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## Committee on Economic, Social and Cultural Rights

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Geneva, 1–19 November 2010

### Implementation of the International Covenant on Economic, Social and Cultural Rights

**Consideration of reports submitted by States parties in accordance with  
article 16 of the International Covenant on Economic, Social and  
Cultural Rights**

**Replies by the Government of Sri Lanka to the list of issues  
(E/C.12/LKA/Q/2-4) to be taken up in connection with the  
consideration of the combined second, third and fourth periodic reports  
of Sri Lanka (E/C.12/LKA/2-4)\***

[15 October 2010]

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\* In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not formally edited before being sent to the United Nations translation services.

**Reply to the issues raised in paragraph 1 of the list of issues (E/C.12/LKA/Q/2-4)**

1. Sri Lanka wishes to draw the attention of the Committee, at the outset, to the significant developments that have taken place in Sri Lanka since submission of the second, third and fourth combined periodic reports, which will have important bearing on the democratic political process within the country.
2. The ceasefire agreement signed between the Government of Sri Lanka (GOSL) and the Liberation Tigers of Tamil Eelam (LTTE) in February 2002 failed due to the aggressive actions taken by the LTTE. Hence, GOSL was compelled to launch a humanitarian military campaign to rescue innocent civilians who were under LTTE control.
3. As a result of this humanitarian campaign in May 2009, GOSL was successful in definitively defeating terrorism perpetrated by the LTTE, a terrorist organization proscribed in over 30 democratic countries worldwide.
4. The LTTE had been waging a separatist conflict in the Northern and Eastern Provinces of Sri Lanka for three decades. During that time, the democratic rights and entitlements of civilians in those areas were suppressed by the LTTE.
5. With the end of the conflict in May 2009, Sri Lanka entered a post-conflict phase. The Government has been successful in liberating the civilians in the north and east of the country from LTTE domination.
6. The liberation of the Eastern Province took place in 2007, and the Government held municipal, local government and provincial elections in the Eastern Province in May 2008. A democratically elected provincial Council, with representations from the Tamil, Sinhalese and Muslim communities, and led by a former LTTE child soldier who renounced violence and joined the democratic mainstream, is now functioning effectively.
7. In the Northern Province, the current efforts of the Government are focused on long-term voluntary and sustainable return and resettlement of the large number of civilians who have been freed from LTTE control. The Government is committed to achieving the target of early voluntary resettlement as soon as the areas mined by the LTTE have been cleared. The Government is working in close cooperation with United Nations agencies, international and local NGOs in this important task.
8. As with the Eastern Province, it is the Government's objective to restore the democratic institutions and electoral processes which had been in place in these areas prior to their suppression by the LTTE. Accordingly, elections to the Jaffna Municipal Council and Vavuniya Urban Council were held in August 2009. At the same time, the Government is also determined to accelerate economic, social and infrastructural developments in these areas.
9. Presidential elections and general parliamentary elections were held in January and April 2010 respectively throughout Sri Lanka. These elections were conducted in a peaceful manner, confirming the right to elect representatives by the democratic process.
10. The basic administrative infrastructure for accelerated development under the Northern Re-awakening Programme, known as "Northern Spring," (*Uthuru Wasanthaya* in Sinhala, and *Wadakkin Wasantham* in Tamil) and the Eastern Re-awakening Programme, known as "Dawn of the East," (*Nagenahira Navodaya* in Sinhala, and *Kilakkin Uthayam* in Tamil) is already in place. The Government is pursuing a lasting political solution engaging all stakeholders.
11. In Hambantota in southern Sri Lanka, a new international Airport and a harbour are being developed and constructed under the authority of the Ports and Aviation Ministry. This area has been under-developed for a long time, and was the breeding ground for two

insurrections based on youth unrest in the post-independence period. This new development initiative is expected to provide a renaissance in the southern part of the island-country.

**Reply to the issues raised in paragraph 2 of the list of issues**

**Rights justiciable before the Supreme Court**

12. The rights conferred in the ICESCR are justiciable before the courts of law in Sri Lanka. As the highest court, the Supreme Court has the highest appellate jurisdiction over all matters. In the event of violation of certain rights conferred in the ICESCR, jurisdiction is vested in lower courts, but only the Supreme Court has appellate jurisdiction.

13. The Constitution of the Democratic Socialist Republic of Sri Lanka contains a chapter on fundamental rights which are justiciable. It also contains chapters on language and citizenship.

14. Article 12 (1) of the Sri Lankan Constitution states that all people are equal before the law and are entitled to equal protection of the law. This provision has been invoked on numerous occasions before the Supreme Court, which has consistently upheld and enforced the validity of this constitutional provision.

15. Article 26 (3) of the Constitution also guarantees that no distinction shall be drawn among the citizens of Sri Lanka for any purpose by reference to the mode of acquisition of such status, as to whether acquired by descent or by virtue of registration.

16. Article 14 of the Constitution guarantees to every citizen:

- (a) freedom of speech and expression, including publication;
- (b) freedom of peaceful assembly;
- (c) freedom of association;
- (d) freedom to form and join a trade union;
- (e) freedom, either individually or in association with others, and either publicly or privately, to manifest one's religion or belief in worship, observance, practice and teaching;
- (f) freedom, either individually or in association with others, to enjoy and promote one's own culture and use one's own language;
- (g) freedom, either individually or in association with others to engage in any lawful occupation, profession, trade, business or enterprise;
- (h) freedom of movement and to choose one's residence within Sri Lanka; and
- (i) freedom to return to Sri Lanka.

17. The exercise and operation of the fundamental rights, declared and recognized by Article 14(1)(a), are subject to such restriction as may be prescribed by law in the interest of racial and religious harmony or in relation to parliamentary privilege, contempt of court, defamation or incitement to offence.

18. The exercise and operation of the fundamental rights declared and recognized by Article 14(1)(b) are subject to such restrictions as may be prescribed by law in the interests of racial and religious harmony.

19. The exercise and operation of the fundamental rights declared and recognized by Article 14(1)(c) are subject to such restriction as may be prescribed by law in the interests of racial and religious harmony or national economy.

20. The exercise and operation of the fundamental rights declared and recognized by Article 14(1)(g) are subject to such restrictions as may be prescribed by law in the interests of national economy or in relation to:

(a) professional, technical, academic, financial and other qualifications necessary for practicing any profession or carrying on any occupation, trade, business or enterprise, and the licensing and disciplinary control of the persons entitled to such fundamental right; and

(b) carrying on by the State, a State agency or a public corporation of any trade, business, industry, service or enterprise whether to the exclusion, complete or partial, of citizens or otherwise.

21. The exercise and operation of the fundamental rights declared and recognized by Article 14(1)(h) shall be subject to such restrictions as may be prescribed by law in the interest of national economy.

22. The exercise and operation of all the fundamental rights declared and recognized by Articles 12, 13(1), 13(2) and 14 shall be subject to such restrictions as may be prescribed by law in the interest of the national security, public order and protection of public health or morality, or for the purpose of securing due recognition and respect for the rights and freedoms of others or of meeting the just requirements of the general welfare of a democratic society. For the purposes of this paragraph, "law" includes regulations made under the temporary law relating to public security.

23. Article 17 states that every person shall be entitled to apply to the Supreme Court, as provided for by Article 126, in respect of the infringement or imminent infringement by executive or administrative action of a fundamental right.

24. Article 126 gives the Supreme Court sole and exclusive jurisdiction to hear and determine any question relating to infringement or imminent infringement by executive or administrative action of any fundamental or language right declared and recognized by Chapter III or Chapter IV. Any person may, by himself or by an attorney-at-law or on his behalf, within one month of the infringement or imminent infringement, apply to the Supreme Court for relief.

#### **Rights invoked by national courts**

25. There has been no instance in which the rights of the Covenant have been challenged before the superior courts to consider compatibility with national legislation. So far, the President of Sri Lanka has not referred to the Supreme Court of Sri Lanka, under the Article 129 of the Constitution, to obtain an opinion on the compatibility of the ICESCR with national legislation.

#### **Access to effective judicial remedies**

26. The rights conferred by the ICESCR are embodied in various domestic legislation, including the Constitution of the Republic of Sri Lanka. A victim of the violation of the rights could seek remedial action from the competent courts having jurisdiction to hear such rights violation.

#### **Article 2, paragraph 1**

#### **Reply to the issues raised in paragraph 5 of the list of issues**

27. Commissioners appointed under Section 02 of the Commission Act No. 19 of 1994 normally hold office for a period of five years and are not eligible for reappointment. Accordingly, the term of the former Commissioners ended on 28.03.2010 and no new

appointments have been made so far. It may be noted that at the moment we are continuing with the investigations and court cases for which the former Commissioners have given approval. Accordingly, since 28.03.2010 more than 30 cases have been filed in courts to date. Except for new investigations, all other activities are taking place as usual.

#### **Independence of control or monitoring bodies**

28. In 2008, the Department of External Resources, UNDP and the Commission to Investigate Allegations of Bribery or Corruption (CIABC) entered into an agreement to implement the Support Efforts & Actions against Corruption project (SEAAC) in order to strengthen integrity, accountability and transparency in the management of public affairs in Sri Lanka. The total value of the project is US \$300,000.

29. The above project is supposed to implement activities, such as UNCAC gap analysis, develop the operational capacity of the CIABC, sensitize the general public and local government officials on combating corruption, and identify pilot integrity initiatives to be implemented in selected government organizations.

#### **Combating and preventing corruption**

30. Under the above project, a series of lectures for public officials has been conducted and the education sector has been involved in the activities. Further, the capacity of the Commission staff has been strengthened under this project.

#### **Article 2, paragraph 2**

#### **Reply to the issues raised in paragraph 6 of the list of issues**

##### **Enjoyment of rights**

31. All Tamils of Indian origin are entitled to citizenship following the Grant of Citizenship to Persons of Indian Origin (Amendment) Act, No. 35 of 2003. The Government has commenced the process of issuing identity documents.

32. The Government intends to enact new Disability Rights Legislation soon. It is currently being drafted. According to the Ministry of Social Services, the Government intends to ratify the Convention on the Rights of Persons with Disabilities and its Optional Protocol.

#### **Reply to the issues raised in paragraph 7 of the list of issues**

33. An Act to protect the rights of persons with disabilities, cited as Act No.28 of 1996 Protection of the Rights of Persons with Disabilities, was enacted by Parliament in 1996. A new bill has been formulated, incorporating the provisions in the UN Convention on the Rights of Persons with Disabilities, and submitted to the legal draftsman.

34. Regulations cited as the Disabled Persons Accessibility Regulation No.1 of 2006 was gazetted in 2006. These regulations were amended, incorporating more facilities for persons with disabilities, and submitted to the legal draftsman.

35. A national policy on disability was approved by Cabinet in 2003, incorporating sectoral policies in 21 area, including vocational training, poverty alleviation, education, health, sports, transport, housing, social security, mass media, among others.

36. Act No.28 of 2006 contains the following provisions aimed at combating all forms of discrimination against persons with disabilities.

37. No person with a disability shall be discriminated against on the ground of such disability in recruitment for any employment or office or admission to any educational institution.

38. No person with a disability shall, on the ground of such disability, be subject to any liability, restriction or condition with regard to access or use of any building or place which any other member of the public has access to or is entitled to use.

### **Convention on the Rights of Persons with Disabilities and its Optional Protocol**

39. Sri Lanka intends to ratify the Convention on the Rights of Persons with Disabilities and its Optional Protocol following enactment of the new Act on Disability Rights by Parliament.

### **Article 3**

#### **Reply to the issues raised in paragraph 8 of the list of issues**

40. Article 7 of the Women's Charter of Sri Lanka proclaims rights within the family, therefore a mechanism is already in place to protect the rights of girls and women of all communities.

41. The Land Development Ordinance (Amendment) Bill was approved by Parliament in 2009, and action is being taken to remove the provisions that are discriminatory to women.

42. The Minister of Justice has appointed certain Committees with wide representation to examine the question of personal laws. At present, the Muslim Law Reform Committee is examining questions of discrimination and early marriage of Muslim girls.

#### **Women's Rights Bill**

43. The Women's Rights Bill is before the Parliament of Sri Lanka, and amendments are being drafted by the Ministry of Child Development and Women's Affairs for further proceedings.

#### **Marriage of Muslim girls**

44. Although there is a provision in the relevant legislation governing Muslim marriages on contracting marriage between a girl of young age and a man, with the increase in literacy among Muslim women, and their exposure to the diversity of norms and values underpinning the multicultural society in Sri Lanka, such marriages are rather rare today.

45. The Ministry of Buddha Sasana and Religious Affairs, and the Department of Muslim Religious and Cultural Affairs are directly, as well as through relevant civil society institutions, engaged in an awareness generation programme aimed at discouraging marriages of under-age girls in the Muslim community. The work programme undertaken by the Government institutions include workshops or seminars for Muslim women, activities to further increase opportunities for higher education, and sensitizing community leaders on empowerment of Muslim women through education and skills development.

46. The efforts taken by the Department of Muslim Religious and Cultural Affairs and the relevant civil society institutions have contributed to decreasing the number of marriages of under-age Muslim girls over the years. These efforts will be ongoing until the target is met.

**Reply to the issues raised in paragraph 9 of the list of issues**

47. The unemployment rate remains double for women, and the majority of women are still concentrated in low-skilled and low-paid occupations. However, this is not mainly due to traditional sex stereotypes with respect to the role of women, but rather because there are no other alternative opportunities available to them. There is mismatch in available opportunities and the skills of women. As such, promotion of skills among women is necessary to open skilled occupational opportunities for women.

48. Women's participation in public life is at a high level. However, women's participation in decision making at the national and community levels is insignificant, except for in women societies.

**Promotion and advancement of women**

49. According to the amendment of the Penal Code in 1995, unwelcome sexual advances by words or actions used by a person in authority in the workplace or any other place shall constitute the offence of sexual harassment. For the purpose of this section, assault may include any act that does not amount to rape under section 363. Section 12 (4) of the Constitution prohibits discrimination, and in general, the principle of equal remuneration for men and women for work of equal value is followed.

**Reply to the issues raised in paragraph 10 of the list of issues**

50. Women's participation in public life is at a high level. However, women's participation in decision making at the national and community levels is insignificant, except for in women societies.

**Article 6**

**Reply to the issues raised in paragraph 11 of the list of issues**

51. The Department of Social Service provides vocational training opportunities for persons with disabilities and detoxified drug addicts, as well as provides employment opportunities. Self-employment grants are provided for these categories of persons, and encourage them to start income-generating activities. People with disabilities in urban and rural areas are provided with these forms of assistance without discrimination.

52. Cabinet approval has been obtained to make available to persons with disabilities, 3% of the job opportunities in the public sector. Since then, educated people with disabilities have been able to secure employment in the public sector, under this grant.

53. The Government established 18 vocational training units in the Northern and Eastern provinces to provide training for youths in seven (7) districts.

54. Accordingly, a national strategy and action plans on technical and vocational education and training (TVET), aimed at vulnerable groups, have been developed

55. The Ministry has taken the following measures to ensure equal access to vocational technical training for disadvantaged and marginalized groups and youth..

56. An island-wide training network has been established to cater to rural and disadvantaged groups. Training centres have been set up to establish in all districts and divisions to enable the rural youths and those in disadvantaged sectors to enroll in vocational and technical training programmes. Those centres offer courses in a wide range of vocational fields.

57. A career guidance division has been established in all major training institutions, and a separate Director has been made responsible for the service. Increasing enrolment is one of his/her main functions.

58. A separate unit for career guidance and counselling has been established at the district level of major institutions, such as the Vocational Training Authority, National Apprentice & Industrial Training Authority and the Department of Technical Education and Training. Career guidance officers have been assigned to these units. The officers are specially trained to conduct career-guidance programmes, and conduct career guidance according to a yearly calendar aiming at students leaving school, in order to attain the annual targeted number of enrolment in the training institutions. Information on training programmes is also available at the training centres and on the Tertiary and Vocational Education Commission (TVEC) website.

59. Vocational and technical training centres have been established in the Eastern and Northern provinces in collaboration with the Government's accelerated development programmes for the two provinces.

60. Vocational training programmes for ex-combatants have been implemented.

61. An information management centre has been established within the TVEC, and data disaggregated by sex, as well as detailed information on enrollment in rural centres is gathered for review..

#### **Reply to the issues raised in paragraph 12 of the list of issues**

62. Emergency regulations are promulgated under the Public Security Ordinance. Further to the emergency regulations, the President must declare the services which are necessary to the public interest and regarding the maintenance of any service which, in his opinion, is essential to the life of the community. These regulations only apply to the essential services, not to all services. There is no compulsory service under these regulations, however a worker is obliged to work over the full period or any part of a normal working day, as required. There is no additional burden because of the emergency regulations upon the employee. He/she is required to work in accordance with the normal terms and conditions of employment.

#### **Reply to the issues raised in paragraph 13 of the list of issues**

63. Sri Lanka Bureau of Foreign Employment (SLBFE) conducts awareness programmes to educate the prospective female migrant workers, especially those seeking work in the domestic sector, on the importance of rethinking their decision to migrate and to seek possible domestic job avenues.

64. The Sri Lanka policy on migration provides for the children of migrant mothers. Accordingly, special laws have been enacted to facilitate legal protection for children up to 18 years. The National Child Protection Authority (NCPA) will set up a special desk at the Bandaranaike International Airport to register information on children of migrant mothers traveling overseas for employment. The NCPA is also formulating a system to enable migrant mothers to contact their children while being employed abroad. This may be further amended, and the provisions strengthened.

65. There are also safety net programmes at the community level for children of migrant mothers, particularly in areas where such women are more numerous. Such programmes are implemented under the purview of the Child Rights Protection Officers at the divisional level, under the Department of Probation and Child in collaboration with the Foreign Employment Bureau.



66. It has not been possible to undertake a comprehensive assessment of the physical, psychological and social impact of women labour migrants on their children, due to the lack of necessary resources. Such children are generally cared by members of the women's extended family. Safety net programmes are implemented in high-concentration areas.

67. All applications for compensation should be submitted directly to the Welfare Division of the SLBFE or through a regional centre.

68. The Government of Sri Lanka awards scholarships to children of migrant workers. This is a significant project conducted on behalf of the children of migrant workers and is also one of the nation's premier scholarship-awarding campaigns which has provided many students with scholarships so far. The scholarships are awarded to children who have passed the Grade 5 Scholarship Examination, GCE Ordinary Level Examination and GCE Advanced Level Examination and are currently pursuing higher studies. In order for their children to be eligible for a scholarship, parents must be registered with SLBFE prior to their departure for overseas.

69. Housing loans and self-employment loans may be granted to migrant workers who have returned to Sri Lanka at very low interest. More than 70% of the interest on these loans is borne by SLBFE.

70. SLBFE provides for the repatriation of migrant workers. The repatriation scheme is intended for migrant workers returning to Sri Lanka and it looks after their social welfare and development. Returning migrant workers are given proper guidance and advice on how to spend, save and invest the money that they have earned overseas in a manner that is beneficial to themselves, as well as the country.

71. The insurance scheme provided to all migrant workers registered with SLBFE also falls under this category. Compensation and related welfare services of the insurance scheme are also provided through this programme.

72. SLBFE also grants housing loans for persons who become permanently disabled during their overseas employment of about Rs 400,000 (for those who do not have their own house). To be eligible for such loans, a Sri Lankan migrant worker must have been registered with SLBFE at the time of his/her disability

73. Sesatha Retirement Benefits are available to returning migrant workers; this scheme is a wonderful opportunity for them to relax and enjoy their twilight years in retirement without being a burden on anyone. It is coordinated by the Welfare Division of SLBFE.

74. Medical treatment is provided to migrant workers returning to Sri Lanka due to illness. Under this scheme, ill migrant workers can receive free medical treatment at the Sri Jayawardenapura General Hospital. Ambulance service is also free of charge.

75. The Sahana Piyasa welfare service centre, run by SLBFE and located near Katunayake International Airport, assist migrant workers who may have fallen on hard times overseas and are returning to Sri Lanka. The centre also offers a host of services to migrant workers prior to their departure.

76. Social Insurance service facilities, run by SLBFE, provide a variety of social and insurance services to family members of migrant workers, such as medical clinics, advisory service conferences and discussions throughout the island.

#### **Social impact of women labour migrations**

77. In the recent past, there has been no publications at the national level or social research conducted on the effect of women labour migration on the society or economy.

78. However, some of the issues are being addressed by post-graduate students in seminar reports and theses, for example, Gender transformation and female migration by Mallika Pinnawala (The Hague, Netherlands) or the research findings of Human Rights Watch (New York).

#### **Article 7**

##### **Reply to the issues raised in paragraph 14 of the list of issues**

79. The criminal law of Sri Lanka covers sexual harassment in the workplace.

##### **Sexual harassment in the workplace**

80. Section 345 of the Penal Code has introduced the offence of sexual harassment: whoever, by assault or use of criminal force, sexually harasses another person or by the use of words or actions, causes sexual annoyance or harassment to such other person commits the offence of sexual harassment and shall, on conviction, be punished with imprisonment of either description for a term which may extend to five years or with a fine or with both, and may also be ordered to pay compensation of an amount determined by the court to the person in respect of whom the offence was committed for injuries caused to such person.

#### **Article 9**

##### **Reply to the issues raised in paragraph 21 of the list of issues**

81. Social security schemes are implemented by the Social Security Board and the Ministry of Agriculture for workers in the informal sector, and farmers and fishermen respectively. Scheme coverage is low; the pay out is very low and needs to be increased: persons with no income at all are provided with a monthly public assistance of Rs.100 to Rs.350.

##### **Reply to the issues raised in paragraph 23 of the list of issues**

82. The Sri Lankan Government has already entered into bilateral MOUs/agreements with Jordan, UAE, Bahrain, Qatar and Libya to protect the security and welfare of Sri Lankan workers in those countries.

83. Steps have also been taken to institute such MOUs with Oman, Kuwait and Lebanon, and families of migrant women benefit from state support programmes.

#### **2009**

##### **Insurance**

Compensation under insurance programme	5310
Total amount paid	SL Rs 255 million

##### **Scholarships for children of migrant workers**

Number of scholarships	1443
Amount paid	SL Rs 28 million

##### **Housing scheme for disabled returnees**

Number benefitted	3
Amount paid (completed houses)	SL Rs 500,000

Note: above figures include less amount of male migrant worker family members as well.

#### **January-April 2010**

##### **Insurance**

Compensation under insurance programme	177
Total amount paid	SL Rs 56 million (approx.) (for 1498 men)

**Special compensation under workers welfare fund (SLBFE)**

Number of families	18
Amount paid (completed houses)	SL Rs 1 million (approx.)

**Housing scheme for disabled returnees (Completed Houses)**

Number benefitted	2
Amount paid	SL Rs 400,000
Benefit forecast	11(work still in progress)
Amount forecast	SL Rs 2 million

Scholarship scheme for 2010 still being processed

**Article 10****Reply to the issues raised in paragraph 24 of the list of issues**

84. This issue is on the priority agenda of the Ministry of Child Development and Women's Affairs, and is expected to be taken up with the Ministry of Justice soon, in order to initiate the process for legislation on the matter. Although the act of sexual intercourse without consent of the wife is, in itself, not a crime under the existing law, where such act involves violence to such a degree that the violence amounts to a crime, the act of violence is punishable under the Penal Code. In that case, relief can also be sought under the Prevention of Domestic Violence Act (PDVA).

85. With regard to the concerns expressed by the Committee on acts of violence against women, and the need to criminalize marital rape in all instances, Sri Lanka makes the following observations.

86. As a positive step towards addressing the issue of domestic violence, the Government of Sri Lanka enacted the Prevention of Domestic Violence Act No.34 (2005), which came into effect on 3 October 2005. The Act was enacted primarily to fulfil Sri Lanka's obligations under the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), and in response to the concluding observations of the CEDAW on Sri Lanka's third and fourth periodic reports. The Act provides an important opportunity for renewed and refocused efforts to address the issue of domestic violence and is significantly gender neutral in its approach.

87. The definition "domestic violence" in the Act implies both physical and emotional violence committed by a person within or out of the home environment.<sup>1</sup> Any bodily harm caused must be addressed within Chapter XVI of the Penal Code. It therefore covers acts such as grievous hurt, wrongful restraint, assault, rape, cruelty, incest, grave sexual abuse, extortion, criminal intimidation, and any attempt to commit any of those offences.<sup>2</sup>

88. Emotional abuse is defined as a pattern of cruel, inhuman, degrading or humiliating conduct of a serious nature. The relationship between the aggrieved person and the perpetrator has to be personal and the perpetrator could be a spouse, ex-spouse, cohabiting partner or any other ascendant, descendant or collateral of the aggrieved person, or of a spouse, ex-spouse or partner.

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<sup>1</sup> Section 23, PDVA.

<sup>2</sup> Schedule 1.

89. In terms of relief, the aggrieved person can apply to the Magistrate's Court in the district where the act of domestic violence has been committed or is likely to be committed, requesting either an Interim Protection Order (IPO) or a Protection Order (PO) ordering the perpetrator to refrain from committing any further act of domestic violence.<sup>3</sup>

90. Significantly, the court has the discretion to determine whether the veracity of the circumstances, so as to grant immediate relief without a hearing, by issuing an IPO. Under both the IPO and PO, however, the court may, in due course, refer the matter for counseling and order a third party to monitor the observance of the order and submit a report to court.<sup>4</sup> A PO may be altered, modified, varied, extended or revoked upon application by either party, after hearing both sides.<sup>5</sup>

91. A PO can initially be in force for up to one year, and both types of orders may prohibit the respondent from entering the aggrieved person's residence, place of employment, school or temporary shelter, occupying a shared residence, stalking, access to shared resources, contact with a child or performing any transaction related to the matrimonial home.<sup>6</sup>

92. Section 12 of the Act further empowers the court to issue supplementary orders providing for steps to be taken to protect and provide for the immediate safety, health or welfare of the aggrieved person. Significantly, the Act also shares the concern of ensuring the financial stability of the aggrieved person, so that the respondent may be required to provide monetary assistance where he/she has a duty of support.

93. Notably, as far as the hearing of evidence is concerned, where a respondent does not have a legal representative, he/she may not directly interrogate witnesses or the aggrieved, instead any questions must be directed to court which, in turn, will direct the question to the individual concerned.

94. The Act provides for a civil remedy, therefore a charge has to be proved on the basis of probability only, which places a lesser onus on the aggrieved person. Any violation of an IPO or PO entails a penal sanction in the form of a fine or imprisonment or both.<sup>7</sup> The granting of a civil remedy has no bearing on the normal criminal law jurisdiction. Thus, where an offence has been committed, the normal criminal justice process of investigation, prosecution and punishment will follow.

95. Sri Lanka notes that the enactment of this Act has brought a subject, earlier considered a "private" matter and outside State intervention, particular given the cultural background of the country, into the public domain. This is a marked example of the Government's commitment to enforcing rights guaranteed under the Covenant and other international instruments to which Sri Lanka is a party.

96. Sri Lanka also notes, however, that full implementation of the Act would require awareness-raising campaigns in all parts of Sri Lanka, and particularly cooperation between all the support networks contemplated in the Act, namely social workers, police, aggrieved person and the courts. The Government is confident that this will be achieved in the long term.

97. Sri Lanka also wishes to highlight the importance of the Women's Charter, which was approved by the Cabinet of Ministers in 1993, and the principles laid down in the

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<sup>3</sup> Sections 4, 6, 8, 10, PDVA.

<sup>4</sup> Section 5(2) (b).

<sup>5</sup> Section 14(1).

<sup>6</sup> Section 11(1).

<sup>7</sup> Section 18.

Charter, which act as a guide for all persons, institutions, organizations and enterprises in all matters relating to women. The Charter recognizes the following rights, which are well developed within the Charter:

- (a) Political and civil rights;
- (b) Rights within the family;
- (c) Right to education and training;
- (d) Right to economic activity and training;
- (e) Right to health care and nutrition;
- (f) Right to protection from social discrimination.

98. The Charter has also established a National Committee on Women for the purpose of examining programmes on the realization of the obligations undertaken by the Charter. This is an advisory body which meets monthly to take policy decisions on issues relating to women and has a secretariat and a complaints centre for the benefit of women, children and men. The Committee is also engaged in conducting all-island awareness programmes for the prevention of domestic violence.

99. Many State and non-State institutions carry out awareness-raising campaigns on domestic violence. For instance, the Equal Access to Justice project is implemented nationally by the Ministry of Constitutional Affairs and National Integration, and funded by UNDP. Women who have been identified as victims of domestic violence have been granted legal aid. Awareness programs are conducted continuously with special focus in the Northern and Eastern provinces, and also the plantation sector. The project also conducts awareness-building workshops and seminars. Legal-aid desks have also been set up to provide legal aid to women who are subject to violence, including domestic violence.

100. The Ministry of Child Development and Women's Empowerment organized a workshop to ascertain the progress of the Domestic Violence Act No.34 of 2005. The Ministry is now in the process of taking progressive follow-up steps to address the issues raised the workshop, with the participation of the children and women's secretariat of the Police and NGOs. The Ministry also conducted programmes on Violence Against Women in 183 divisional Secretariats in 12 districts, in commemoration of the international day of Prevention of Violence Against Women. Short films have also been telecasted to raise awareness and minimize violence against women. Furthermore, awareness programmes on the Domestic Violence Act have also been conducted for 80 counseling officers attached to the Ministry of Social Services and Social Welfare, and the Ministry of Child Development and Women's Empowerment. Awareness programs have also been conducted with the aim of sensitizing law enforcement authorities and promoting organizational capacity-building to minimize such harassment at the divisional level.

101. The National Action Plan on Women has been finalized and forwarded to the Ministry of Plan Implementation for observations.

102. Four workshops, organized by the Ministry of Justice and Law Reforms, the National Committee on Women, and the Medico-Legal Society of Sri Lanka, were also held in different districts of Sri Lanka to sensitize police officers on Violence Against Women.

103. In addition, the Judges Training Institute, in collaboration with the Ministry of Justice and Law Reforms, the National Committee on Women, and Women in Need have organized four workshops to sensitize magistrates on domestic violence to ensure effective implementation of the Domestic Violence Act.

104. Sri Lanka requests that the Committee appreciate that there are cultural sensitivities relating to the criminalization of “marital rape” in all circumstances within Sri Lankan society.

#### **Prevention of Violence against Women**

105. An island-wide Campaign to End Violence Against Women (CEVAW) was launched in 2004 with the aim of reducing social acceptance of violence against women. The Women and Children’s Bureau of the Sri Lanka police operates 36 specialized desks across the island, under the supervision of the Assistant Superintendent of police for the relevant district.

106. The National Committee on Women has embarked on an island-wide programme to monitor and implement the PDVA, including awareness seminars to sensitize women to the provisions of the Act, shelters, counseling and centres for abused women and children under protection orders of the new legislation.

107. Action has been taken by the Police Department to increase the number of Women and Children’s desks. Even during the conflict, 175 persons of Tamil linguistic origin, including 50 women, were inducted into the police force in the Eastern Province.

#### **Implementation of the PDVA**

108. According to the statistics maintained by the Women and Children’s Bureau, 187 protection orders were issued in 2008/2009.

#### **Reply to the issues raised in paragraph 25 of the list of issues**

##### **Sanctions for child labour exploitation**

109. Sri Lanka is taking measures to completely eradicate child labour in the country by 2016, and in this regard, the Government is working with the ILO to develop a roadmap to eliminate the worst forms of child labour in the country by 2016.

110. Under Article 27 (13) of the Constitution of Sri Lanka (1978), the State pledges to promote with special care the interest of children and youth so as to ensure their full physical, mental, religious and social development and to protect them from exploitation and discrimination.

111. The Employment of Women, Young Persons and Children (Amendment) Act, No. 8 of 2003 strengthened child labour laws by, inter alia, prohibiting the employment of children under 14 years, and enabling youths between 16 and 18 years to be employed in industrial undertakings.

#### **Child labour: complaints and cases filed**

Year	Complaints received	Nature		Action taken		Over 14 years
		Domestic	Others	Charge (cases filed)	No Evidence	
2008	166	76	90	8	158	15
2009	149	70	79	9	140	9

Source: Department of Labour

## Reply to the issues raised in paragraph 26 of the list of issues

### Recovery and rehabilitation needs

112. The Penal Code No.2 of 1883 was amended in 1995. The amendment, which entered into force on 31 October 1995, contains special provisions for the protection of children from all forms of abuse. It is considered “child- and women-friendly legislation,” and provides for a panoply of offences, including the following:

Section 286(a)	Using children for pornography and videos and obscene publications related to children
Section 308(a)	Cruelty to children
Section 360(a)	Procurement of children for sexual abuse
Section 360(b)	Sexual exploitation of children
Section 360 (c)	Trafficking and sale of children
Section 363	Statutory rape
Section 364(a)	Incest
Section 365(b)	Grave sexual abuse
Section 365 (c)	Publication of matters related to children (especially child abuse). This section is identical to section 11 of the Children and Young Persons Ordinance of 1939

113. It is noteworthy that most of these offences are identical to the offences specified in the United Nations Convention on the Rights of the Child (CRC). Further, the sentences for grave offences, such as sexual abuse of children and rape, is 7 to 20 years rigorous imprisonment; this enhancement of the quantum of the sentence is a noteworthy feature of the amendment.

114. In terms of Section 286(A)2 of this Amendment (Amendment No.22 of 1995), all persons under the age of 18 years are considered to be children; a definition which accords with Article 1 of the CRC.

115. “Child abuse” is defined in the Code of Criminal Procedure (Amendment) Act No.28 of 1998. According to the second explanation in Section 2(1) of this Amendment, when an offence enumerated above (namely the offences defined in the Penal Code (Amendment) Act No.22 of 1995) are committed against a child, it is considered “child abuse.”

116. There is also a broad definition of “child abuse” in Section 39 of the National Child Protection Authority Act No.50 of 1998. While defining a “child” as a person under 18 years of age, Section 39 states as follows:

“Child abuse” means any act or omission relating to a child, which would amount to a contravention of any of the provisions of:

- (a) Sections 286A, 288, 288A, 288B, 308A, 360A, 360B, 360C, 363, 364A, 365, or 365B of the Penal Code;
- (b) the Employment of Women, Young Persons and Children Act;
- (c) the Children and Young Persons Ordinance; or
- (d) the regulation relating to compulsory education under the Education Ordinance.

117. The definition includes the involvement of a child in armed conflict, which is likely to endanger the child's life or to harm such child physically or emotionally.

118. The Penal Code (Amendment) Act. No.16 of 2006 strengthens child rights by providing for several offences, such as debt bondage, serfdom, forced or compulsory labor, slavery and recruitment of children for use in armed conflict. In addition, child trafficking and child pornography via electronic media have been criminalized.

119. Equal protection is afforded without distinction to girls and boys. The State party has developed shelters, in the form of care institutions, and others shelters are run by civil society organizations and religious institutions. Although professionals are available to provide therapy and counselling, demand exceeds supply. Resource availability continues to be a constraint.

#### **Reply to the issues raised in paragraph 27 of the list of issues**

120. The National Child Protection Authority (NCPA) collaborates with the Commissioner of Rehabilitation for the North and the Ministry of Justice to rehabilitate child soldiers in Government custody, and ensure protection for children used for armed struggles.

#### **Article 11**

#### **Reply to the issues raised in paragraph 28 of the list of issues**

121. There has been a drastic drop in the Poverty Headcount Index over the past few years in Sri Lanka, from 22.7% in 2002 to 15.2% in 2007. Several factors have contributed to this sharp decline. The rapid improvement in the economy, decline in unemployment, rise in wages, increased public investments and capitalization on rural development paved the way to the upswing, while other developments, such as increased use of vehicles, increased access to public utilities and favourable prices for agricultural products, helped to boost the rural economy. There has been significant development in the agricultural sector where nearly one third of the labour force is employed. This improvement amounts to the growth rate of per capita income.

#### **Access to safe drinking water, sanitation facilities, infrastructure, basic services**

122. The Government of Sri Lanka had prioritized the development of infrastructure with the aim of uplifting the standard of living in the rural sector.

#### **Reply to the issues raised in paragraph 29 of the list of issues**

#### **Findings of Task Force on Monitoring and Reporting (TFMR)**

Situation Report (as at 13.10.2010)

IDP resettlement / return progress and release movements from Vavuniya, Mannar

Trincomalee (Pulmodai) and Jaffna District

as at 13.10.2010

	Returns from	District (to place of origin)	Families	Male	Female	Total Persons
1	Vavuniya, Mannar, Trincomalee (Pulmodai)	Ampara	191	260	331	591
2		Trincomalee	2,112	3,174	3,530	6,704
3		Batticaloa	897	1,140	1,374	2,514
4		Vavuniya	8,405	13,213	14,146	27,359



5		Mannar	4,418	7,141	7,697	14,838
6		Jaffna	18,948	28,628	31,202	59,830
7		Mulathivu	9,678	15,094	16,137	31,231
8		Killinochhei	19,735	31,700	34,584	66,284
9		Kandy	5	11	15	26
10		Pollonnaruwa	1	1		1
11		Puttalam	10	18	15	33
12		Kegalle	4	6	8	14
13		Baddulla	1	1	1	2
14		Colombo	2	3	2	5
15		Gampaha	1	1	2	3
16		Nuwara Eliya	2	2	2	4
17		Galle	1		1	1
18		Mathale	1	1	2	3
19		Kurunegala	2	3	6	9
		<b>Sub Total</b>	<b>64,414</b>	<b>100,397</b>	<b>109,055</b>	<b>209,452</b>
	Returns (26 March to 18 June 2009)	To various districts				1,429
<b>Total</b>			<b>64,414</b>	<b>100,397</b>	<b>109,055</b>	<b>210,881</b>

## Details of IDP releases

	Humanitarian releases from	Conditions				Number released (Individuals)
1	Vavuniay , Mannar and Trincomalee(Pulmudai)	Medical Ground				420
2		Humanitarian Ground				9,719
3		Elderly (Over 60)				9,111
4		Courts Orders				428
5		Foreign Passport Holders				10
6		University Students*				147
7		Elders Home				393
8		Child Home/Orphanage				634
9		Host				3,863
10		Religious*				17
11		Infants with family members				687
12		Pregnant Women				2,051
13		OTHERS				164
<b>Total</b>						<b>27,644</b>
<b>Total (returned &amp; released)</b>						<b>238,525</b>

Note: \*204 university students and 432 clergy and their families were released under the resettlement programme

Jaffna District ( as at 12.05.2010)

	Returns and releases from	Districts (to place of origin)	Families		Total Persons
1	Jaffna Welfare Centers	Jaffna, Mannar, Vavuniya, Trincomalee	3,418		10,252
Grand Total					248,777

## Article 12

### Reply to the issues raised in paragraph 33 of the list of issues

123. The Ministry of Education and the Ministry of Health prepared a health promotion package for adolescents, with sexual and reproductive health as a component. Through that initiative, all advocacy to educational authorities is aware of the principles which had been completed. By the end of 2010, all teachers responsible for teaching adolescents will be trained by both provincial ministries.

124. Sexual and reproductive health is also included in school curricula. However, certain parts are not taught properly. Therefore, the Ministry of Health has developed an adolescent health manual to train care providers from both ministries to provide adolescent-friendly reproductive health services. The School Health Units of the Family Health Bureau has provided training to all district-level teachers, and WHO has funded a pilot project in Kurunegala district which has already been started.

## Article 15

### Reply to the issues raised in paragraph 39 of the list of issues

125. The mandate of the Ministry is to pursue programmes aimed at developing conflict-affected areas in order to uplift the standard of living of the population in those areas. Further, the mandate aims to eliminate any discrimination prevalent in the communities and other vulnerable groups that prevent the enjoyment of the full range of social and cultural rights.

126. The Ministry of National Languages and Social Integration was established to implement this mandate, which includes most of the functions performed by the Ministry of Constitutional Affairs and National Integration.

### Since June 2008

127. The Ministry of Constitutional Affairs and National Integration has conducted many programmes to promote national integration through cultural activities. The Ministry acknowledges the cultural diversity in Sri Lanka, and considers such diversity to be an asset for Sri Lanka, of which it is very proud.

128. Since cultural diversity involves gaining a greater awareness of the ways that cultural heritage and background influence one's values, assumptions, thought process and relationships, it is mandatory to understand the uniqueness of the cultures of the different ethnic communities and comprehend the communities of the different cultures.

129. Cultural pluralism contributes to the wider exchange of knowledge and understanding of cultural background. Cultural pluralism and dialogue among various cultures and civilizations will contribute to the efforts of all Sri Lankans to enrich their cultures and traditions by engaging in a mutually beneficial exchange of knowledge and intellectual, moral and material achievements.

130. Promotion of the rights of indigenous people and their cultures and traditions will contribute to the respect for and acceptance of cultural diversity among the population.

131. In order to acknowledge cultural diversity, the Ministry conducted the following programmes to promote the cultural rights of citizens:

- Cultural Programme – Mahayaya – Ampara District (November 2008), with the participation of indigenous groups, in which over 1000 people, including Sinhala, Tamil and Muslim school children and youth, participated. The respective groups presented cultural activities aimed at promoting greater understanding of other cultures. This also helped to strengthen relationships among the communities, thereby building mutual respect.
- Cultural programmes held at Ambepussa, Batticaloa and Nuwara Eliya with the objective of highlighting the uniqueness in each culture, and also communities of such cultures. The programme was conducted at the Ambepussa camp for ex-combatants where over 150 ex-combatants are housed.
- Cultural programme as a peace-support campaign – joint activity with the Cultural Department – Sapugahakanda Maha Vidyalaya – Kiribathgoda.
- Cultural programme conducted by the communities in the Matale and Kolonna secretariat divisions to promote national integration and peace building.

#### **Since May 2010**

132. The objectives of the new Ministry of National Languages and Social Integration include implementation of the official languages policy, promotion of social integration by formulating a social integration policy and other projects and programmes.

133. The objectives are:

#### **Language**

- Increase the percentage of Sinhala and Tamil bilinguals in Sri Lanka by 15% by 2013;
- Create awareness of the Official Languages Policy and related laws among the officials in the identified 800 public sector institutions;
- Increase the percentage of Sinhala and Tamil bilingual officers in the public service by 25% by the end of 2013;
- Increase the percentage of qualified translators by 50% by the end of 2014;
- Increase the percentage of interpreters by 50% by the end of 2014;
- Establish a National Translation Bureau by 2012;
- Provide Trilingual Name Boards to district and divisional secretariats in Jaffna, Mannar, Vavuniya, Mulathivu and Kilinochchi;
- Conduct language classes island-wide for public service officers working in the Government Institutions so as to make services available to the public in their own languages;
- Create awareness of the Official Languages Policy and related laws among mobile phone users by the beginning of 2011;
- Create awareness of the Official Languages Policy and related laws among the newspaper readership by the beginning of 2011;

- Amend existing laws and regulations relating to languages by the beginning of 2012, to coincide with the current social, cultural, economic, technological and political conditions.

**Social Integration**

- Create a friendly social environment through mutual trust building among the diverse social groups, by ensuring equal opportunities to all;
  - Ensure sustainable peace through promoting and protecting cultural identities and the heritages of different social and ethnic communities.
  - Create an “A society for all,” in which every individual, each with rights and responsibilities, has an active role to play;
  - Formulate a National Policy on Social Integration and ensure that all the activities of the Government are in line with the policy;
  - Protect and provide a safe environment for vulnerable groups in the society;
  - Promote multiculturalism by conducting programmes in the Northern Province;
  - Foster dialogue among religious leaders;
  - Formulate social integration policy (launch preparatory work);
  - Develop youth exchange programmes;
  - Support school children from all parts of Sri Lanka to come together to promote reconciliation;
  - Conduct social integration programmes island-wide at the divisional level to create mutual understanding among all communities.
-