



**International covenant
on civil and
political rights**

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HUMAN RIGHTS COMMITTEE
Seventy-ninth session

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER
ARTICLE 40 OF THE COVENANT**

Concluding observations of the Human Rights Committee

SRI LANKA

1. The Human Rights Committee considered the combined fourth and fifth reports of Sri Lanka (CCPR/C/LKA/2002/4) during its 2156th and 2157th meetings, held on 31 October and 3 November 2003 (see CCPR/C/SR.2156 and 2157) It adopted the present concluding observations during its 2164th meeting (CCPR/C/SR. 2164), held on 6 November 2003.*

Introduction

2. The Committee notes that the report was submitted after considerable delay and combines the fourth and fifth periodic reports of Sri Lanka. It notes that the report contains detailed information on domestic legislation and relevant national case law in the field of civil and political rights, but regrets that it does not provide full information on the follow-up to the Committee's concluding observations on Sri Lanka's previous report. The Committee expresses its appreciation for the discussion with the delegation, and notes the answers, both oral and written, that were provided to its questions.

* These concluding observations do not address events in Sri Lanka that occurred after the examination of the report.

B. Positive aspects

3. The Committee welcomes the conclusion, on 24 February 2002, of a ceasefire agreement between the Government of Sri Lanka and the LTTE (Liberation Tigers of Tamil Eelam), and expresses the hope that the implementation and monitoring of the agreement will help to achieve a peaceful and lasting solution to a conflict which has given rise to serious violations of human rights on both sides.

4. The Committee welcomes the establishment of the National Human Rights Commission in March 1997. It notes that the Commission has begun to play an active role in the area of promotion and protection of human rights in the peace process. It expresses the hope that the Commission's monitoring and educational activities, including those projected under the Strategic Plan for 2003-2006, will receive appropriate resources.

5. The Committee notes the measures taken by the State party to improve awareness of human rights standards among public officials and members of the armed forces, and to facilitate the investigation of human rights violations. These measures include improved human rights education for all law enforcement officers, members of the armed forces and prison officers, the establishment of a central register of detainees in all parts of the country and the creation of the National Police Commission.

6. The Committee welcomes the State party's ratification of the Optional Protocol to the Covenant in October 1997, and the training workshop on the procedure under the Optional Protocol to the Covenant co-organized by the National Human Rights Commission and the United Nations Development Programme in December 2002.

C. Principal subjects of concern and recommendations

7. While taking note of the proposed constitutional reform and the legislative review project currently being undertaken by the National Human Rights Commission, the Committee remains concerned that Sri Lanka's legal system still does not contain provisions which cover all of the substantive rights set forth in the Covenant, or all the necessary safeguards required to prevent the restriction of Covenant rights beyond the limits permissible under the Covenant. It regrets in particular that the right to life is not expressly mentioned as a fundamental right in chapter III of the Constitution of Sri Lanka, even though the Supreme Court has, through judicial interpretation, derived protection of the right to life from other provisions of the Constitution. It is also concerned that contrary to the principles enshrined in the Covenant (e.g. the principle of non-discrimination), some Covenant rights are denied to non-citizens without any justification. It remains concerned about the provisions of article 16, paragraph 1. of the Constitution, which permits existing laws to remain valid and operative notwithstanding their incompatibility with the Constitution's provisions relating to fundamental rights. There is no mechanism to challenge legislation incompatible with the provisions of the Covenant (arts. 2 and 26). It considers that a limitation of one month to any challenges to the validity or legality of any "administrative or executive action" jeopardizes the enforcement of human rights, even though the Supreme Court has found that the one-month rule does not apply if sufficiently compelling circumstances exist.

The State party should ensure that its legislation gives full effect to the rights recognized in the Covenant and that domestic law is harmonized with the obligations undertaken under the Covenant.

8. The Committee is concerned that article 15 of the Constitution permits restrictions on the exercise of the fundamental rights set out in chapter III (other than those set out in articles 10, 11, 13.3 and 13.4) which go beyond what is permissible under the provisions of the Covenant, and in particular under article 4, paragraph 1, of the Covenant. It is further concerned that article 15 of the Constitution permits derogation from article 15 of the Covenant, which is non-derogable, by making it possible to impose restrictions on the freedom from retroactive punishment (article 13, paragraph 6, of the Constitution).

The State party should bring the provisions of chapter III of the Constitution into conformity with articles 4 and 15 of the Covenant.

9. The Committee remains concerned about persistent reports of torture and cruel, inhuman or degrading treatment or punishment of detainees by law enforcement officials and members of the armed forces, and that the restrictive definition of torture in the 1994 Convention against Torture Act continues to raise problems in the light of article 7 of the Covenant. It regrets that the majority of prosecutions initiated against police officers or members of the armed forces on charges of abduction and unlawful confinement, as well as on charges of torture, have been inconclusive due to lack of satisfactory evidence and unavailability of witnesses, despite a number of acknowledged instances of abduction and/or unlawful confinement and/or torture, and only very few police or army officers have been found guilty and punished. The Committee also notes with concern reports that victims of human rights violations feel intimidated from bringing complaints or have been subjected to intimidation and/or threats, thereby discouraging them from pursuing appropriate avenues to obtain an effective remedy (art. 2 of the Covenant).

The State party should adopt legislative and other measures to prevent such violations, in keeping with articles 2, 7 and 9 of the Covenant, and ensure effective enforcement of the legislation. It should ensure in particular that allegations of crimes committed by State security forces, especially allegations of torture, abduction and illegal confinement, are investigated promptly and effectively with a view to prosecuting perpetrators. The National Police Commission complaints procedure should be implemented as soon as possible. The authorities should diligently enquire into all cases of suspected intimidation of witnesses and establish a witness protection program in order to put an end to the climate of fear that plagues the investigation and prosecution of such cases. The capacity of the National Human Rights Commission to investigate and prosecute alleged human rights violations should be strengthened.

10. The Committee is concerned about the large number of enforced or involuntary disappearances of persons during the time of the armed conflict, and particularly about the State party's inability to identify, or inaction in identifying those responsible and to bring them to justice. This situation, taken together with the reluctance of victims to file or pursue complaints (see para. 9 above), creates an environment that is conducive to a culture of impunity.

The State party is urged to implement fully the right to life and physical integrity of all persons (arts. 6, 7, 9 and 10, in particular) and give effect to the relevant recommendations made by the United Nations Commission on Human Rights' Working Group on Enforced or Involuntary Disappearances and by the Presidential

Commissions for Investigation into Enforced or Involuntary Disappearances. The National Human Rights Commission should be allocated sufficient resources to monitor the investigation and prosecution of all cases of disappearances.

11. While noting that corporal punishment has not been imposed as a sanction by the courts for about 20 years, the Committee expresses concern that it is still statutorily permitted, and that it is still used as a prison disciplinary punishment. Moreover, despite directives issued by the Ministry of Education in 2001, corporal punishment still takes place in schools (art. 7).

The State party is urged to abolish all forms of corporal punishment as a matter of law and effectively to enforce these measures in primary and secondary schools, and in prisons.

12. The Committee is concerned that abortion remains a criminal offence under Sri Lankan law, except where it is performed to save the life of the mother. The Committee is also concerned by the high number of abortions in unsafe conditions, imperilling the life and health of the women concerned, in violation of articles 6 and 7 of the Covenant.

The State party should ensure that women are not compelled to continue with pregnancies, where this would be incompatible with obligations arising under the Covenant (art. 7 and General Comment 28), and repeal the provisions criminalizing abortion.

13. The Committee is concerned that the Prevention of Terrorism Act (PTA) remains in force and that several of its provisions are incompatible with the Covenant (arts. 4, 9 and 14). The Committee welcomes the decision of the Government, consistent with the Ceasefire Agreement of February 2002, not to apply the provisions of the PTA and to ensure that normal procedures for arrest, detention and investigation prescribed by the Criminal Procedure Code are followed. The Committee is also concerned that the continued existence of the PTA allows arrest without a warrant and permits detention for an initial period of 72 hours without the person being produced before the court (sect. 7), and thereafter for up to 18 months on the basis of an administrative order issued by the Minister of Defence (sect. 9). There is no legal obligation on the State to inform the detainee of the reasons for the arrest; moreover, the lawfulness of a detention order issued by the Minister of Defense cannot be challenged in court. The PTA also eliminates the power of the judge to order bail or impose a suspended sentence, and places the burden of proof on the accused that a confession was obtained under duress. The Committee is concerned that such provisions, incompatible with the Covenant, still remain legally enforceable, and that it is envisaged that they might also be incorporated into the Prevention of Organized Crimes Bill 2003.

The State party is urged to ensure that all legislation and other measure enacted taken to fight terrorism are compatible with the provisions of the Covenant. The provisions of the Prevention of Terrorism Act designed to fight terrorism should not be incorporated into the draft Prevention of Organized Crime Bill to the extent that they are incompatible with the Covenant.

14. The Committee is concerned about recurrent allegations of trafficking in the State party, especially of children (art. 8).

The State party should vigorously pursue its public policy to combat trafficking in children for exploitative employment and sexual exploitation, in particular through the

effective implementation of all the components of the National Plan of Action adopted to give effect to this policy.

15. The Committee notes with concern that overcrowding remains a serious problem in many penitentiary institutions, with the inevitable adverse impact on conditions of detention in these facilities (art. 10).

The State party should pursue appropriate steps to reduce overcrowding in prisons, including through resorting to alternative forms of punishment. The National Human Rights Commission should be granted sufficient resources to allow it to monitor prison conditions effectively.

16. The Committee expresses concern that the procedure for the removal of judges of the Supreme Court and the Courts of Appeal set out in article 107 of the Constitution, read together with Standing Orders of Parliament, is incompatible with article 14 of the Covenant, in that it allows Parliament to exercise considerable control over the procedure for removal of judges.

The State party should strengthen the independence of the judiciary by providing for judicial, rather than parliamentary, supervision and discipline of judicial conduct.

17. While appreciating the repeal of the statutory provisions relating to criminal defamation, the Committee notes with concern that State radio and television programmes still enjoy broader dissemination than privately owned stations, even though the Government has taken media-related initiatives, by repealing the laws that provide for State control of the media, by amending the National Security Act and by creating a Press Complaints Commission (art. 19).

The State party is urged to protect media pluralism and avoid state monopolization of media, which would undermine the principle of freedom of expression enshrined in article 19 of the Covenant. The State party should take measures to ensure the impartiality of the Press Complaints Commission.

18. The Committee is concerned about persistent reports that media personnel and journalists face harassment, and that the majority of allegations of violations of freedom of expression have been ignored or rejected by the competent authorities. The Committee observes that the police and other government agencies frequently do not appear to take the required measures of protection to combat such practices (arts. 7, 14 and 19).

The State party should take appropriate steps to prevent all cases of harassment of media personnel and journalists, and ensure that such cases are investigated promptly, thoroughly and impartially, and that those found responsible are prosecuted.

19. While commending the introduction since 1995 of legislation designed to improve the condition of women, the Committee remains concerned about the contradiction between constitutional guarantees of fundamental rights and the continuing existence of certain aspects of personal laws discriminating against women, in regard to marriage, notable the age of marriage, divorce and devolution of property (arts. 3, 23, 24 and 26).

The State party should complete the ongoing process of legislative review and reform of all discriminatory laws, so as to bring them into conformity with articles 3, 23, 24 and 26 of the Covenant.

20. The Committee deplores the high incidence of violence against women, including domestic violence. It regrets that specific legislation to combat domestic violence still awaits adoption and notes with concern that marital rape is criminalized only in the case of judicial separation (art. 7).

The State party is urged to enact appropriate legislation in conformity with the Covenant without delay. It should criminalize marital rape in all circumstances. The State party is also urged to initiate awareness-raising campaigns about violence against women.

D. Dissemination of information about the Covenant (art. 2)

21. The fifth periodic report should be prepared in accordance with the Committee's reporting guidelines (CCPR/C/66/GUI/Rev.1) and be submitted by 1 November 2007. The State party should pay particular attention to indicating the measures taken to give effect to these concluding observations. The Committee requests that the text of the State party's fourth periodic report and the present concluding observations be published and widely disseminated throughout the country.

22. In accordance with rule 70, paragraph 5, of the Committee's rules of procedure, the State party should provide information, within one year, on its response to the Committee's recommendations contained in paragraphs 8, 9, 10 and 18. The Committee requests the State party to provide information in its next report on the other recommendations made and on the implementation of the Covenant as a whole.
