



# International Covenant on Civil and Political Rights

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## Human Rights Committee

### List of issues in relation to the sixth periodic report of Sri Lanka\*, \*\*

#### Constitutional and legal framework within which the Covenant is implemented (art. 2)

1. With reference to the State party's sixth periodic report (CCPR/C/LKA/6, paras. 19–21), please provide information about the status of the constitutional reform process. Please report on the status and content of the new Bill of Rights under consideration and clarify whether it will guarantee the rights recognized in the Covenant, including the right to life.
2. With reference to the previous concluding observations (para. 5), to the Committee's evaluation of the State party's follow-up information (see CCPR/C/117/2) and to the State party's sixth periodic report (CCPR/C/LKA/6, para. 15), please report on the implementation of the nineteenth amendment to the Constitution (enacted to limit excessive executive power and facilitate independent institutions including the judiciary). Please respond to concerns that certain proposed initiatives, such as the private member's bill seeking to introduce the twenty-second amendment to the Constitution, aimed at vesting in the President wide powers, inter alia relating to the appointment of members of the judiciary and the holding of ministerial portfolios, undermine the rule of law and the independence of the judiciary.
3. Please report on measures taken to ensure effective judicial review of the constitutionality of legislation adopted by Parliament, and on any plans to establish a constitutional court.
4. With reference to the previous concluding observations (para. 6) and to the State party's sixth periodic report (CCPR/C/LKA/6, paras. 22–24), please report on measures taken to ensure full compliance with all the Views adopted in relation to the State party. Please also provide information on the status of deliberations in the Supreme Court relating to the legal effect of the *Nallaratnam Singarasa v. Attorney General* decision of 2006.

#### Non-discrimination and equality between men and women (arts. 2, 3, 25 and 26)

5. With reference to the previous concluding observations (para. 7) and to the State party's periodic report (CCPR/C/LKA/6, paras. 25–27), please report on progress relating to: (a) reviewing and repealing all discriminatory provisions against women, in particular under the Land Development Ordinance of 1935 and the Muslim Marriage and Divorce Act of 1951; (b) addressing the persistent patriarchal attitudes and discriminatory stereotypes, including in the media, regarding the roles of women and men in the family and in society; and (c) achieving equitable representation of women in political and public life, particularly

\* Adopted by the Committee at its 128th session (2–27 March 2020).

\*\* Unless otherwise indicated, paragraph numbers in parentheses refer to the Committee's previous concluding observations (CCPR/C/LKA/CO/5).



in legislative and executive bodies at the national, regional and local levels, and especially in decision-making positions.

6. With reference to the previous concluding observations (para. 8) and to the State party's periodic report (CCPR/C/LKA/6, paras. 28–30), please clarify whether the recommendation to include an explicit prohibition of discrimination on the grounds of sexual orientation and gender identity in the draft Constitution has been accepted, and report on: (a) any progress in amending sections 365, 365A and 399 of the Penal Code that are used to criminalize lesbian, gay, bisexual, transgender and intersex conduct; and (b) measures taken to address effectively the reported discrimination against and social stigmatization of lesbian, gay, bisexual, transgender and intersex persons, including violence, police harassment and extortion (including through arrests under the Vagrants Ordinance 1841), and discrimination in access to housing, health care and employment.

#### **Gender-based violence (arts. 2, 3, 6, 7 and 26)**

7. With reference to the previous concluding observations (para. 9), please report on the progress made in eradicating gender-based violence, including domestic violence, rape and other forms of sexual violence, such as sexual bribery, particularly of widows and divorcees, and in addressing impunity for such acts, including information on:

(a) The status of draft amendments to the Prevention of Domestic Violence Act No. 34 of 2005 (CCPR/C/LKA/6, paras. 39–40), and the progress made in amending section 363 (a) of the Penal Code (CCPR/C/LKA/6, para. 41), in criminalizing marital rape in all circumstances where the consent of a spouse is absent, and in implementing the measures relating to the investigation and prosecution of cases of violence against women, including the measures established in the National Human Rights Action Plan 2017–2021 (CCPR/C/LKA/6, para. 34);

(b) Measures taken, and their impact, to: (i) address the factors contributing to underreporting of gender-based violence, including the sociocultural values condoning it, the fear of reprisals, and the obstacles to effective access to justice, including the requirement for participation in mediation prior to pursuing a domestic violence case in court; (ii) put an end to the unlawful police practice of recording some statutory rapes as having been committed “with consent”; and (iii) ensure the effective investigation, prosecution and sanctioning of perpetrators (please include relevant statistics from 2015 onwards).

#### **States of emergency and counter-terrorism measures (arts. 2, 7, 9, 10, 14, 18, 19, 21 and 26)**

8. Please report on any progress made in bringing Public Security Ordinance No. 25 of 1947 into line with the Covenant. Please also outline the measures derogating from the provisions of the Covenant taken pursuant to Emergency Regulations in 2019, comment on their compliance with article 4 of the Covenant, and respond to reports that such derogations have resulted in undue restrictions to the rights to liberty and security of person, freedom of expression and of peaceful assembly, and freedom to manifest one's religion or belief, among others.

9. With reference to the previous concluding observations (para. 11), please report on the progress made in repealing and replacing Prevention of Terrorism Act No. 48 of 1979 with regulations that are compatible with the Covenant, and elaborate on the content of any counter-terrorism bill under consideration, including on its full compliance with the Covenant. Please clarify whether the administratively enforced de facto moratorium on new arrests under the Prevention of Terrorism Act continues to be in operation, and report on the status of persons currently being held in judicial custody, on any effective judicial review of the legality of their detention, and on the trials of persons charged under the Act (CCPR/C/LKA/6, para. 51) and the free trial guarantees afforded to them.

**Accountability for serious human rights violations and the right to an effective remedy (arts. 2, 6, 7, 9, 14, 16, 18, 19 and 26)**

10. In view of the State party's announcement in February 2020 that it would be withdrawing from its commitments set forth in Human Rights Council resolutions 30/1 (2015), 34/1 (2017) and 40/1 (2019), please report on the status of transitional justice and other measures taken to end impunity for violations of international humanitarian law and violations and abuses of human rights committed by both the State party and the Liberation Tigers of Tamil Eelam during the Civil War, including unlawful killings, enforced disappearances, arbitrary deprivation of liberty, torture, and sexual violence against women, men and children, that may amount to war crimes and crimes against humanity, including, inter alia, information on:

(a) Steps to address the allegations of interference in, and obstruction of, the judicial or investigative process, by politicians and members of security forces;

(b) The review of the Protection of Victims of Crime and Witnesses Act No. 4 of 2015, including the safeguards for the effective protection of victims and witnesses, investigations into allegations of intimidation of witnesses in cases against the military, and clarification as to whether any draft or adopted amendments allow overseas witnesses to testify by video link from secure and secret locations outside the State party;

(c) Progress made towards ensuring effective investigations, prosecutions and convictions of perpetrators and the provision of full reparation to victims, including in relation to the killing of five students in Trincomalee in January 2006, and of 17 humanitarian workers of the non-governmental organization Action contre la faim, in Muttur in August 2006, and other related cases.

11. Please clarify whether war crimes, crimes against humanity and genocide have been criminalized in the domestic legislation. Please report on the implementation of the recommendations of the Consultation Task Force on Reconciliation Mechanisms and on the timeline for, and progress towards, establishing a truth-seeking commission and a judicial accountability mechanism, and include information on the scope and mandate of such mechanisms and on their compatibility with the Covenant, including with regard to the right of victims of human rights violations to an effective remedy and to full reparation.

12. Please report on progress made in reforming the security sector as part of the transitional justice process; respond to reports that security and other officials have remained in their positions, or have been appointed or promoted to senior positions, such as in the case of Major General Shavendra Silva who was appointed Chief of Staff of the Sri Lanka Army on 9 January 2019, despite there being allegations of serious human rights violations against them or against individuals under their command; and clarify whether robust vetting procedures have been put in place to remove from office security personnel and other public officials involved in serious human rights violations.

13. Please clarify whether a comprehensive national policy for reparations for victims has been adopted, respond to concerns regarding the mandate and the independence of the Office for Reparations, clarify whether former combatants are eligible for reparations, and provide information on individual and collective reparations provided pursuant to the Office for Reparations Act No. 34 of 2018.

14. With regard to persons who went missing in the context of the conflict, please provide information on: (a) measures taken to strengthen the capacity of the Office on Missing Persons, particularly with regard to investigations and the identification of human remains, and to provide it with adequate resources and technical means for the effective implementation of its mandate in practice; (b) progress made in clarifying the fate and whereabouts of missing persons, including victims of enforced disappearance, in bringing perpetrators to justice and in providing full reparation to victims, including in relation to the mass graves in Matale and Mannar; and (c) the scope and content of the intended review of the Office on Missing Persons Act No. 14 of 2016. Please also respond to allegations of cases of enforced disappearance of short duration for the purpose of extracting bribes.

**Right to life, prohibition of torture and other cruel, inhuman or degrading treatment or punishment, and liberty and security of person (arts. 6, 7, 9 and 14)**

15. Please clarify whether there are any plans to resume the implementation of the death penalty for drug-related offences, in violation of article 6 (2) of the Covenant, and thus to abandon the long-standing moratorium on the death penalty. Please provide information about the status of the bill to abolish the death penalty tabled by a member of parliament in August 2019 and about any other steps planned or taken towards the legal abolition of the death penalty and the ratification of the Second Optional Protocol to the Covenant. Pending abolition, please clarify whether any comprehensive review of relevant legislation is planned with a view to ensuring that the death penalty may be imposed only for the most serious crimes, as prescribed in article 6 (2) of the Covenant, that is, only for crimes of extreme gravity involving intentional killing, and that death sentences are not mandatory for certain crimes.

16. Please respond to reports indicating that security forces have committed acts of abduction, unlawful detention, torture and sexual violence against men and women since 2016 and to concerns that such practices might still continue in the northern part of the State party, and provide information on investigations and prosecutions in regard to such allegations.

17. In connection with the previous concluding observations (para. 16), please respond to reports of, and impunity for, torture and ill-treatment of persons deprived of their liberty by police and security forces for purposes such as the extracting of confessions, including systematic use of torture of persons arrested and detained under the Prevention of Terrorism Act. Please report on measures taken, and on their impact, to enforce the “zero-tolerance policy” towards torture effectively, and to investigate promptly, thoroughly and independently all such allegations, to prosecute perpetrators, sanction them in a manner commensurate with the gravity of the offence, and to provide full reparation to victims or their families (providing relevant statistics). Please provide information on deaths in custody, and report on investigations conducted and their outcomes, including in the case of two young male Muslim inmates in Welikada and Batticaloa prisons.

18. In connection with the previous concluding observations (paras. 17–18), please respond to reports of arbitrary arrest and detention, and indicate the measures taken to address effectively the reported disproportionate use of arbitrary arrests and detention against Tamils and Muslims, including since the terrorist attacks of April 2019. Please also address reports of the following: (a) persons arrested or detained by the police not being systematically informed of their right to legal assistance and not having access to counsel from the very outset of the deprivation of liberty; (b) deficient judicial review of legality of detention, inconsistent and discriminatory application of bail provisions and lack of effective access to other non-custodial alternative measures to pretrial detention; and (c) prolonged pretrial detention, the high proportion of detainees awaiting trial among the prison population, and the time spent in pretrial detention not being properly taken into account when determining the final sentence.

19. Please respond to reports of deprivation of liberty without sufficient legal and procedural safeguards against arbitrariness, in cases related to: (a) the placement of persons with psychosocial or intellectual disabilities in psychiatric or similar institutions and lack of judicial review of decisions relating to psychiatric treatment; (b) the rehabilitation and treatment of drug addicts in two centres akin to prisons; and (c) the rehabilitation of women, most of whom are detained pursuant to the House of Detention Ordinance 1907 for acts of vagrancy under the Vagrants Ordinance 1841, and of other persons in vulnerable situations, at the Methsevana State House of Detention in Gangodawila.

**Independence of the judiciary, administration of justice and fair trial (art. 14)**

20. Please report on measures to strengthen the independence and impartiality of judges and prosecutors, including by providing information on the procedure and criteria for the selection, appointment and dismissal of judges, and the safeguards against executive interference and political influence in the appointing process, and against arbitrary impeachment of judges without sufficient guarantees of due process and fair trial.

21. Please outline the measures taken, and their impact, in relation to addressing effectively the excessive delays in trials and the ensuing backlog of cases, and the barriers to equal access to justice for Tamil-speaking people owing to the very limited use of the Tamil language in judicial proceedings and the insufficient numbers of Tamil-speaking judges, counsels and police officials and the poor interpretation and translation services or lack thereof.

**Internally displaced persons, refugees and asylum seekers (arts. 2, 7, 12, 13, 17 and 26)**

22. With reference to the previous concluding observations (para. 13) and to the State party's periodic report (CCPR/C/LKA/6, paras. 57–60), please report on the progress made in resettling internally displaced persons, in providing durable solutions relating inter alia to housing and employment, and in restitution of immovable property, including land. Please provide updated information on the restitution of private land occupied by the military in Northern and Eastern Provinces to their original owners, and address concerns related inter alia to partial or incomplete restitution, new land grabs and other contentious land issues, such as alleged "colonization" through the establishment of irrigation, forestry and archaeological projects, and continued military involvement in economic activities.

23. Please report on measures taken to address effectively the rise in discrimination and hostility towards refugees and asylum seekers since the terrorist attacks of 21 April 2019. Please comment on allegations that over 1,000 refugees and asylum seekers, particularly from Afghanistan, the Islamic Republic of Iran, and Pakistan, were forced to flee from Negombo and had to be relocated as a result of threats, violence and intimidation perpetrated by mobs in the aftermath of the 21 April 2019 attacks. Please report on measures taken to investigate the attacks against refugees and asylum seekers and bring perpetrators to justice, to ensure their safety and security, and to provide adequate housing to those displaced.

**Non-discrimination, prohibition of advocacy of national, racial and religious hatred, freedom of conscience and religious belief, and the rights of minorities (arts. 2, 18, 20, 26 and 27)**

24. Please respond to concerns regarding the lack of effective legal protection of minority religious communities against incitement and hate crimes, including perceived police bias in addressing complaints and the selective application of section 3 of the International Covenant on Civil And Political Rights Act No. 56 of 2007 to target minorities while invoking that Act to a limited extent in relation to incitement and hate crimes perpetrated by the majority communities. Please report on measures taken to prevent: (a) ethno-religious hostility targeted at minorities and to ensure accountability for hate speech and misinformation online and offline; (b) incitement to hatred, discrimination and violence against Muslims; and (c) attacks and mob violence perpetrated by Buddhist nationalist groups and their supporters targeting mosques and Muslim-owned businesses and property, such as the communal rioting in the Kandy district in March 2018 and in the districts of Puttalam and Kurunegala in May 2019.

25. In connection with the previous concluding observations (para. 23), please comment on the following reported restrictions on freedom of religion and belief in law and in practice, and explain their compatibility with the Covenant:

- (a) Unequal treatment of religions owing to the special status afforded to Buddhism;
- (b) Lack of recognition and protection of proselytism;
- (c) Restricting freedom to manifest one's religion or belief on the grounds of national security;
- (d) Unclear registration requirements of religious organizations or places of worship and cumbersome procedures;
- (e) Intolerance towards Muslims and Evangelical Christians, including harassment, physical assaults, interference with religious meetings and damage to their places of worship.

**Rights to freedom of expression, peaceful assembly and freedom of association (arts. 19, 21 and 22)**

26. With reference to the previous concluding observations (para. 21), please respond to continued reports of harassment, intimidation, surveillance and attacks against journalists, media workers and human rights defenders, and report on measures taken to ensure that they are protected effectively against such acts and to bring perpetrators to justice, and provide information on progress made in addressing impunity for past cases, including on the status of the investigation into the killing of the journalist Lasantha Wickrematunge in January 2009 and into the disappearance of the journalist Prageeth Ekmaligoda in January 2010. Please also respond to concerns regarding the lack of independence of the Telecommunications Regulatory Commission and to reports of undue restrictions on online expression, including undue blocking of online content, social media and communication platforms, and prosecution for online expression under vaguely defined regulations, including through the misapplication of section 3 of International Covenant on Civil And Political Rights Act No. 56 of 2007.

27. Please explain how subjecting the right of peaceful assembly to restrictions in the interests of racial and religious harmony is compatible with the Covenant. Please comment on wide provisions allowing police officers of a certain rank to give directions prohibiting a demonstration or imposing such conditions “as deemed necessary”. Please respond to reports of interference with the exercise of freedom of peaceful assembly, including intimidation of families and activists against organizing and participating in memorial ceremonies for persons who have disappeared, the allegedly biased and routine use of court injunctions to prevent assemblies, and disproportionate force against protesters, including the use of water cannon and tear gas.

**Freedom of association (art. 22)**

28. Please clarify how restricting freedom of association in the interests of racial and religious harmony and the national economy is compatible with the Covenant. Please address concerns relating to the burdensome reporting obligations for non-governmental organizations; the security clearance that they are required to obtain from the Ministry of Defence, with no requirement for the Ministry to provide reasons for withholding it and no avenue for appeal; the requirement for associations’ programmes to be approved, and the alleged rejection of programmes deemed political or sensitive; and the informal refusals of registration for associations working on politically sensitive issues such as disappearances, land rights, post-conflict reconciliation, and rights of lesbian, gay, bisexual, transgender and intersex individuals. Please also respond to reports of police and intelligence officials visiting the premises of human rights organizations and making enquiries about activities, donors and other matters, reportedly aimed at intimidating activists.

**Participation in public affairs (arts. 25, 26 and 27)**

29. Please report on measures taken to achieve effective participation by members of ethnic, religious and linguistic minorities in public affairs, as well as on the implementation of the Official Language Policy and its impact on enhancing minorities’ participation and on ensuring their language rights and access to services. Please respond to reported violations relating to the presidential elections, including: (a) allegations of vote buying and political bribery ahead of the elections of 2015; and (b) attempts to hinder and deter members of minorities, such as Muslims and Tamils, from voting during the elections of 2019, including unauthorized roadblocks in the north of the State party, and violent attacks such as gunmen opening fire on buses transporting hundreds of Muslims to polling stations in Mannar.