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Committee on the Elimination of Discrimination against Women

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Item 4 of the provisional agenda

Consideration of reports submitted by States parties under article 18 of the Convention on the Elimination of All Forms of Discrimination against Women

List of issues in relation to the eighth periodic report of Sri Lanka

Legal status of the Convention

1. The State party report asserts “there is adequate provision within the existing legal regime of Sri Lanka to accord statutory recognition to the right to equality and to recognize thereby the right of women not be discriminated on the grounds of gender” (State party report¹, para. 12). Please demonstrate to the Committee how the enforceability of all provisions of the Convention is ensured in the State party’s domestic legal order. Please give specific examples where the rights of the Convention have been invoked before national tribunals or courts and where reference to these rights has been made in the jurisprudence, including the frequency with which this has been done.

Prohibition of discrimination against women

2. According to the State party, Article 12(a) of the Constitution of Sri Lanka clearly prohibits any discrimination on the ground of sex, and is thereby in line with the principle of equality and the prohibition of discrimination as articulated in the Convention (para. 13). Please provide the Committee with examples of how the Constitutional provision has been invoked to ensure the protection of women from both direct and indirect discrimination, including multiple forms of discrimination and from discriminatory acts committed by public authorities, the judiciary, organizations, enterprises and private individuals. Please further explain the measures taken by the State to prevent, investigate and punish any violations of the Convention by both public and private actors.

Discriminatory laws

3. Please detail the actions taken in light of the State party’s declaration made during its Universal Periodic Review in 2012-2013, “[w]ith regard to recommendations 128.16 (‘Fully incorporate the Convention on the Elimination of Discrimination against Women

¹ Unless otherwise indicated, paragraph numbers refer to the eighth periodic report of the State party.
Note: The present document is being circulated in English, French and Spanish only.

into its domestic system') and 128.28 ('Enact urgent legislative amendments to the Penal Code to ensure that the rights of women from all religious and ethnic communities are safeguarded'), that a review of legislation with a view to ensuring conformity with CEDAW is envisaged under the NHRAP [National Plan of Action for the Promotion and Protection of Human Rights 2011-2016]" (A/HRC/22/16/Add.1, paras. 2- 3).

4. The State party report informs that discriminatory laws have been amended and cites, as examples, the Citizenship Law and the Criminal Procedure Code (para. 19). In accordance with the State party's obligations under articles 1 and 2 of the Convention and in line with Sustainable Development Goal 5, target 5.1 to end all forms of discrimination against all women and girls everywhere, please provide: (a) additional details on all discriminatory laws that have been amended; (b) information on the efforts of the State party to support customary law reform through sensitization of and dialogue with religious groups and community members, civil society organizations, including women's non-governmental organizations (CEDAW/C/LKA/CO/7, para. 17(c)); and, (c) an update on the review process of the Bill to amend the Land Development Ordinance to recognize equal rights to succession to land (para. 21) and the expected timeline for its adoption into law (CEDAW/C/LKA/CO/7, para. 17(b)).

5. Please provide the Committee with a description of the mechanisms in place to ensure women are enabled in practice to participate, fully and equally, in the law reform process as reported in paragraph 22 of the State party's report (CEDAW/C/LKA/CO/7, para. 17(d)). Please further inform the Committee on the efficiency of these mechanisms by demonstrating the number of women who have participated in the law reform process and the manner in which they have contributed to the new constitutional reform process, as well as the impact of their contributions. Please additionally provide the Committee with information on how the State party is enhancing the awareness and knowledge of women in general about their rights under the Convention and relevant national legislation, including through the provisions of legal aid to raise challenges to customs, laws and practices, where alleged to violate the Convention, and the outcomes of any such challenges.

Impact of conflict on women

6. According to information before the Committee, Tamil women in the Northern and Eastern parts of the country, female headed households, single women, internally displaced women, war widows and former female combatants continue to suffer discrimination, sexual and gender-based violence, harassment and abuse, from within their own community and from the authorities, including at the hands of the military. In light of the foregoing, please provide an update on the undertakings made by the State party in its letter to the Committee, dated 16 October 2015: (a) to ensure that "action will be taken to: issue instructions clearly to all branches of the security forces that torture, rape, sexual and gender-based violence and other human rights violations are prohibited and those responsible will be investigated and punished" (pp. 4), in line with the recommendations of the High Commissioner for Human Rights (A/HRC/30/61, para. 91(2)(f)); and, (b) to prioritize making special arrangements for Women Headed Households, acknowledged by the State party as a vulnerable social group (pp. 5).

7. The report sets out the number of cases of sexual offences reported during and after the conflict period in the Northern Province (para. 108). Please provide details on: (a) the number of investigations, prosecutions, and punishment ordered, for acts of sexual and gender-based violence against women during this period, throughout the country; (b) the number of accusations involving private actors, the armed forces, the Police and militant groups; and, (c) the number of victims comprising female headed households, single women, internally displaced women, war widows and former female combatants. Please further inform the Committee on the steps taken by the State party to ensure the application of gender-sensitive procedural safeguards to avoid re-victimization and to encourage

reporting of cases of discrimination and gender-based violence against women, ensuring the prosecution and punishment of perpetrators of such violations.

8. The Committee is further informed that the majority of widows, female-headed households, women IDPs and returnees face impoverishment and barriers to enjoying their economic and social rights. Please provide information on comprehensive strategies to combat poverty and prejudicial stereotypes of this group, as well as to provide these women with durable housing solutions, the return of their land, and access to basic services such as water and sanitation, health facilities, schooling and transportation (CEDAW/C/LKA/CO/7, para. 41(d)).

9. Please provide information on the implementation of UN/SC Res. 1325/2000 and subsequent resolutions and on whether: (a) the Disarmament, Demobilization and Reintegration processes have been redesigned to take into account the complex roles women played during the war; (b) the Government's process of rehabilitation has been redesigned in consultation with female ex-combatants as well as with community and women's participation; (c) there is female representation in the Presidential Task Force for Resettlement; and, (d) steps have been taken to build trust with the Tamil community to ensure that women, including female ex-combatants, do not fear being arrested. Please provide information on whether the State party intends to develop a National Action Plan on Women, Peace and Security.

National machinery for the advancement of women

10. Please provide the Committee with an update on the status of the Bill to establish the National Commission on Women (para. 23) and its expected timeline for adoption into law, the status accorded to the Commission, and the allocation of adequate resources for its work (CEDAW/C/LKA/CO/7, para. 19). Please provide the Committee with an update of measures and actions taken to establish the independence of the National Commission of Women and to implement the State party's voluntary pledge, made during its Universal Periodic Review, to appoint a gender focal point to each line Ministry of Government (A/HRC/22/16/Add.1, para. 4.12) and clarify the role of these focal points in implementing strategies on the advancement of women.

Temporary Special Measures

11. According to the State party, "no temporary measures have been introduced since the approach has been to integrate necessary interventions into the national policy which is an evolving process" (para. 24). In accordance with the objectives of the Committee's previous recommendation (CEDAW/C/LKA/CO/7, para. 21), please demonstrate whether the State party has undertaken any studies to determine areas in which women are underrepresented or disadvantaged. Please convey how the outcomes of any such studies have resulted in the increased allocation of resources to programs designed to accelerate the achievement of substantive equality between women and men in the specific sectors showing such underrepresentation or disadvantage. Please further inform the Committee of the impact this action has had.

Stereotypes and harmful practices

12. In light of the recently articulated concerns of the Human Rights Committee (CCPR/C/LKA/CO/5 (Nov 2014) paras. 7, 9) regarding: (a) "the persistence of sociocultural values that condone domestic violence, resulting in such gender-based violence remaining widespread and subject to impunity"; and, (b) "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", as well as those previously noted by the CEDAW Committee (CEDAW/C/LKA/CO/7, para. 22), please provide information on indicators and research

used to assess that “gender role stereotyping continues to decline and is not a serious concern or a subject which is widely discussed in Sri Lanka” (para. 25) in view of prevailing evidence of the stereotypical attitude recognizing only men as head of households.

Gender-based violence against women

13. Please provide the Committee with the details of the Action Plan to combat gender-based violence against women, as referred to by the Special Rapporteur on torture and other cruel, inhuman and degrading treatment or punishment in his Preliminary observations and recommendations made on his recent visit to Sri Lanka (29 April to 7 May 2016). Please clarify whether it provides a comprehensive approach to prevent and address gender-based violence against women in all its forms and manifestations and the projected timeline for the attainment of its objectives. Please further provide specific examples of the educational and awareness-raising programmes conducted by the State party (paras. 28, 29, 37) to sensitize the population on the criminal nature of all forms of gender-based violence against women, including domestic violence and provide their numerical and geographical reach (CEDAW/C/LKA/CO/7, para. 25(b)).

14. Please provide the Committee with an update on the status of the review of the Assistance to and Protection of Victims of Crime and Witnesses Act No. 04 of 2015, as referred to in the letter from State party to the Committee dated 16 October 2015, and as recommended by the United Nations High Commissioner for Human Rights (A/HRC/30/61, para. 91(3)(k)). Please further provide the Committee with data, disaggregated by geographical region, on the number of women and girls who have availed themselves of the support services referred to in paragraphs 30 to 33 and 38 to 39 of the State party’s report. Please further provide the Committee with an update on the State party’s plans to establish more shelters in the Northern and Eastern regions of the country (para. 38) (CEDAW/C/LKA/CO/7, para. 25(f)).

15. According to the State party, “the act of sexual intercourse without the consent of the wife is by itself not a crime under existing law” (para. 35). Please inform the Committee on whether the State party intends to reverse this position such that the act of sexual intercourse without the consent of the wife is criminalized, regardless of the degree of violence it entails, in line with its obligations under article 5 of the Convention and in line with General Recommendation No. 19 (1992) on Violence against women. Please further clarify whether judicial acknowledgement of separation is still required for prosecution of marital rape under the Penal Code, and if so, the progress made on eliminating this requirement in line with the Committee’s previous recommendation (CEDAW/C/LKA/CO/7, para. 25(d)).

16. Please clarify the statement that, “the provisions of the Penal Code (sections 365 and 365A) which criminalize sexual activity between two consenting adults of the same sex does not detract from the Constitutional guarantee under Article 12 of the Constitution on protection from discrimination on the grounds of sexual orientation or sexual identity.” Please detail the measures in place to guarantee the protection of LBT women who are subject to gender-based violence against women and intersecting forms of discrimination on the basis of their sexual orientation and gender identity (CEDAW/C/LKA/CO/7, para. 25(g)).

Trafficking and exploitation of prostitution

17. The Committee welcomes the establishment of a shelter for female victims of trafficking (paras. 44, 53). Please provide further examples of how the State party is ensuring the protection and recovery of female victims of trafficking, and the number of victims who have benefited from the services provided ((CEDAW/C/LKA/CO/7, para. 27(b)). The State party reports (para. 59) that police continue to arrest women in

prostitution under section 7 of the Vagrants Ordinance, No. 4 of 1841, counter to the previous recommendation of the Committee (CEDAW/C/LKA/CO/7, para. 29). Please provide the Committee with information on the measures taken by the State party to cease this impugned practice.

Participation in public and political life and in decision-making

18. Please provide the Committee with an update on the implementation of the commitment made by the State party, during its Universal Periodic Review, to take “[f]urther measures to encourage increased participation of women in representative bodies [...] in line with MDG 3 and relevant national policies” (A/HRC/22/16/Add.1, para. 2.19). In this regard, please describe whether the measures taken by the State Party include: (a) the enactment of legislation to abolish indirect discrimination in public and political life, including by providing incentives to parties to achieve greater gender balance in their own leadership positions, as well as penalties to render political parties accountable; (b) the establishment of numerical goals, benchmarks, timetables, and quotas for nomination, selection, and promotion, across all political and public life sectors; (c) the protection of women against reprisals when women exercise their political rights; (d) support given to the equal sharing of family responsibilities by adopting measures to enhance the work/life balance for both women and men in the public sector; and, (e) the existence of a mechanism to monitor the effectiveness of the measures taken and to report on progress and failures.

Employment

19. Please indicate whether the National Human Resources and Employment Policy for Sri Lanka, 2012, (para. 159) uses temporary special measures to dismantle the concentration of women in low-skilled and low-paid jobs and has reduced the high unemployment rate of women (CEDAW/C/LKA/CO/7, para. 35(a)). Please further inform the Committee about whether a Plan of Action has been elaborated for the protection of women working in the informal sector including women’s access to social security and other benefits, including paid maternity leave, pension and unemployment insurance and the specific categorization of Female Headed Household for welfare programs and whether the State party envisages ratifying the ILO Domestic Workers Convention, 2011 (No. 189) (CEDAW/C/LKA/CO/7, para. 35(b)). Please provide the Committee with the scope of application of the policies and code of conduct and guidelines developed by the State party on the prevention of and response to sexual harassment in the workplace (para. 78). Please provide details on how a complaint may be initiated, the resolution process, gravity of punishments for perpetrators, and compensation of victims (CEDAW/C/LKA/CO/7, para. 35(c)).

Health

20. Please indicate whether the Family Health Programme and services (paras. 84 and 168), including reproductive health education, are accessible to all women, including to internally displaced women, women in less-developed and conflict-affected areas of the State party, and to adolescents without any requirement of consent from an adult (CEDAW/C/LKA/CO/7, paras. 37(a), (c)). Please provide the Committee with an update on the status of the “draft Bill recommending the liberalization of the current strict approach [towards abortion] contained in the Penal Code” (para. 85) and indicate whether it: (a) includes as exceptions to the ban on abortion, termination of pregnancy for therapeutic reasons and cases where the pregnancy is the result of rape or incest; (b) removes the punitive provisions imposed on women who undergo abortion; and (c) guarantees women seeking the termination of their pregnancy will be provided with access to quality services, including the management of complications arising from unsafe abortions, as previously recommended by the Committee (CEDAW/C/LKA/CO/7, para. 37(d)).

Rural women

21. Please demonstrate how a gender perspective has been included in the National Development Agenda providing targeted support for rural women in sectors such as health, education, employment, economic development and participation in decision-making (CEDAW/C/LKA/CO/7, para. 39(a)). Recalling the State party's obligations under the Convention and its commitment to achieve target 5.1 of the Sustainable Development Goal 5, please further provide the Committee with an update on the status of the proposed amendment to the Land Development Ordinance (paras. 94-95) and confirm whether these proposed amendments ensure that joint or co-ownership be granted to both spouses when the State allocates land to married couples (CEDAW/C/LKA/CO/7, para. 39 (d)-(e)). Please further clarify whether the main rural development programmes: Divi Neguma, Gama Neguma, and Maga Neguma (para. 89), fulfil the Committee's recommendation to develop policies and programmes, including income-generation schemes, to improve the situation of women heads of households and older women (CEDAW/C/LKA/CO/7, para. 39 (c)).

Migrant women

22. Concerning the Memoranda of Understanding entered into with several countries to protect migrant workers (para. 122), please provide details on the nature of the protections provided to women migrant workers, the mechanisms in place to guarantee these protections, and assistance given to migrant women seeking redress for exploitation, gender-based violence and abuse perpetrated by their employers (CEDAW/C/LKA/CO/7, para. 43). In view of eliminating discriminatory measures directed at women only, please provide an update on the timeline for adoption into law of the draft Employment Migration Authority Act, which provides, in article 74, a gender-neutral requirement for Sri Lankans migrating for work to inform the Divisional Secretary about any child under 6 years that they will be leaving behind in Sri Lanka, and to register a guardian for such a child. (A/HRC/29/36/Add.1, para. 67). Please further provide the Committee with any action taken by the State party to withdraw the Ministry of Foreign Employment Promotion and Welfare circular issued in January 2014, as recommended by the Special Rapporteur on the human rights of migrants (A/HRC/29/36/Add.1, para 75 (3.A.cc)), to respect women's freedom of movement.

Equality in marriage and family relations

23. The State party asserts that "there is adequate provision within the existing legal regime of Sri Lanka to accord statutory recognition to the right to equality and to recognize thereby the right of women not be discriminated on the grounds of gender" (para. 12). In light of this statement, and recalling the State party's obligations under the Convention and its commitment to achieve target 5.1 of the Sustainable Development Goal 5, please demonstrate to the Committee how these provisions are applied to ensure that women do not suffer adverse consequences from the application of: (a) the Muslim Personal Law regarding polygamy and early, child and forced marriage; (b) the Thesawalamai law which requires the husband's consent for women to appear in court or undertake any transaction; and (c) the existing legal framework on inheritance and property and land ownership. Please further provide the Committee with an update the progress of finalizing the draft Bill (para. 129) which recognizes the concept of marital breakdown as a ground for divorce and whether it recognizes no-fault divorce and enhances women's economic rights upon divorce, as previously recommended by the Committee (CEDAW/C/LKA/CO/7, para. 45) and in line with General Recommendation No. 29 (2013) on Economic consequences of marriage, family relations and their dissolution and Joint General Recommendation No. 31 (2014) of the Committee on the Elimination of Discrimination against Women/ general comment No. 18 of the Committee on the Rights of the Child on harmful practices.