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**Committee on the Elimination of Racial Discrimination****Concluding observations on the tenth to seventeenth periodic reports of Sri Lanka\***

1. The Committee considered the combined tenth to seventeenth periodic reports of Sri Lanka (CERD/C/LKA/10-17), submitted in one document, at its 2468th and 2469th meetings (CERD/C/SR. 2468, CERD/C/SR. 2469), held on 15 and 16 August 2016. At its 2482nd meeting, held on 24 August 2016, it adopted the following concluding observations.

**A. Introduction**

2. The Committee welcomes the submission of the combined tenth to seventeenth periodic reports of the State party and the resumption of dialogue. While noting that the State party has been through almost three decades of conflict, the Committee regrets that the delays in submitting the periodic report have resulted in a prolonged interval of 15 years since the State party's periodic report was considered by the Committee.

3. The Committee nevertheless welcomes the open and constructive dialogue with the State party's delegation on the implementation of the Convention and the oral and written responses provided to the questions and concerns raised by the Committee, during the dialogue.

**B. Positive aspects**

4. The Committee welcomes the adoption of the following legislative and policy measures:

(a) Adoption of legislation to establish an Office of Missing Persons on 11 August 2016;

(b) Steps taken to advance the commitments made by the State party through its co-sponsorship of Human Rights Council resolution 30/1 of October 2015 on promoting reconciliation, accountability and human rights in the State party;

(c) Issuance of a standing invitation to Special Procedures mandate holders in December 2015 and recent facilitation of visits by several mandate holders;

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\* Adopted by the Committee at its ninetieth session (2-26 August 2016).

(d) The adoption of the Trilingual Policy in January 2012 (2012-2020), a ten year National Plan for a Trilingual Sri Lanka and recent efforts to ensure public sector workers speak both Sinhala and Tamil;

(e) Adoption of the National Plan of Action for the Promotion and Protection of Human Rights 2011-2016 and the current consultations on the National Human Rights Action Plan for 2017-2021.

5. The Committee welcomes the ratification by the State party of the following international instruments, since its last report:

(a) The International Convention for the Protection of All persons from Enforced Disappearances 25 May 2016;

(b) The Convention on the Rights of Persons with Disabilities on 8 February 2016;

(c) The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography in 2006;

(d) The Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women in 2002.

## C. Concerns and recommendations

### Statistics

6. While noting the statistical data provided by the State party, the Committee is concerned that it does not allow the Committee to gain a comprehensive picture of the demographic composition of the State party disaggregated in the manner specified in article 1, paragraph 1 of the Convention and the enjoyment of economic and social rights by various ethnic and ethno-religious groups, including numerically smaller groups such as the Burgher, Malay, Sri Lanka Chetty and Adivasi/Veddah peoples. The Committee further notes the absence of comprehensive data on the representation of ethnic and ethno-religious minorities including women from these groups in education, employment, and all levels of public and political affairs (art. 1).

7. **The Committee notes the State party's commitment to provide accurate data on the situation of ethnic and ethno-religious groups. To facilitate these efforts, the Committee refers the State party to its general recommendation No. 4 (1973) on reporting by States parties on the demographic composition of the population, its general recommendation No.8 concerning the interpretation and application of article 1, paragraphs 1 and 4 of the Convention, its general recommendations No. 24 (1999) concerning article 1 of the Convention, and the revised guidelines for reporting under the Convention (see CERD/C/2007/1, paras. 10-12). The Committee recommends that the State party gather and provide statistical data in its next periodic report on the demographic composition of the population, socio-economic situation, and representation in education, employment, and public and political life of ethnic and ethno-religious minorities, including women from these groups, and numerically smaller groups, in order to provide it with an empirical basis to evaluate the equal enjoyment of rights under the Convention.**

### Definition of racial discrimination

8. The Committee notes that Article 12 (2) of the Constitution provides a prohibition on discrimination including on the basis of race and caste. However, it is concerned that the definition of racial discrimination does not include all grounds as stipulated in Article 1 of

the Convention, including colour, or national or ethnic origin. The definition also does not specify the prohibition of both direct and indirect forms of discrimination (art. 1).

9. **The Committee notes that the State party is in the process of Constitutional reform, and recommends that it makes the necessary amendments to ensure that the prohibition of racial discrimination in the Constitution is in line with the Convention, and includes direct and indirect discrimination on the basis of all grounds for discrimination specified in Article 1.**

#### **Domestic application of the Convention and complaints**

10. The Committee, while noting that the State party practices the dualist system, emphasizes the importance of ensuring that sufficient national laws and policies exist to invoke the rights in the Convention domestically, and that policies and laws, including customary laws, are in line with the Convention, and notes the absence of comprehensive information in this regard. The Committee further notes with concern the absence of information, including statistical data, on complaints of racial discrimination, as well as investigations or prosecutions of perpetrators. The Committee reminds the State party that absence of complaints does not necessarily signify the absence of racial discrimination, but rather may signify impediments in invoking the rights in the Convention domestically, including the absence of relevant legislation under which the rights can be invoked. It may also signify lack of public awareness of the rights under the Convention as well as lack of access to, availability of, or confidence in methods to seek judicial recourse (arts. 2 and 4-7).

11. **Recalling its general recommendation no. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system, the Committee recommends that the State party:**

(a) **Adopt legislative and policy measures to ensure the domestic application of the rights in the Convention.**

(b) **Take measures to ensure that existing laws and policies, including customary laws, are in line with the Convention.**

(c) **Undertake public education campaigns on the rights provided in the Convention and domestic legislation under which these rights can be invoked, as well as on the methods for filing complaints on racial discrimination, and hate crimes. Ensure that methods for judicial recourse are administered in a manner that is open and accessible to victims to lodge all complaints.**

(d) **Provide updated information in its next periodic report on the number and types of complaints on racial discrimination and hate crimes reported as well as prosecutions, and convictions of perpetrators, disaggregated by the age, gender and ethnic or ethno-religious origin of the victims.**

#### **National Human Rights Institution**

12. The Committee expresses concern that the National Human Rights Institution (NHRI), established in 1996, is accorded B status. While welcoming its newfound independence, as well as the appointment by the Constitutional Council of members of high repute to the NHRI, it emphasizes the need to further strengthen the independence, mandate and resources of the NHRI as well as its public reporting and engagement with civil society (art. 2).

13. **Recalling its general recommendation No. 17 (1993) on the establishment of national institutions to facilitate the implementation of the Convention, the Committee recommends the State party take immediate measures to bring the NHRI into full**

compliance with the Paris Principles (General Assembly resolution 48/134), and strengthen its mandate and provide it with adequate resources to effectively and independently fulfil its mandate. The Committee further recommends that the NHRI continue to strengthen its public reporting and engagement with all sectors of civil society to ensure pluralistic representation, as required by the Paris Principles.

#### **Prevention of Terrorism Act**

14. The Committee expresses concern that the Prevention of Terrorism Act disproportionality impacts ethnic and ethno-religious-minorities such as Tamils who have reportedly been targeted for arbitrary arrests and detentions under this Act, and that this Act may be used to stifle freedom of expression. The Committee is further concerned that this Act allows for prolonged detentions without due process. In particular it notes reports that some individuals have been detained under this Act without trial for more than 20 years. The Committee also notes with concern that although the State party has agreed to repeal this Act, arrests continue to be made under this Act (art. 1, 2, and 5).

15. **The Committee welcomes the commitment made by the State party to repeal the Prevention of Terrorism Act, as according to Article 1, paragraph 1, of the Convention, State parties must prohibit racial discrimination, including legislation and practices that, even if they may not be discriminatory in purpose are discriminatory in effect. The Committee further welcomes the establishment of a Special Committee to study the legal framework against terrorism, with the aim of drafting new legislation, in line with international standards, which include the Convention. The Committee requests the State party expedite the work of the Commission and enact new legislation. Furthermore, bearing in mind its general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system, the Committee also recommends the State party to guarantee detainees the right to due process to challenge their detention, and ensure that any detainees who are not charged and tried are released without delay. The Committee further recommends the State party strengthen the mandate of the NHRI to allow it to monitor places of detention. The Committee requests the State provide information in its next periodic report on the implementation of this recommendation.**

#### **Hate speech and hate crimes**

16. The Committee is alarmed by reports of hate speech, incitement to violence, and violent attacks including riots against ethnic and ethno-religious minority groups, which have resulted in deaths, injuries and destruction of property. The Committee is further concerned that groups or individuals inciting violence and undertaking violent attacks against ethnic and ethno-religious minorities are not held accountable. The Committee notes recent efforts by the State party to introduce draft legislation to criminalize hate speech (art. 4 and 5).

17. **Bearing in mind its general recommendations no. 35 (2013) on combating racist hate speech the Committee recommends that the State party:**

(a) **Take immediate measures to protect the safety and security of ethnic and ethno-religious minorities and their places of worship, in accordance with article 5 of the Convention.**

(b) **Adopt comprehensive legislation on hate speech fulfilling the requirements of article 4 of the Convention which requires State parties to ensure the prohibition of ideas based on racial superiority and hatred, the incitement to racial hatred, acts of violence against any race or groups of persons of another colour or**

ethnic origin, and incitement to such acts. The Committee also recommends that the State party ensure that its criminal legislation defines racial motivation as an aggravating circumstance.

(c) **Enforce legislative provisions to prosecute perpetrators of hate speech, incitement to violence, and hate crimes to deter further crimes and prevent impunity of perpetrators. Provide information in its next periodic report, on numbers of cases reported, investigations, prosecutions, convictions of perpetrators, and remedies for victims.**

(d) **Foster tolerance and unity through facilitating dialogue between communities in conflict to eliminate tensions.**

#### **Freedom of religion of ethnic and ethno-religious minorities**

18. The Committee is alarmed by the difficulty faced by ethnic and ethno-religious minority groups, such as Moors, or Muslims, Hindus and Christians of Tamil or Sinhala ethnicity, to freely practice their right to freedom of religion. In particular it is concerned by reported cases of desecration of places of worship, disruptions of religious services, denials of building permits to construct religious buildings, and denials of burials in public cemeteries of members of ethnic or ethno-religious groups (art. 5).

19. **The Committee recommends the State party urgently undertake effective measures to protect the rights of ethnic and ethno-religious minorities, including their right to freedom of thought, conscience and religion, without any discrimination based on race, colour, descent or national or ethnic origin, as specified in article 5 of the Convention.**

#### **Tamils of Indian origin or “Plantation Tamils”**

20. While welcoming the establishment of the Ministry of Hill Country New Villages, Infrastructure and Community Development in 2015 and its establishment of a 5 year National Plan of Action (NPA) 2016-2020 on Social Development of the Plantation Community, the Committee notes that Tamils of Indian origin, also referred to as “Plantation Tamils” continue to face the following challenges:

- (a) High levels of poverty, poor compensation for work, poor conditions of work;
- (b) Poor housing conditions, difficulty accessing health services;
- (c) Lack of quality education, higher drop-out and child labour rates than the national average;
- (d) Difficulty obtaining citizenship papers or identity documents leading to problems with owning housing, opening bank accounts and avoiding detention; and
- (e) Caste based discrimination (arts. 1 and 5).

21. **The Committee refers the State party to its general recommendation no. 32 (2009) on the meaning and scope of special measures and requests the State party to take the abovementioned concerns into consideration in the development of special measures for the plantation community, and ensure that the affected community is consulted in the development and implementation of plans on matters that concern them. The Committee requests detailed qualitative and quantitative information in its next periodic report on the impact of special measures on improving the livelihood and social and economic rights of Tamils of Indian origin.**

22. **Recalling its general recommendation No. 29 (2002) on article 1, paragraph 1, of the Convention (Descent), the Committee calls on the State party to undertake awareness raising campaigns with the assistance of community leaders in the relevant communities to change attitudes and reject caste.**

#### **Situation of the Adivasi/Veddah people**

23. The Committee is concerned at the situation of Adivasi/Veddah people in the State party, including reported discrimination, socioeconomic marginalization and poverty, as well as restrictions in their use of traditional lands and cultural rights, and problems accessing quality education and health services. The Committee notes the State party's statement during the dialogue that it wants to preserve the traditions and rights of indigenous peoples including their access to education, health and livelihood support, yet it is concerned by the lack of specific information on any measures undertaken in this regard, and their impact (art. 5).

24. **In line with its general recommendation no. 23 (1997) on the rights of indigenous peoples, the Committee urges the State party to undertake special measures to ensure access to basic services and improve the Adivasi/Veddah people's socio-economic situation in consultation with the Adivasi/Veddah people, and provide detailed information on measures undertaken and their impact in its next periodic report.**

#### **Situation of internally displaced persons**

25. The Committee is concerned by the situation of internally displaced persons, a majority of whom belong to the Tamil, Moor, and Muslim ethnic and ethno-religious minority groups, who continue to remain displaced, and face challenging living conditions in camps and delays in reintegration into society. Once reintegrated, these communities also face challenges in access to basic services, employment, and adequate housing. The Committee notes efforts by the State party to de-mine and release land, but is concerned by reports that land is also still being held by the military in the North and East (art. 5).

26. **The Committee, acknowledging efforts undertaken this far, recommends the State party step up efforts to address the challenges faced by internally displaced persons in terms of reintegration, including in accessing employment, housing, and basic services and resolution of land claims, as well as hasten efforts to release land in the North and East to facilitate further resettlement. The Committee requests the State party continue to communicate with all affected communities with regards to efforts for resettlement, in a transparent manner, to avoid tensions.**

#### **Situation of minority women in war affected areas**

27. The Committee expresses concern at the situation of women from ethnic and ethno-religious minority groups, in areas affected by the war in particular in the North and East, who are now female heads of households, and are reportedly experiencing high rates of poverty and unemployment. The Committee is further concerned by information that these women are vulnerable to sexual and gender based violence, including rape, by security forces.

28. **While recalling its general recommendation No. 19 on gender-related dimensions of racial discrimination, the Committee emphasizes that women are particularly vulnerable to certain forms of racial discrimination, such as sexual violence during armed conflict. The Committee recommends the State party take measures to ensure the protection of these women, post-conflict, and ensure that any**

victims of violations have access to complaint mechanisms and judicial remedies, and that reported cases are investigated and perpetrators are prosecuted. The Committee further recommends that the State party implement measures to assist women heads of households in access to employment and basic services to improve their socio-economic condition.

#### **Truth and reconciliation**

29. The Committee welcomes information from the State party on the current truth and reconciliation efforts underway with a four pronged approach of non-recurrence, right to truth, right to justice and reparations, as well as information that a task force is currently in place shaping the modalities of these mechanisms. The Committee is concerned, however, by reports of the lack of consistent public consultations regarding these processes (art. 6).

30. **The Committee encourages the State party include representatives of all ethnic and ethno-religious groups, including women from these groups, in the shaping and implementation of transitional justice processes. The Committee further recommends that the State party ensure cases of human rights violations committed during the conflict, including violations of rights under the Convention, are investigated and that perpetrators are prosecuted and proper redress is provided to victims. As part of the non-recurrence process the Committee recommends the State party undertake efforts to address any underlying tensions and discriminatory attitudes towards ethnic and ethno-religious minority groups through fostering dialogue.**

### **D. Other recommendations**

#### **Ratification of other instruments**

31. **Bearing in mind the indivisibility of all human rights, the Committee encourages the State party to consider ratifying those international human rights instruments that it has not yet ratified, in particular treaties with provisions that have direct relevance to communities that may be subjected to racial discrimination, including Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Optional Protocol to the Convention on the Rights of the Child on a communications procedure, Optional Protocol to the Convention on the Rights of Persons with Disabilities, Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, ILO Convention on Indigenous and Tribal Peoples (No. 169), ILO Convention No. 189 concerning Decent Work for Domestic Workers.**

#### **Follow-up to the Durban Declaration and Programme of Action**

32. **In the light of its general recommendation No. 33 (2009) on the follow-up to the Durban Review Conference, the Committee recommends that, when implementing the Convention in its domestic legal order, the State party give effect to the Durban Declaration and Programme of Action, adopted in September 2001 by the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, taking into account the outcome document of the Durban Review Conference, held in Geneva in April 2009. The Committee requests that the State party include in its next periodic report specific information on action plans and other measures taken to implement the Durban Declaration and Programme of Action at the national level.**

#### **International Decade for People of African Descent**

33. In the light of General Assembly resolution 68/237, in which the Assembly proclaimed 2015-2024 the International Decade for People of African Descent, and resolution 69/16 on the programme of activities for the implementation of the Decade, the Committee recommends that the State party prepare and implement a suitable programme of measures and policies. The Committee requests that the State party include in its next periodic report specific information on the concrete measures adopted in that framework, taking into account its general recommendation No. 34 (2011) on racial discrimination against people of African descent.

#### **Consultations with civil society**

34. The Committee recommends that the State party continue consulting and increasing its dialogue with civil society organizations working in the area of human rights protection, in particular those working to combat racial discrimination, in connection with the preparation of the next periodic report and in follow-up to the present concluding observations.

#### **Amendment to article 8 of the Convention**

35. The Committee recommends that the State party ratify the amendment to article 8 (6) of the Convention adopted on 15 January 1992 at the fourteenth meeting of States parties to the Convention and endorsed by the General Assembly in its resolution 47/111.

#### **Declaration under article 14 of the Convention**

36. The Committee encourages the State party to make the optional declaration provided for in article 14 of the Convention recognizing the competence of the Committee to receive and consider individual communications.

#### **Common core document**

37. The Committee encourages the State party to update its common core document, which dates to 2008, in accordance with the harmonized guidelines on reporting under the international human rights treaties, in particular those on the common core document, as adopted at the fifth inter-committee meeting of the human rights treaty bodies, held in June 2006 (HRI/GEN/2/Rev.6, chap. I). In the light of General Assembly resolution 68/268, the Committee urges the State party to observe the limit of 42,400 words for the such documents.

#### **Follow-up to the present concluding observations**

38. In accordance with article 9 (1) of the Convention and rule 65 of its rules of procedure, the Committee requests the State party to provide, within one year of the adoption of the present concluding observations, information on its implementation of the recommendations contained in paragraphs 13, 25, and 28 above.

#### **Paragraphs of particular importance**

39. The Committee wishes to draw the attention of the State party to the particular importance of the recommendations contained in paragraphs 11, 15, 17, and 24 above and requests the State party to provide detailed information in its next periodic report on the concrete measures taken to implement those recommendations.



**Dissemination of information**

40. The Committee recommends that the State party's reports be made readily available and accessible to the public at the time of their submission and that the concluding observations of the Committee with respect to those reports be similarly publicized in the official and other commonly used languages, as appropriate.

**Preparation of the next report**

41. The Committee recommends that the State party submit its combined eighteenth and nineteenth periodic reports, as a single document, by 20 March 2019, taking into account the reporting guidelines adopted by the Committee during its seventy-first session (CERD/C/2007/1) and addressing all the points raised in the present concluding observations. In the light of General Assembly resolution 68/268, the Committee urges the State party to observe the limit of 21,200 words for periodic reports.

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