return of land currently occupied for military use to their owners/residents.

Right to life

14. The Committee is concerned about reports of the unlawful use of force and violations of the right to life by State agents and/or by paramilitary groups, including extrajudicial killings, deaths in custody, enforced disappearances and disproportionate civilian casualties at the end of the conflict. In this context, it is also concerned at the continued lack of effective investigations and prosecutions of perpetrators of human rights violations, including the 2006 killings related to Muthur and Trincomalee. (art. 6)

The State party should take all measures necessary to vigorously investigate all allegations of unlawful use of force and violations of the right to life promptly,

transparently and impartially, with an intent to bring those responsible to justice by prosecuting and punishing, and provide adequate remedies to victims and their relatives. It should redouble its efforts to implement the recommendations of the Lessons Learned and Reconciliation Commission (LLRC) pertaining to the need to investigate allegations of serious violations of international law through independent investigative mechanisms. In particular, the State party should:

(a) Cooperate with the Office of the High Commissioner for Human Rights in investigating all allegations of serious human rights violations; and,

(b) In the context of the Muthur and Trincomalee cases as well as other similar cases, consider allowing witness testimony by video-link from secure and secret locations in order to facilitate the investigations with due regard to the needs of witness protection.

Enforced disappearances

15. While noting that the State party has established a Presidential Commission to Investigate into Complaints regarding Missing Persons, the Committee is concerned at the limited territorial scope of its mandate and the slow rate at which such cases have been investigated and prosecuted. Furthermore, it is concerned about reports of continued enforced disappearances, including of human rights defenders, journalists, clergymen, aid workers and activists. (arts. 6, 7, 9 and 16)

The State party should:

(a) Expediently investigate, prosecute and punish perpetrators of enforced disappearance, and establish the whereabouts of missing persons, in a transparent and impartial manner; and,

(b) Ensure the rights of families to know the location or status of disappeared persons by ensuring that the Presidential Commission to Investigate into Complaints regarding Missing Persons and other relevant bodies are provided with adequate legal powers as well as human, technical and financial resources to operate in an independent, timely and effective manner that ensures adequate witness protection.

Prohibition of torture and ill-treatment

16. While noting that the State party has stipulated a “zero tolerance” policy on torture, the Committee is concerned about reports of torture and other ill-treatment, including sexual violence, of adults as well as juveniles who are arrested and/or detained. Furthermore, it is concerned about reports that the penalties for acts of torture are not commensurate and are rarely enforced. (arts. 2, 6, 7 and 14)

The State party should:

(a) Ensure the prompt, transparent and impartial investigation of any allegation of torture and other ill-treatment by an independent authority that is not connected to the prosecution of the alleged victim;

(b) Ensure that the burden of proving that a confession was not produced by torture or other ill-treatment rests with the prosecution in proceedings against the alleged victim;

(c) Ensure the enforcement of commensurate penal and administrative sanctions against perpetrators of torture and other ill-treatment;

(d) **Ensure that law enforcement and/or security forces officers are suspended from their normal duties pending any investigation of torture or ill-treatment;**

(e) **Ensure mechanisms and reporting channels for the enforcement of all laws, regulations and directives for preventing torture and other ill-treatment, including the Criminal Procedure Act, Convention against Torture Act, and Presidential Directives on Protecting Fundamental Rights of Persons Arrested and/or Detained; and,**

(f) **Ensure that victims of torture and other forms of ill-treatment are provided with timely, full and effective reparation, including rehabilitation, satisfaction and guarantees of non-repetition.**

Detention

17. The Committee is concerned that a significant number of persons in detention have been subject to prolonged and arbitrary detention without trial. It is also concerned at the lack of effective guarantees, in law and practice, of the rights of detainees to notify their immediate family members about their detention and to have access to legal counsel from the moment of arrest. It is also concerned about reports of keeping detainees in unofficial places of detention. (arts. 9, 10 and 14)

The State party should take measures to ensure that no one is subject to arbitrary arrest or detention and that detained persons enjoy all legal guarantees, in compliance with articles 9 and 14 of the Covenant. It should publish all official places of detention on a regular basis and explicitly forbid and criminalise the use of unofficial places for detention.

18. The Committee is concerned at excessive use of pre-trial detention; overcrowding and poor conditions in prisons, including the lack of segregation of detainees, unsanitary conditions, inadequate provision of basic services and facilities, and the lack of a regular and independent system for monitoring places of detention. (arts. 9 and 10)

The State party should take measures to reduce the length and frequency of pre-trial detention, taking into consideration alternatives to pre-trial detention; to ensure separation of pre-trial detainees from convicted prisoners and juveniles from adults; to reduce overcrowding and improve conditions of detention in line with the Standard Minimum Rules for the Treatment of Prisoners. It should consider the construction of new prison facilities and the application of alternative measures to incarceration. It should establish a system of regular and independent monitoring of places of detention, and also establish a confidential mechanism for receiving and processing complaints lodged by detainees.

Corporal punishment

19. While taking note that violence against children and corporal punishment is legally prohibited in schools and judicial corporal punishment called “whipping” was outlawed in 2005, the Committee notes with concern that corporal punishment traditionally continues to be accepted and practised as a form of discipline by parents and guardians. (arts. 7 and 24)

The State party should take practical steps, including through legislative measures where appropriate, to put an end to corporal punishment in all settings. It should encourage non-violent forms of discipline as alternatives to corporal punishment, and should conduct public information campaigns to raise awareness about its harmful effects.

Trafficking in persons

20. While noting that the State party has established an anti-trafficking task force under its Ministry of Justice, the Committee is nonetheless concerned at the lack of effective measures to protect victims and provide them with effective remedies, including compensation and rehabilitation. It is concerned that there has been low rates of prosecution and insufficient punishment of perpetrators. (art. 8)

The State party should systematically, transparently, impartially and vigorously investigate allegations of trafficking in persons, prosecute and, if convicted, punish those responsible and provide compensation to victims. In doing so, it should take measures to ensure access to reporting mechanisms for victims of trafficking. These mechanisms should ensure victims protection while ensuring they are not punished for activities which result from their situation as victims of trafficking. There should also be a system for documenting such reports in order to use them as a basis for regularly evaluating the impact of all initiatives and measures taken to counter trafficking in persons. Furthermore, the State party should strengthen its support and protection measures for victims and witnesses, including rehabilitation.

Freedom of expression and participation in the political process

21. The Committee is concerned at widespread reports of intimidation and harassment, including physical attacks, death threats, administrative detention and politically motivated charges, against journalists, lawyers, clergymen, NGO workers and human rights defenders, by State officials, including at the charges brought against opposition politicians. It is also concerned about reports of defamation campaigns against human rights defenders and the blocking of websites. Furthermore, it is concerned at the State party's failure to bring perpetrators of reprisals to justice. (arts. 19 and 25)

The State party should refrain from any measures amounting to intimidation or harassment taken against persons exercising the right to freedom of expression, and ensure that any restriction to the right is in compliance with article 19, paragraph 3 of the Covenant. It should vigorously investigate all cases of threats and attacks against journalists, lawyers, clergymen, political activists, NGO workers and human rights defenders, hold the perpetrators accountable, and provide effective remedies to victims. Furthermore, it should ensure that any individual or organization can freely provide information to the Committee and protect them against any reprisals for providing such information.

Freedom of assembly and freedom of association

22. The Committee is concerned at the disproportional and discriminatory restrictions on freedom of peaceful assembly and association against Tamils, particularly in the North of the State party, including restrictions of religious and/or civil ceremonies commemorating the loss of loved ones during the armed conflict. (arts. 2, 21, 22 and 26)

The State party should take measures to ensure the protection of the rights to freedom of peaceful assembly and freedom of association of all individual and groups, including the Tamil minority, in accordance with articles 21 and 22 of the Covenant.

Rights of persons belonging to minorities

23. The Committee is concerned about the restrictions and conditions placed on the enjoyment of cultural, linguistic and religious freedoms of minorities in the State party, such as the Muslim, Tamil and Christian communities, including refusal of school admission on grounds of religion, and harassment against minority religious groups which includes attacks on the places of worship of Hindu, Muslim, Evangelical Christian and Jehovah's Witness communities. (arts. 18, 26 and 27)

The State party should ensure that all members of ethnic, religious and linguistic minorities enjoy effective protection against discrimination and are able to enjoy their own religion, language and culture, and able to participate in public affairs. Furthermore, it should take measures to prevent and stop all attacks against Christian and Muslim minorities, including attacks on their places of worship and businesses. It should promptly and effectively investigate and prosecute all reported incidents of violence against ethnic and religious minorities.

Dissemination and follow-up

24. The State party should widely disseminate the Covenant, the first Optional Protocol to the Covenant, the text of its fifth periodic report, the written replies to the list of issues drawn up by the Committee and the present concluding observations among the judicial, legislative and administrative authorities, civil society and non-governmental organizations operating in the country, as well as the general public. The report and the concluding observations should be translated into all official languages of the State party.

25. In accordance with rule 71, paragraph 5, of the Committee's rules of procedure, the State party should provide, within one year, relevant information on its implementation of the Committee's recommendations made in paragraphs 5, 14, 15 and 21 above.

26. The Committee requests the State party to provide in its next periodic report, due for submission on 31 October 2017, specific, up-to-date information on the implementation of all its recommendations and on the Covenant as a whole. The Committee also requests the State party, when preparing its next periodic report, to broadly consult civil society and non-governmental organizations operating in the country.
