

Concluding observations of the Committee on the Elimination of Discrimination against Women: Sri Lanka

Forty-eighth session, 17 January – 4 February 2011, CEDAW/C/LKA/CO

1. The Committee considered the combined fifth, sixth and seventh periodic reports of Sri Lanka (CEDAW/C/LKA/5-7) at its 971th and 972nd meetings, on 26 January 2011 (see CEDAW/C/SR. 971 and 972). The Committee's list of issues and questions is contained in CEDAW/C/LKA/Q/7 and the responses of the Government of Sri Lanka are contained in CEDAW/C/LKA/Q/7/Add.1

A. Introduction

2. The Committee commends the State party's high level delegation, headed by the Secretary to the Ministry of Technology and Research, which included the Permanent Representative of Sri Lanka to the United Nations, the Secretary to the Ministry of Child Development and Women's Affairs and officials from various branches of Government.

3. It notes, however, that the delegation left several questions raised by the Committee during the dialogue unanswered.

4. The Committee notes the significant delay in the submission of the State party's periodic report. It regrets that the report was not prepared in a participatory process involving a wide range of national civil society organizations, including women's organizations, but notes that the State party committed to involving national civil society organizations in the preparation of the next report.

B. Positive aspects

5. The Committee welcomes the ratification of the State party to the Optional Protocol to the Convention on the Elimination of all Forms of Discrimination against Women on 15 October 2002 and the ratification of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography on 22 September 2006.

6. The Committee notes with satisfaction that Sri Lanka is on track towards achieving goals two (achieving universal primary education), four (reducing child mortality) and five (improving maternal health) of the Millennium Development Goals.

7. The Committee welcomes:

(a) The enactment of the Prevention of Domestic Violence Act (2005);

(b) The enactment of the Citizenship (Amendment) Act No. 16 of 2003 enabling a Sri Lankan woman to transmit her citizenship to her child;

(c) The Penal Code (Amendment) Act No. 16 of 2006 which includes a new definition of the offence of trafficking in persons in line with the United

Nations Convention Against Transnational Organized Crime and its Protocols and provision to impose certain reporting obligations on incidents of child abuse; and

(d) The establishment of the Ministry of Foreign Employment Promotion and Welfare, and the adoption of the Sri Lanka National Policy on Labour Migration which has a focus on concerns of migrant women workers.

8. The Committee also commends the State party's commitment to elaborate a National Action Plan for the Protection and Promotion of Human Rights including a Thematic Action Plan on Women.

Factors or difficulties preventing effective implementation of the Convention

9. The Committee recognizes the challenges, arising from the decades-long armed conflict, the Tsunami of 2004 and the recent floods, faced by the State party in the implementation of the Convention.

C. Principle areas of concern and recommendations

10. The Committee recalls the obligation of the State party to systematically and continuously implement all the provisions of the Convention and views the concerns and recommendations identified in the present concluding observations as requiring the priority attention of the State party between now and the submission of the next periodic report. Consequently, the Committee urges the State party to focus on those areas in its implementation activities and to report on actions taken and results achieved in its next periodic report. The Committee calls upon the State party to submit the present concluding observations to all relevant ministries, to the Parliament, and to the judiciary, so as to ensure their full implementation.

Parliament

11. While reaffirming that the Government has the primary responsibility and is particularly accountable for the full implementation of the obligations of the State party under the Convention, the Committee stresses that the Convention is binding on all branches of Government. It invites the State party to encourage its Parliament, in line with its procedures, where appropriate, to take the necessary steps with regard to the implementation of the present concluding observations and the Government's next reporting process under the Convention.

Legal status of the Convention

12. The Committee is concerned that, although the State party ratified the Convention in 1981, the Convention has not yet been accorded the status of domestic law under the Constitution or an Act of Parliament.

13. The Committee urges the State party to proceed without delay with the full incorporation of the Convention into its domestic legal system in order to give central importance to the Convention as the basis for the elimination of all forms of discrimination against women.

Prohibition of discrimination against women

14. The Committee is concerned that legislation in the State party does not prohibit discrimination against women in line with article 1 of the Convention covering both direct and indirect discrimination, or extending to acts of both public and private actors in accordance with article 2. In this regard, the Committee observes that the Women's Rights Bill which is being elaborated by the State party is not in line with the Convention.

15. The Committee calls upon the State party to:

- (a) Fully incorporate into appropriate domestic legislation such as the Women's Rights Bill, the principle of equality between women and men in line with article 2(a) of the Convention, as well as a prohibition of discrimination on the basis of sex in line with articles 1 and 2 of the Convention;
- (b) Ensure state responsibility for acts of discrimination by public and private actors in accordance with article 2(e) of the Convention, with a view to achieving formal and substantive equality between women and men.

Discriminatory laws

16. While noting that there is an ongoing reform of the Muslim Personal Law, the Committee is concerned about the persistence of discriminatory provisions in the law, including in the Penal Code, the Land Development Ordinance which gives preference to male heirs over females, the general personal laws, the Muslim Personal Law, the Kandyan Law and the Tesawalamai Law. The Committee is also concerned about the plurality of legal systems composed of the general, customary and religious laws and the lack of choice for women between the different legal systems. The Committee further reiterates its concern at the fact that there is no opportunity for judicial review of legislation pre-dating the Constitution.

17. The Committee calls upon the State party to:

- (a) Accelerate its review process to harmonize, within a specific timeframe, its domestic legislation with provisions of the Convention;
- (b) Expedite the adoption of bills aimed at modifying discriminatory laws, such as the Land Development Ordinance currently pending in Parliament for amendment;
- (c) In particular, provide its support for customary law reform through sensitization of, dialogue and collaboration with religious groups and community members, civil society organizations including women's nongovernmental organizations; and
- (d) Ensure that women are fully and equally involved in the law reform process.

National machinery for the advancement of women

18. While welcoming the State party's commitment to elaborate a thematic action plan on women, the Committee is concerned that the previous National Action Plan has never been adopted. The Committee is also concerned about the delays in the adoption of the bill establishing the National Commission on Women.

19. The Committee reiterates its recommendation to

- (a) Expedite the adoption of the Bill on the establishment of the National Commission on Women;
- (b) Ensure the independence of the members of the Commission and secure sufficient resources from the State budget for the work of the Commission.

Temporary special measures

20. The Committee notes with concern that the State party has no plans to adopt temporary special measures as a necessary strategy to accelerate the achievement of substantive equality between women and men in all areas of the Convention. The Committee is also concerned about information before the Committee referring to the Supreme Court's restrictive interpretation of the matter of affirmative action (Supreme Court Special Determination No. 2-11 of 2010).

21. The Committee calls upon the State party to:

- (a) Take temporary special measures, including specific timetables and numerical targets, in areas in which women are underrepresented or disadvantaged and allocate additional resources, where needed, to accelerate the advancement of women;
- (b) Familiarize all relevant officials with the concept of temporary special measures contained in article 4, paragraph 1, of the Convention, as interpreted in the Committee's general recommendation No. 25; and
- (c) Include comprehensive information on the use of such temporary special measures in relation to various provisions of the Convention and their impact in its next periodic report.

Stereotypes and discriminatory practices

22. The Committee is concerned about the persistence of stereotypes regarding the roles, responsibilities and identities of women and men among the general public and the media. The Committee is concerned that gender role stereotyping perpetuates discrimination against women and girls and is reflected in their disadvantageous and unequal status in many areas, such as employment, decision-making, land ownership, education including sexual and reproductive education, sexual harassment and other forms of violence against women, including violence in family relations.

23. The Committee urges the State party to:

- (a) Put in place a comprehensive strategy to modify or eliminate practices and stereotypes that discriminate against women in conformity with articles 2, 2 (f) and 5 (a) of the Convention. This strategy should include awareness raising efforts targeting the general public and the media, including religious and community leaders, and be undertaken in collaboration with civil society and women's organizations.
- (b) Use measures that target young people and adults to strengthen understanding of the equality of women and men, and to work through the educational system, both formal and informal, as well as with the mass media, to enhance a positive and non-stereotypical portrayal of women; and
- (c) Monitor and review the measures taken in order to assess their impact and to take appropriate action, and include in next report clear information on this issue.

Violence against women

24. The Committee is concerned that, despite the adoption of the Prevention of Domestic Violence Act, there are significant delays before cases are processed under this Act. It appears from the constructive

dialogue that most cases are dealt with through police mediation, and that family relations prevail over protection of women and suppression of violence against women. The Committee is further concerned that marital rape is recognized only if a judge has previously acknowledged the separation of the spouses. It also regrets the absence of specific data and information on domestic violence. The Committee is concerned that the criminalization of same sex relationship results in women being completely excluded from legal protection. It is also concerned about the information that the law enforcement officers are allowed to arbitrarily detain them.

25. In accordance with its general recommendation No. 19, the Committee urges the State party to:

- (a) Give priority attention to combating violence against women and girls and to adopt comprehensive legislation to criminalize all forms of violence against women;
- (b) Carry out additional educational and awareness-raising trainings for the judiciary and public officials, in particular law enforcement officers, health service providers and social workers, community leaders and the general public so as to raise awareness and sensitization that all forms of violence against women constitute criminal offense;
- (c) Take the necessary measures to provide support to victims of violence, including by improving women's access to justice, and implement its decision to establish State-sponsored shelters for victims of violence;
- (d) Extend criminalization of marital rape regardless of judicial acknowledgement of separation; and
- (e) Take measures to prevent violence against women, investigate occurrences, prosecute and punish perpetrators;
- (f) Provide protection, relief and remedies, including appropriate compensation, to victims and their families; and
- (g) Decriminalize sexual relationship between consenting adults of same sex, and abide by the obligation of non-discrimination under the Convention.

Trafficking and exploitation of prostitution

26. The Committee commends the efforts undertaken by the State party to combat trafficking, including the introduction of a new definition of the offence of

trafficking in persons in the Penal Code, the organization of awareness-raising activities and the establishment of an Anti-Human Trafficking Task Force. The

Committee further commends that a bill on witness protection is being elaborated. The Committee is, however, concerned at the low number of convictions and punishment of those convicted of trafficking and at the lack of protective measures and safe homes for victims of trafficking. It is also concerned that the State party has not ratified the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime.

27. The Committee urges the State party to:

(a) Strengthen its measures to combat all forms of trafficking in women and children, including through increased international, regional and bilateral cooperation with countries of origin and transit, in line with article 6 of the Convention.;

(b) Ensure the prosecution and punishment of individuals involved in trafficking and the protection and recovery of victims of trafficking;

(c) Ensure that information and training on anti-trafficking legislation be provided to the judiciary, law enforcement officers, border guards, social workers and service providers in all parts of the country;

(d) Take into account the Recommended Principles on Human Rights and Human Trafficking of the United Nations Office of the High Commissioner for Human Rights (E/2002/68/Add.1) in the design of policies to combat trafficking in human beings, especially women and girls; and

(e) Ratify the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (Palermo Protocol).

28. The Committee is concerned about information received in respect of the use by the police of the Vagrancy Ordinance of 1842 to arbitrarily arrest sex workers.

29. The Committee urges the State party to ensure that the police refrain from applying the provisions of the Vagrancy Ordinance to arrest sex workers on the street.

Participation in political and public life

30. The Committee is concerned about the extremely low level of participation of women in politics and public life, including a low representation of women in Parliament, Provincial Councils and Local Authorities, at the decision-making level and in the diplomatic corps. The Committee is further concerned that no measures have been taken to encourage women to participate in political life and that the State party attributes the low representation of women to their own choice, their preoccupation with multiple roles, high costs of the electoral campaigns and the lack of confidence of political parties in the ability of women to garner votes.

31. The Committee reiterates its recommendation that the State party take all necessary measures to increase the representation of women in politics and public life at the local, provincial and national levels. The Committee also urges the State party to:

(a) Pursue sustained policies aimed at the promotion of the full and equal participation of women in decision-making in all areas of public, political and professional life;

(b) Fully utilize general recommendation No. 23 concerning women in public life and adopt temporary special measures, within a clear timeframe and with numerical targets, in accordance with article 4, paragraph 1, of the Convention and general recommendation No. 25; and

(c) Implement awareness-raising campaigns, including on the purpose of introducing temporary special measures, such as quotas or financial support to women candidates, and to highlight the importance to

society as a whole of women's full and equal participation in leadership positions in all sectors and at all levels.

Education

32. While noting the achievements of the State party in the area of women's education and efforts undertaken to eliminate gender role stereotyping in formal education, the Committee regrets the lack of data disaggregated by sex and ethnic groups at each level of the education system. The Committee is also concerned about the persistence of gender role stereotyping in the educational system, resulting in girls' concentration in lower skill areas of vocational and technical education, as well as the lack of action of the State party to combat the persistent underrepresentation of women in the high education technical and engineering fields.

33. The Committee encourages the State party to:

- (a) Strengthen its efforts to achieve universal provision of quality education for girls at each level of the education system and from each ethnic group;
- (b) Continue its efforts to overcome gender role stereotyping in the formal education; and
- (c) Elaborate a policy aimed at promoting the access of girls to vocational and technical education and women in higher education to science, engineering and other technical disciplines.

Employment

34. The Committee is concerned about the persistence of discrimination against women in the labour market, in particular the concentration of women in low-skilled and low-paid jobs and the high rate of unemployment affecting women despite the achievements of the State party in the area of education. The Committee expresses its concern at the lack of protection of women working in the informal sector and the lack of specific law on sexual harassment. It is further concerned that, despite the State party's ratification of the ILO Convention No. 100 on Equal Remuneration, the principle of equal remuneration for men and women for work of equal value has not been reflected in national legislation.

35. The Committee urges the State party to:

- (a) Ensure equal opportunities for women and men in the formal labour market through, inter alia, temporary special measures aimed at eliminating both horizontal and vertical occupational segregation, in accordance with article 4, paragraph 1, of the Convention and general recommendation No. 25;
- (b) Elaborate a plan of action for the protection of women working in the informal sector including women's access to social security and other benefits; and
- (c) Include in its next periodic report legislative and other measures taken to protect women from sexual harassment in the workplace.

Health

36. While the Committee acknowledges the achievements of the State party in the area of maternal healthcare, it is concerned about the limited knowledge of reproductive health and the low rate of use of contraceptives, the high level of teenage pregnancies especially in less developed and conflict-

affected areas, as well as the low accessibility to family planning and the increase in prevalence of HIV/AIDS infection among women. The Committee is also concerned that abortion is a punishable offence under the law, unless the purpose is to save the life of the mother and regrets that about 10 percent of maternal mortality is reported as the direct result of clandestine abortion.

37. Within the framework of the Committee's general recommendation No. 24, the Committee urges the State party to:

(a) Ensure that family planning and reproductive health education are widely promoted, in particular for internally displaced women and girls as well as women working in less developed and conflict-affected areas, with special attention to the prevention of early pregnancies of girls and the control of sexually transmitted diseases and HIV/AIDS; and

(b) Reduce maternal mortality rates by identifying and addressing causes of maternal death;

(c) Take measures to ensure that women do not seek unsafe medical procedures, such as illegal abortion, because of lack of appropriate services in regard to fertility control; and

(d) Review the laws relating to abortion with a view to removing punitive provisions imposed on women who undergo abortion, providing them with access to quality services for the management of complications arising from unsafe abortion.

Rural women

38. The Committee notes with appreciation the elaboration by the State party of a National Development Agenda. It, however, expresses its concern about the lack of data on disparities between urban and rural women and reiterates its concern about the increase of the number of widows as a result of the conflict, and the Tsunami in 2004, many of whom are elderly, illiterate and with meagre means of living.

The Committee notes that discriminatory practices prevent women from acquiring ownership of land since only the "head of household" is authorized to sign official documentation such as land ownership certificates and receive pieces of land from Government.

39. The Committee urges the State party to:

(a) Ensure that a gender perspective is included in the National Development Agenda;

(b) Collect data on the situation of rural women and disparities between rural and urban women and include such data and analysis in the next periodic report;

(c) Develop policies and programmes, including income generation schemes, to improve the situation of women heads of households and older women;

(d) Abolish the concept of "head of household" in administrative practice and recognize joint or co-ownership of land; and

(e) Speedily amend the Land Development Ordinance in order to ensure that joint or co-ownership be granted to both spouses when the State allocates land to married couples.

Impact of conflict on women

40. While noting the State party's explanation that women were not subjected to violence and discrimination during the last stages of the conflict and in the post conflict phase, the Committee remains deeply concerned about reports of gross violations of the human rights of women on both sides, particularly the Tamil minority group, the internally displaced women and the female ex-combatants. The Committee is particularly concerned about reports of sexual violence allegedly perpetrated also by the armed forces, the police and militant groups. The Committee is also deeply concerned about reports on the inadequate infrastructure and the limited availability of basic services such as shelter, health facilities, water and sanitation. The Committee is further concerned that the Ministry of Child Development and Women's Empowerment is not a member of the Consultative Committee on Humanitarian Assistance (CCHA) which consists of representatives of relevant Ministries to consult with donor countries and agencies, and that the Lessons Learnt and Reconciliation Commission composed of eight members appointed by the President only includes one woman.

41. The Committee urges the State party to:

- (a) Protect the women affected by the prolonged conflict, particularly the Tamil minority group, including internally displaced women and female ex-combatants from any form of human rights violations;
- (b) Promptly investigate, prosecute and punish all acts of violence including acts of sexual violence perpetrated by private actors as well as by the armed forces, the Police and militant groups;
- (c) Establish counselling centres for women to address the traumatic experiences, specifically with regard to sexual violence;
- (d) Provide adequate infrastructure for women IDPs and returnees especially housing and health facilities, water and sanitation;
- (e) Include provision for economic and social rights in post-conflict reconstruction including through the adoption of temporary special measures;
- (f) Ensure the freedom of movement of internally displaced women, wider access of international organizations to the conflict-affected population in the North of the country and the population's access to humanitarian aid;
- (g) Consider having an independent international accountability mechanism, in accordance with recent proposal of the UN High Commissioner for Human Rights, mandated to investigate the cases of serious violations of human rights, including women's rights, which have arisen in the last stages of the fighting in the State party; and
- (h) Include women in the country's post conflict, reconstruction and peace building process.

Migrant women

42. While welcoming the protective measures taken by the State party for women who migrate from Sri Lanka, the Committee remains concerned that these women remain vulnerable to illegal employment agencies, and that many work in exploitative situations and experience violence and abuse at the hands of their employers.

43. The Committee urges the State party to take a rights-based approach in order to empower women migrant workers, in particular through implementing bilateral conventions with recipient countries and assisting migrant women who seek for redress.

Marriage and family relations

44. The Committee is concerned about the preservation of a combination of general, customary and religious marital laws that contain discriminatory elements against women. The Committee is concerned that polygamy is not prohibited, that there is no minimum age of marriage recognized under Muslim personal law, and that Tamil women need their husband's consent to appear in court or undertake any transaction. The Committee is further concerned about the lack of progress in recognizing no-fault divorce and women's economic rights upon divorce.

45. The Committee calls upon the State party to:

(a) Accelerate the amendment of the Muslim personal law regarding polygamy and early marriage and the Thesawalamai law which requires husband's consent for women to appear in court or undertake any transaction, in line with the Convention on the Rights of the Child and the Committee's general recommendation No. 21;

(b) Consider preparing a unified family code in conformity with the Convention in which equal right of inheritance, property and land are addressed, as well as polygamy and early marriage with the view to abolishing them, and include in it the option of civil provisions available for all women;

(c) Ensure women's participation in the law reform process; and

(d) Provide information in the next periodic report on efforts undertaken to recognize no-fault divorce and enhance women's economic rights upon divorce.

Data collection and analysis

46. While noting that comprehensive statistics have been provided as regards the health of children, the Committee is concerned by the limited availability of data disaggregated by sex and ethnic group in other fields, including violence against women, polygamy, the situation of internally displaced women and the disparities between urban and rural women, which are necessary for an accurate assessment of the situation of women, for informed and targeted policy making, and for the systematic monitoring and evaluation of progress achieved towards the realization of women's substantive equality in regard to all areas covered by the Convention.

47. The Committee calls upon the State party to continue to enhance the collection of comprehensive data disaggregated by sex and of measurable indicators to assess trends in the situation of women and progress towards the realization of women's substantive equality, and draws the State party's attention to the Committee's general recommendation No. 9 in this regard.

Amendment to article 20, paragraph 1 of the Convention

48. The Committee encourages the State party to accept, as soon as possible, the amendment to article 20, paragraph 1, of the Convention concerning the meeting time of the Committee. Beijing Declaration and Platform for Action

49. The Committee urges the State party, in the implementation of its obligations under the Convention, to fully utilize the Beijing Declaration and Platform for Action, which reinforce the provisions of the Convention, and requests the State party to include information thereon in its next periodic report.

Dissemination

50. The Committee requests the wide dissemination in Sri Lanka of the present concluding observations in order to make the people, government officials, politicians, parliamentarians and women's and human rights organizations, aware of the steps that have been taken to ensure the formal and substantive equality of women, as well as the further steps that are required in that regard. The Committee recommends that the dissemination should include the local community level. The State party is encouraged to organize a series of meetings to discuss progress achieved in the implementation of these observations. The Committee requests the State party to continue to disseminate widely, in particular to women's and human rights organizations, the Committee's general recommendations, the Beijing Declaration and Platform for Action and the outcome of the twenty-third special session of the General Assembly on the theme "Women 2000: gender equality, development and peace for the twenty first century".

Ratification of other treaties

51. The Committee notes that the adherence of the State party to the nine major international human rights instruments would enhance the enjoyment by women of their human rights and fundamental freedoms in all aspects of life. The Committee therefore encourages the Government of Sri Lanka to consider ratifying the treaties to which it is not yet a party, namely the International Convention for the Protection of All Persons from Enforced Disappearance and the Convention on the Rights of Persons with Disabilities. The Committee also encourages the Government of Sri Lanka to consider ratifying the Rome Statute of the International Criminal Court and the Convention relating to the Status of Refugees adopted in 1951.

Follow-up to concluding observations

52. The Committee requests the State party to provide, within two years, written information on the steps taken to implement the recommendations contained in paragraphs 31 and 41 above.

Financial and technical assistance

53. The Committee recommends that the State party avail itself of technical assistance from the relevant UN agencies in the development and implementation of a comprehensive programme aimed at the implementation of the above recommendations as well as the Convention as a whole. The Committee expresses its willingness to continue the dialogue with the State party to provide further guidance on the implementation of the above recommendations and the State party's obligations under the Convention.

Preparation and date of next report

54. The Committee requests the State party to ensure the participation of all ministries and public bodies in the preparation of its next periodic report and, at the same time, to consult a variety of women's and human rights organizations.

55. The Committee requests the State party to respond to the concerns expressed in the present concluding observations in its next periodic report under article 18 of the Convention. The Committee invites the State party to submit its next periodic report in February 2015.

56. The Committee invites the State party to follow the harmonized guidelines on reporting under the international human rights treaties, including the guidelines on a common core document and treaty-specific documents, approved at the fifth inter-committee meeting of the human rights treaty bodies, in June 2006 (HRI/MC/2006/3 and Corr.1). The treaty-specific reporting guidelines adopted by the Committee at its fortieth session, in January 2008 (A/63/38, annex I) must be applied in conjunction with the harmonized reporting guidelines on a common core document. Together, they constitute the harmonized guidelines on reporting under the Convention on the Elimination of All Forms of Discrimination against Women. The treaty specific document should be limited to 40 pages, while the updated common core document should not exceed 80 pages.