



# Economic and Social Council

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## Committee on Economic, Social and Cultural Rights Forty-fifth session

### Summary record of the 40th meeting

Held at the Palais Wilson, Geneva, on Monday, 8 November 2010, at 3 p.m.

*Chairperson:* Mr. Marchán Romero

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*The meeting was called to order at 3.05 p.m.*

**Consideration of reports**

**(a) Reports submitted by States parties in accordance with articles 16 and 17 of the Covenant** *(continued)*

*Second, third and fourth periodic reports of Sri Lanka ((E/C.12/LKA/2-4); core document (HRI/CORE/LKA/2008); list of issues (E/C.12/LKA/Q/2-4); written replies of the Government of Sri Lanka to the list of issues (E/C.12/LKA/Q/2-4/Add.1)).*

1. *At the invitation of the Chairperson, the delegation of Sri Lanka took places at the Committee table.*

2. **The Chairperson** welcomed the delegation of Sri Lanka and invited members to submit the second, third and fourth periodic reports of the State party.

3. **Mr. Fernando** (Sri Lanka) said that Sri Lanka was at a crossroads: after 30 years of armed conflict and with the end of the terrorist threat, the country was now reaping the peace dividend. In spite of the difficulties it had faced, it had never faltered in its efforts to progress in the areas of health, education and economic and social development. The Government had spared no effort in resettling the many displaced people and in helping them return to normality through the creation of means of subsistence and the provision of essential services (transport, education, health care, water supplies and sanitation), not to mention the demining process in collaboration with international humanitarian organizations. In view of their irrelevance in the current situation, the Government would initiate the process of repealing and amending the regulations in force since 2005; for example, the emergency regulations regarding freedom of expression and those relating to the publication, dissemination and possession of documents, which had been part of the increased protection afforded to journalists, human rights advocates and civil society. The regulations regarding searches of private property had been brought into line with the relevant principles of the International Covenant on Civil and Political Rights.

4. By treating them as victims rather than criminals and respecting their rights and by reintegrating them into society and into their families, the Government of Sri Lanka had succeeded in rehabilitating the 667 child soldiers in the country who, in addition to psychological treatment and spiritual support, were receiving a special education and vocational training. Adult ex-combatants were also being reintegrated with the aid of governmental programmes that enabled them to undertake vocational training.

5. The main responsibility of the Commission for Lessons Learned and Reconciliation, which had been established in August 2010, was to restore justice and in particular to attribute responsibility for acts committed during the conflict. The Commission was currently conducting interviews in the north of the country — a region where the conflict had been particularly violent — in order to collect testimonies. The Commission had already drafted a number of preliminary recommendations for rapid implementation by the Inter-Agency Advisory Panel, the establishment of which, under the auspices of the Attorney-General, had been approved by the Council of Ministers. The case of detained persons in particular should be dealt with urgently by guaranteeing a fair trial, and their families should

be notified in the event of their transfer. Government bodies should be prevented from exploiting what had once been private land in the regions affected by the conflict. In order to strengthen law and order in former conflict zones, the Government had been advised to disarm any remaining armed groups. The Government had been further advised to use only one language in administrative dealings in order to facilitate relations between the public and the authorities. The Inter-Agency Advisory Panel should create conditions conducive to economic and social advancement by improving coordination and communication between the relevant bodies and by stimulating economic activity among the population through, for example, the guarantee of a means of subsistence.

6. In September 2010, a ministerial subcommittee had been assigned the responsibility of fine-tuning the National Action Plan for the promotion and protection of human rights and of swiftly making recommendations to the Government on the Plan's implementation schedule, in line with the commitments undertaken by Sri Lanka during the Universal Periodic Review. At the same time, an overwhelming parliamentary majority had adopted the Eighteenth Amendment to the Constitution, establishing a parliamentary council that was highly efficient and also simplifying the appointment process of members of commissions responsible for human rights, public services, the National Police and matters of corruption, a process that was due to be implemented shortly.

7. Sri Lanka had continued its economic development in spite of the devastating effects of the tsunami in 2004 and the internal conflict that had ended the previous May. The national economy had withstood those internal factors as well as the external impact of the global financial crisis, the food crisis and the oil crises. Several economic indicators were favourable: inflation had fallen, interest rates had come down, international reserves had reached historic levels and the investment climate had become more favourable, which signalled solid prospects for growth.

8. However, Sri Lanka's economy remained vulnerable and dependent on foreign trade, which, with the transfer of private funds, accounted for 70 per cent of the gross domestic product (GDP), totalling \$42 million. From being an exporter of goods more than 30 years before, Sri Lanka had now become an exporter of manufactured products, in which the service sector played an increasingly significant role. Over the previous five years, GDP per capita had almost doubled, amounting to 2,053 United States dollars in 2009. From 2010, the country had been promoted to the rank of a middle-income emerging country by the International Monetary Fund (IMF), which improved its prospects on the international financial markets. During the first half of 2010, economic growth had stood at 7.8 per cent, while GDP growth for the current year was expected to exceed 7 per cent. The Colombo Stock Exchange had become one of the highest-performing stock exchanges, having grown by 111.14 per cent in October 2010. Since then, Sri Lanka had been among the 10 fastest-growing countries, even surpassing certain developed countries in the region, according to the Legatum Prosperity Index.

9. The exemplary transformation of the economy was largely due to the constant efforts undertaken by the country since 1977 to promote liberalization chiefly based on export-oriented industrialization. Sri Lanka now intended to pursue its trade policies in the free market in order to generate rapid economic growth, increase exports, create jobs and improve resource management, while ensuring that those

policies were incorporated into development strategies aimed at benefiting the population and achieving a fairer society.

10. During the drafting of economic and trade policies, the country had always sought to empower women, in particular by improving their means of subsistence in rural areas, with considerable success. Sri Lanka had been ranked sixteenth in the Global Gender Gap Report 2010, far ahead of some developed countries. In general terms, it had always striven to uphold the three pillars of long-term development, namely economic growth, social development and respect for the environment. Accordingly, the National Council for Sustainable Development had been established and ministerial action had been redirected so as to tackle energy-related problems, climate change and other environmental issues more efficiently. The industrial sector was advised by the National Cleaner Production Centre, established in collaboration with the United Nations Industrial Development Organization (UNIDO).

11. In Sri Lanka, 85 per cent of the population had access to drinking water and 86 per cent of households had electricity. The road network was more developed than in other countries in the region, while the telecommunications sector had advanced significantly in 2009.

12. Sri Lanka's favourable economic climate had encouraged the Government to formulate ambitious programmes to safeguard long-term economic and social development. A marked decrease was already discernible in the number of those receiving benefits from *Samurdhi*, the assistance programme for the most disadvantaged. Each one of those advances would contribute to the achievement of the Millennium Development Goals (MDG), in particular the reduction of the poverty rate — which had dropped from 26.1 per cent in 1991 to 15.2 per cent in 2007 — and the reduction of the unemployment rate by half over the past 10 years. Since the country had regained its independence in 1948, successive governments had always ensured cost-free basic services and supported local initiatives. Thanks to cost-free health care, 98 per cent of births took place in hospitals and the infant and maternal mortality rates were almost in line with the MDG targets. Of the 20 million inhabitants in Sri Lanka, 36 per cent were under the age of 18. A quarter of the population was of school age, which explained the continued efforts of the authorities to ensure cost-free schooling until university level and the occasional provision of uniforms, textbooks and lunches. The results of those endeavours spoke for themselves: the primary school attendance rate stood at 97.5 per cent, the literacy rate of young people aged between 15 and 24 was approximately 95 per cent and the female school attendance rate was 99 per cent of that of the male population. More than 20 per cent of the country's population currently had access to a computer, enabling children to have free access to information.

13. As the country of origin of a large proportion of the South Asian workforce, Sri Lanka had come to play a significant role on the international migration scene. It was estimated that currently 1.8 million Sri Lankans worked abroad. As a party to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, Sri Lanka was aware of its responsibilities toward those individuals, in which connection it had drafted, in collaboration with the International Labour Organization (ILO), a national policy on workforce migration incorporating the provisions, concepts and good practices of the various relevant international instruments.

*Articles 1 and 5 of the Covenant*

14. **Mr. Abdel-Moneim** welcomed the detailed presentation by the head of the delegation of Sri Lanka, which had provided up-to-date information relating to various areas and had, to some extent, bridged the gap left by the report of the State party, which amounted to only 28 pages despite covering a period of many years. He expressed his satisfaction at the position by IMF adopted toward Sri Lanka while noting the additional burdens that would be placed on the country as a result. Furthermore, it would be interesting to see the extent to which the 7.8 per cent growth would serve to strengthen the economic infrastructure of the country and how consumer prices would change, as they served as a good indicator of the population's living standards. In accordance with article 2 of the International Covenant on Economic, Social and Cultural Rights, Sri Lanka, in its current situation, could draw on international assistance and cooperation. He wished to know whether the country had need of such assistance and, if so, to what extent, and whether it intended to request it. With reference to the core document prepared by Sri Lanka, he was surprised to read in paragraph 78 that under the Muslim Marriage and Divorce Act written consent of a Muslim bride-to-be was not necessary and asked why that was the case when in other countries where Sharia law had been adopted the authorities insisted on written consent being obtained. Referring to paragraph 79, he noted that many of those countries had established a minimum age of consent for marriage.

15. **Mr. Abashidze** wished to know to what extent the International Covenant on Economic, Social and Cultural Rights had been incorporated into domestic law and wondered about the content and scope of the Human Rights Charter that Sri Lanka was currently drafting. Furthermore, he believed that the exceptions to the principles set out in paragraphs 76 and 77 of the core document with regard to the minimum age of consent for marriage in the Muslim community, according to which girls might marry from the age of 12 without written consent, constituted discrimination based not so much on gender as on religion, since Muslims accounted for only 7.5 per cent of the total population. He requested clarification on the matter. He also wondered about the scope of competence of the Ministry for Disaster Management and Human Rights compared with that of the National Human Rights Commission.

16. **Mr. Atangana** said that information submitted to the Committee mentioned regular political interference in the functioning of the Supreme Court and the Judicial Service Commission, which seriously compromised the independence of the judiciary, as well as arbitrary transfers of judges in cases relating to extrajudicial execution, enforced disappearances, and an apparent climate of impunity in the army, especially for the perpetrators of human rights violations. He wished to know what measures had been adopted by the State party to improve the functioning of the judicial system and, in particular, to remedy the lack of judges, which significantly delayed proceedings.

17. He wished to know what resources were allocated by the State party to the National Human Rights Commission, whether that Commission functioned independently, what was its membership and how its members were appointed. Noting that the Supreme Court could refer any complaint relating to a violation of fundamental rights to the National Human Rights Commission, and vice versa, he wished to know on what grounds the Supreme Court might take the decision to

withdraw from such a case and whether that did not constitute a denial of justice. Recalling that prior to 2007 the National Human Rights Commission had been assigned the task of establishing human rights units in schools and of publishing reports, textbooks and other information on fundamental rights, he asked whether the task had been completed and requested more detailed information on the subject.

18. **Ms. Bras Gomes** commented that there was still a certain lack of transparency associated with governmental activity and the operation of the public administration in Sri Lanka and asked whether the Government planned to promulgate a law on the right to information. Noting with satisfaction the significant decline in the numbers of displaced persons in the country since the end of the conflict, she requested more detailed information on their resettlement and living conditions. Furthermore, she wished to know how the National Action Plan for the protection of human rights had been formulated, whether consultations had been held with civil society in that connection, whether the National Human Rights Commission had been involved in the process and whether the Commission was expected to have its grade A status restored in the near future.

19. **Mr. Dasgupta**, concerned that the State party had not responded to 17 questions raised by the Committee in the list of issues, particularly with regard to article 8, asked why those issues had been overlooked. Noting that the activities of the National Human Rights Commission, which had been established in June 2009, seemed to have been suspended and that 5,000 cases were still pending, he asked what the Government planned to do to ensure the proper functioning of the Commission under the Paris Principles.

20. **Mr. Kedzia** enquired as to the legal basis on which Sri Lanka stated that the rights set out in the Covenant came under the jurisdiction of the Sri Lankan court system and whether the relevant provisions appeared in the Constitution. He also drew attention to the fact that the Constitution allowed domestic law to be deemed valid even if it contradicted the provisions of the Covenant and requested detailed information on the jurisprudence relating to that instrument. Furthermore, he wished to know whether the Supreme Court had indeed handed down a decision authorizing a private individual to submit a complaint to the National Human Rights Commission while at the same time ruling that such a decision constituted a violation of the Constitution, as seemed to have happened in the *Singarasa* case in 2006, and asked whether that decision still set a legal precedent.

21. He asked the Sri Lankan delegation to provide more detailed information on the invocable economic, social and cultural rights in Sri Lanka and more examples of case law on that subject, particularly in trade union-related matters. He also wanted to know what progress had been made in the drafting of the Charter of Constitutional Rights referred to by Sri Lanka before the Human Rights Council in 2008 and asked whether it pertained to Bill No. 372, which had been submitted in August 2000. Noting that, according to several Human Rights Watch reports, human rights advocates had faced difficulties or even suffered reprisals, he requested more information on the measures adopted to protect their rights.

22. **Mr. Pillay**, deploring the brevity of the State party's report and deeming it to have failed to comply with the guidelines of the Committee, asked the delegation to comment on information to the effect that human rights advocates, journalists and representatives of civil society had been victims of acts of violence and intimidation

and to specify the measures in place or envisaged for their protection. He wished to know whether it was the case that in Sri Lanka the lower courts were dependent on the executive branch of government and, if so, the reasons for that situation. With regard to the Eighteenth Amendment to the Constitution, under which the President of the Supreme Court was appointed by the President, he asked how that would serve to increase the independence of the judicial system. He also asked why no matter relating to the rights guaranteed in the Covenant had been brought before the Supreme Court and if the explanation was that those rights had not been incorporated into the national legal system.

23. **Mr. Sadi**, expressing satisfaction at the improvement of the general situation in Sri Lanka, asked whether the Covenant enjoyed the status conferred upon it by the legislation of the State party and whether Sri Lanka intended to sign the related Optional Protocol. Noting that the State party had affirmed that a victim of the violation of rights guaranteed in the Covenant could come before the courts, but that the President had not yet consulted with the Supreme Court regarding the compatibility between the Covenant and national legislation, he asked whether there was any case law indicating that those rights could be invoked.

24. He wished to know what measures had been adopted to give effect to the recommendations included in the previous Concluding Observations of the Committee. More precisely, he asked why the accreditation of the National Human Rights Commission had been downgraded to B status, why no commissioner had been appointed, to what extent human rights education had been incorporated at all levels of the education system, both officially and in actual practice, whether the delegation could confirm that the number of displaced people in the country had indeed decreased from 280,000 to 18,000 and whether those figures were recent. He also asked whether Law No. 18 on citizenship contained any discriminatory clauses and whether it was true that the Bill on Equal Opportunities had been abandoned and was no longer being considered by the Parliament. Noting, lastly, that Sri Lanka should seek to tackle the serious problem of corruption and that the capacity of the Commission of Inquiry to deal with cases were very limited, he asked whether the delegation could cite cases of corruption resulting in prosecution and whether there was a list of cases in progress.

25. **Mr. Schrijver** welcomed the fact that Sri Lanka had repealed much of the legislation relating to the state of emergency but observed that some provisions of legislation still in force were hindering enjoyment of economic, social and cultural rights and asked when the Government planned to revoke them. Recalling that it was important to determine whether economic, social and cultural rights had been violated during the conflict in Sri Lanka and the reconstruction phase and observing that the dialogue between the Government and Mr. Ban Ki-moon, the United Nations Secretary-General, regarding the creation of a United Nations commission responsible for establishing the facts appeared to have been difficult, he asked whether the delegation truly believed in the value of such a measure. Concerned by the information relating to the situation of the Veddhas, a small ethnic group whose representatives had reported increasing difficulty in exercising their right to self-determination, gaining access to their traditional habitat and preserving their cultural identity, he requested more detailed information on the matter.

26. **Mr. Texier** wished to know what had happened to the 280,000 or so displaced people who had apparently returned home, whether they had regained their lands

and their jobs and whether they had decent living standards and access to health care, education and so forth. In short, he wondered whether their economic, social and cultural rights were being respected.

27. **Ms. Bonoan-Dandan** wished to know whether the Sri Lankan population were aware of the State party's Periodic Report, whether the report was published in line with the recommended procedure and whether non-governmental organizations, civil society and human rights advocates had been consulted on its content.

28. In its preliminary statement, the head of the Sri Lankan delegation had said that the Constitution had been amended by Parliament on the basis of an overwhelming majority of votes, one effect of which had been to simplify the appointment process for members of the National Human Rights Commission. She would be grateful if the delegation could describe that process, indicating whether it complied with the Paris Principles, and explain the efforts undertaken by the State party to regain grade A status.

29. Noting that a National Council for Sustainable Development had also been mentioned, she requested information on the membership of the Council, as well as the importance given to human rights, which were essential in institutionalizing sustainable development.

30. She would be interested to know who had participated in the creation of the road map charting Sri Lanka's future socio-economic development. She asked whether those in question, namely all segments of society such as women, children and young people, had been consulted and involved in the decision-making process, as required by a rights-based approach to development.

31. The State party had pointed out that countries with similar economic requirements should receive equal treatment and that trade policies should not be subordinated to foreign policy objectives in a manner incompatible with the standards set by the World Trade Organization (WTO). She was surprised that the issue had been raised before the Committee without mention of the fact that trade policies should also comply with human rights principles and requested the delegation to provide more detailed information on the subject.

32. The very precise questions included in the list of issues were longer than the responses given, which had in no way satisfied the Committee members' need for information, given the assessment they were obliged to carry out. She wished to know, for example, whether the Tamils of Indian origin fully enjoyed their economic, social and cultural rights and reminded the Sri Lankan delegation that failure to uphold the rights embodied by an international instrument constituted a violation of that instrument.

33. **Mr. Tirado Mejia** wished to know how the economic development enjoyed by the State party was reflected in quality of life, health and education. In other words, how had Sri Lanka ensured enjoyment of the rights guaranteed by the Covenant?

34. Returning to the matter of the number of displaced people who had been resettled, on which the information provided was vague at best and, depending on the sources used, contradictory, he requested more detailed information on the total resources allocated to the resettlement of those displaced people, the programmes that had actually been put in place to assist them in the areas of health, education



and housing, and the number of dwellings that had already been built and the number still under construction.

35. **Mr. Riedel** pointed out that the documentation provided by the State party did not meet the needs of a periodic review of the type carried out by the Committee. The Committee needed documents detailing the implementation of the Covenant on an article-by-article basis over the years since the previous review had been carried out, as well as precise and exhaustive responses to all questions raised on the list of issues. In the absence of such information, the Committee might be obliged to rely on other sources to formulate its Concluding Observations.

36. **The Chairperson**, speaking as a member of the Committee, expressed his agreement with the questions and observations formulated by his colleagues with regard to the insufficient length and content of the Periodic Report under review. In authorizing State parties to submit combined reports, the Committee's purpose was to enable those State parties that had fallen behind to catch up with their reporting obligations under the Covenant, not to allow them to sidestep such obligations.

*The meeting was suspended at 5 p.m.; the meeting resumed at 5.15 p.m.*

37. **Mr. Fernando** (Sri Lanka), taking note of the observations made by the members of the Committee, explained that 12 years had passed since the last periodic report had been submitted and that much had changed, in particular over the last eighteen months.

38. When the National Human Rights Commission was established, its members were appointed by the President. In 2001, under the Seventeenth Amendment the Constitutional Council had been created with responsibility for recommending nominations to the President, but in 2007, faced with legal and technical difficulties surrounding the establishment of the Commission, the President had been obliged to make use of his residual powers and, the procedure not being completely in line with the constitutional procedure in force, the National Human Rights Commission had been downgraded from grade A to grade B status by the Accreditation Subcommittee. The Eighteenth Amendment had enabled some of the legal and technical difficulties to be resolved and, since then, the Committee of Parliament, comprising members from the majority and opposition parties, had been responsible for formulating the recommendations regarding future members of the Commission. Those members would be appointed in the very near future, by means of a procedure in conformity with the Constitution, which should allow grade A status to be reclaimed.

39. The Commission's powers of inquiry were limited to matters relating to the violation of rights enshrined in the Constitution ensuing from government or administrative actions. Therefore, some economic, social or cultural rights such as employment rights were included in its mandate, whereas others, such as the right to housing, were not and as such could not be brought before the courts. However, any person arbitrarily deprived of their dwelling or of access to education was entitled to bring such a matter to the courts on grounds of discrimination. Furthermore, all economic, social and cultural rights were guaranteed by the guiding principles governing the policies and fundamental duties of the State.

40. The Supreme Court, with which Mr. Singarasa had lodged a complaint in order for the views of the Human Rights Committee (CCPR/C/81/D/1033/2001) regarding

Communication No. 1033/2001 to be given effect, had declared the ratification of the First Optional Protocol to the International Covenant on Civil and Political Rights to be unconstitutional. The State must therefore take great care when ratifying instruments that enabled private individuals to assert their rights before foreign authorities and, in any case, both the executive and legislative powers were bound to abide by the rulings of the Supreme Court, which was the highest national instance.

41. With regard to the age at which a minor could be deemed to have been corrupted, current legislation stipulated that when a young woman under the age of 16 gave birth to a child, her partner — whether or not he was the girl's husband — could be brought before the courts and charged with statutory rape. However, the prosecution could, in certain circumstances, decide not to prosecute the father if, for example, the couple married immediately after.

42. He strongly contested the allegations that called into question the independence of the powers of the judiciary and adduced the large number of cases brought before the courts, which attested to the increased level of trust among persons before the courts. With regard to the emergency regulations, they were subject to a monthly review by the Parliament, which decided whether to maintain or repeal them. The majority of control points in large cities had therefore been removed and the number of high-security areas considerably reduced. Nonetheless, after 30 years of suffering at the hands of terrorists, the authorities wished to act prudently so as not to compromise national security.

43. **Mr. Athukorala** (Sri Lanka) pointed out that article 16 of the new Constitution aimed to protect the rights of minority groups and the laws that had been in force for several centuries, which should not be amended without the approval of the communities concerned. The Committee that had been established to deal with such matters was therefore consulting with the Muslim community with a view to raising the age of consent for marriage, currently fixed at 12 years by Islamic law, to 18 years.

44. With regard to the jurisprudence relevant to the Covenant, he clarified that all the economic, social and cultural rights guaranteed by that instrument had already been incorporated into the Constitution and were recognized by domestic legislation. The Supreme Court had ensured those rights were upheld on two occasions: in a case regarding a mining agreement in Ulanakulame, which had been concluded by the Government and two transnational companies; and in a case between a group of farmers and the Minister for Irrigation, in which the plaintiffs were opposed to the construction of a factory that would endanger their right to water. Furthermore, Sri Lanka had reinforced the provisions of the Covenant through the National Action Plan that it was currently drafting through a participatory process, most of the Plan being intended to be dedicated to the rights guaranteed by the Covenant.

#### *Articles 6 to 9 of the Covenant*

45. **Mr. Texier** wished to learn more about recent developments regarding labour law (unemployment rates of the population, women and professionals) and to know whether the regulations regarding forced labour, established by virtue of the state of emergency, had been lifted and whether the State party applied the ILO Conventions

on forced labour. He was interested to learn about the current legislation to guarantee equal pay for jobs of equal value, a bulwark against discrimination, particularly against women, and about the implementation of ILO Convention No. 111, which Sri Lanka had ratified in 1998. He drew attention to the absence of a national standard minimum wage and the woefully inadequate level of wages in certain sectors (tea plantations in particular), and asked what measures had been adopted to protect Sri Lankan emigrants around the world, whose working conditions were often inhumane. He also asked what was being done to ensure respect for labour legislation in export processing zones, where 80 per cent of workers were women. Since the notion of essential sectors, normally limited to the police, the justice system and the Armed Forces, was used rather too liberally in the State party and the Supreme Court exceeded its prerogatives by prohibiting strikes that were in fact considered legal by ILO (most notably the dockers in 2007 and teachers), he drew attention to a real problem with regard to the application of international conventions by the State party.

*The meeting rose at 6 p.m.*