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SRI LANKA'S OBLIGATIONS UNDER THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS (ICESCR); THE RELEVANCE OF THE OPTIONAL PROTOCOL TO THE ICESCR

LAW & SOCIETY TRUST

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Editor's Note

November 2010 marked a milestone in regard to the monitoring of Sri Lanka's conformity to the International Covenant on Economic, Social and Cultural Rights (the Covenant) which had been ratified on 11 June 1980.

This Double Issue of the Review focuses on the content of Sri Lanka's combined second to fourth periodic report to the Geneva based Committee on Economic, Social and Cultural Rights, perspectives put forward by civil society organisations at the sessions of the Committee and the Committee's Concluding Observations that covered a range of issues relating to the implementation of the Covenant.

Sri Lanka's State party report, of which extracts are published in this Issue, had been centered on key human development indicators such as high levels of literacy, higher life expectancy and maternal mortality. Predictably, the challenges that the country had faced due to decades of internal conflict as well as setbacks due to natural disasters such as the 2004 *tsunami* featured quite largely in Sri Lanka's submissions to the Committee. More interesting were the Government's responses to the List of Issues raised by the Committee (15 October 2010) in the context of the Committee raising direct concerns in relation to the independence, integrity and due functioning of Rule of Law institutions, including bodies such as the National Human Rights Commission and the Bribery and Corruption Commission.

In addition, important questions had been posed by the Committee in relation to the process for compensating land owners whose land had been occupied by military installations or rendered inaccessible due to their location in either formally declared or undeclared high security zones and measures taken to ensure that land acquisition processes used for major reconstruction projects in the North and East are conducted in compliance with relevant international standards, in particular as concerns the consultation of local political leaders and communities (see No 30 of List of Issues available at <http://www2.ohchr.org/english/bodies/cescr/cescrwg44.htm>).

Though Replies were provided by the Government to the Committee, these responses were inadequate and the Committee remained preoccupied with several outstanding issues including the credibility of the National Human Rights Commission (see Concluding Observation No 8). Interventions by civil society organisations at these sessions also indicated the wide range of problems that were highlighted as impeding Sri Lanka's conformity to the Covenant. Chief among these were the plight of internally displaced persons in the post war period, the culture of repression that continues to intimidate journalists, human rights defenders and others, the absence of right to information legislation and an equal opportunities act

and broadly detailed questions relating to the rights of indigenous people, right to non-discrimination and equality, work and social security rights, right to adequate housing and right to adequate health.

The Committee's Concluding Observations raised concerns regarding threats to the independence of the judiciary and the impact of the 18th Amendment to the Constitution (see Concluding Observation No 9) calling upon the Government to review this constitutional amendment. It was observed that the legally binding nature of international human rights treaties had been questioned by the Supreme Court on numerous occasions (see Concluding Observation No 6). Sri Lanka was called upon to ensure that the Covenant prevails over domestic legislation in case of conflict. It also urged the State party to bring its domestic legislation in conformity with rights contained in the Covenant.

Probing questions of this nature expressed by an international treaty body in relation to internal judicial and legal processes of accountability of a State party were somewhat unprecedented, even given Sri Lanka's own history of adverse comments by treaty body monitors in the past. The concerns expressed and precise recommendations that were detailed, indicated the level of unease felt in relation to the country's conformity with treaty provisions.

Buttressing this unease were the observations issued by the Committee on widespread threats, attacks, defamation campaigns and various forms of stigmatisation against human rights defenders as well as about illegitimate restrictions of their activities (see Concluding Observation No 10). Other primary areas of concern included the prevalence of statutory and customary laws that are gender discriminatory, *inter alia*, in relation to land rights, the high incidence of domestic violence against women and children "high levels" of corruption, significant disparities in levels of economic development between geographic regions and an acute housing shortage.

Contentiously, the Committee also drew attention to allegations according to which during the last months of the armed conflict (between the Government and the LTTE) civilians were deliberately deprived of food, medical care and humanitarian assistance. Moreover it was pointed out that thousands of IDPs continued to be prevented from returning due to the establishment of High Security Zones (HSZs) on their homelands and that internally displaced persons continued to lack basic shelter, access to sanitation and water and livelihood opportunities. Sri Lanka was urged to sign and ratify the Optional Protocol to the Covenant.

The last two contributions in this Issue comprise the detailing of the Optional Protocol to the Covenant which permits individual communications to be submitted

to the Committee and an analysis of the relevance of the Protocol by *Sandra Paola Quintero Carrillo* written to the Review.

Quintero dwells on the question of the relatively low protection of economic, social and cultural rights (ESCR) across the world and rightly observes that this undermines the principle of indivisibility and interdependency of all human rights. The adoption of the Protocol which was a gradual process as detailed by her, is therefore an important step in enabling effective implementation of ESCR.

Her detailed analysis of positive and negative facets of the Protocol would undoubtedly be of much informative value to readers in Sri Lanka who are yet unaware of the content, importance and relevance of this individual communications remedy.

Kishali Pinto-Jayawardena

SRI LANKA: IMPLEMENTATION OF THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS - CIVIL SOCIETY REPORT

*Collective for Economic, Social and Cultural Rights in Sri Lanka**

Introduction

01. Sri Lanka's 26 year long war ended in May 2009 with the military annihilation of the separatist Liberation Tigers of Tamil Eelam (LTTE). An estimated 85,000 people were killed in the course of the conflict, with enduring suspicions and grievances among all of the island's ethnic and religious communities.
02. Hundreds of thousands of persons of all ethnicities have been displaced; some on multiple occasions spanning the duration of the war. As of January 2010 there were some 529,500 IDPs and returnees lacking durable solutions to their displacement;¹ and as of May 2010 almost 250,000 among them in the Northern Province continue to be dependent on emergency humanitarian assistance.²
03. Of over 280,000 IDPs interned in the last phase of the war, and denied freedom of movement until December 2009, the government claims to have resettled 182,946 IDPs. The current number of IDPs at six sites in Vavuniya and two sites in Jaffna are 61,898 and 1,347 respectively.³ Those 'resettled' lack adequate shelter, food and water and livelihood opportunities.
04. The end of the war has not been accompanied by rapid improvements in human rights and widening of the democratic space despite the defeat of armed secessionism, and the first all-island presidential and parliamentary elections for decades in January and April 2010 respectively.
05. The state of emergency continues to be operative throughout the island (although partially relaxed since May 2010), while the Prevention of Terrorism Act remains in force in the absence of acts of terrorism, restricting the full enjoyment of democratic and human rights. Over 1,900 Tamils (including Up-Country or Indian-Origin) continue to be in detention under emergency laws more than one year since the war ended.⁴
06. The North and East is highly militarised with permanent encampments of security forces at regular intervals; high security zones barred to all civilian access; provincial administration by former armed forces personnel; and linguistic, religious and cultural markers of occupation.
07. No concrete measures have been taken by government to address the political grievances that are at the root of the conflict. The All-Party Representative Committee process on power-sharing has

* Co-ordinated on behalf of the Collective for Economic, Social and Cultural Rights in Sri Lanka (CESCR – SL), by the Movement for National Land and Agricultural Reform (monlar@sltnet.lk) and the Law & Society Trust (lst@eureka.lk). We gratefully acknowledge the technical support, collaboration and encouragement received from the Programme on Women's Economic, Social and Cultural Rights (pwescr@pwescr.org) and its Executive Director, Ms Priti Darooka, in particular.

¹ 2010 UNHCR country operations profile – Sri Lanka, <http://www.unhcr.org/cgi-bin/texis/vtx/page?page=49e4878e6#>.

² UN Office for the Coordination of Humanitarian Assistance, *Joint Humanitarian Update*, Report #25, 24 April – 21 May 2010, <http://ochaonline.un.org/srilanka/Home/tabid/2581/language/en-US/Default.aspx>.

³ "Resettlement in Vadammarachchi East begins", Ministry of Defense, 9 January 2010, http://www.defence.lk/new.asp?fname=20100901_04.

⁴ "PTA detainees to remain", *Daily Mirror Online*, 17 May 2010, <http://www.dailymirror.lk/index.php/news/3772-pta-detainees-to-remain.html>.

been suspended through obstruction by the Executive and virulent opposition from within the governing coalition. The full implementation of the 13th Amendment to the Constitution that provided for limited devolution of power has been continually frustrated by central government intervention, and its opposition to autonomy for the Northern and Eastern provinces.

08. The urgent task of reconciliation is reduced to the development of the Northern and Eastern provinces, and the recruitment of Tamil-speakers to the police force. The government has rejected even discussion of accountability for alleged gross violations of human rights especially in the last phase of the war. The current 'Lessons Learned and Reconciliation Commission' (LLRC) has a narrow and flawed mandate and is widely regarded as cosmetic – for the objective of deflecting international pressure for accountability. The recent experience of past Commissions has not created confidence among minority communities either in the process or likely outcome of the LLRC.⁵
09. The National Human Rights Commission (NHRC) has been paralysed through non-appointment of Commissioners since June 2009, thereby preventing it from making recommendations following its inquiries and investigations. Consequently, as of August 2010, some 5,500 cases are pending resolution.⁶ Its downgrading in 2007 to Status 'B' (reconfirmed in March 2009), by the International Coordinating Committee of National Human Rights Institutions, as the direct result of non-compliance with the 'Paris Principles' underlined its utter inadequacy. The NHRC continues to lack independence from government, and to lack effectiveness in responding to serious human rights violations such as enforced and involuntary disappearances, extra-judicial killings and preventive detention.⁷
10. The 18th Amendment to the Constitution in September 2010 has gutted the good governance provisions in the 17th Amendment.⁸ This regressive constitutional change concentrates even greater powers in the already authoritarian Executive through the abolition of term limits on the Presidency, and entitles the incumbent to make direct appointments to what were intended to be independent institutions such as the National Police Commission and the Commission to Investigate Allegations of Bribery and Corruption with the effect of undermining their independence and therefore effectiveness.
11. Dissenting media workers, human rights defenders and advocacy non-governmental organisations are subject to intimidation and threat from unknown sources. The government has appeared to condone such actions through its own antagonism towards dissenters; and inaction in the face of assaults, abductions and arson directed against those exercising the freedom of expression.
12. The government's lack of respect for human rights guaranteed in the Constitution and national laws, led to the suspension of preferential trading access to the European Union under its GSP+ scheme as of 15 August 2010. This will have an immediate impact on the livelihoods of 300,000

⁵ Kishali Pinto-Jayawardena, *Post-War Justice in Sri Lanka: Rule of Law, the Criminal Justice System and Commissions of Inquiry*, International Commission of Jurists, Bangkok 2010, http://www.icj.org/IMG/Sri_Lanka_COI_18.01.09-2.pdf.

⁶ "SLHRC overloaded with unresolved cases", *Daily Mirror*, 27 August 2010, <http://www.dailymirror.lk/print/index.php/news/news/19733.html>.

⁷ 2009 ANNI Report on the Performance and Establishment of National Human Rights Institutions in Asia, Forum-Asia, Bangkok 2009, pp. 195-219, http://www.forum-asia.org/news/in_the_news/pdfs/2009/2009%20ANNI%20Report.pdf.

⁸ Centre for Policy Alternatives, *Statement on the Eighteenth Amendment Bill*, 3 September 2010, <http://www.cpalanka.org>.

mainly women garment workers, particularly those employed by small and medium enterprises, driving many into precarious and unregulated employment in the sub-contracting and informal sectors.

13. Although the government claims to have technically resolved the problem of statelessness through the 2003 Citizenship Act and its previous amendments, the main discriminatory Citizenship Act No. 18 of 1948 has not been amended or repealed. Also, Indian Origin Tamils⁹ continue to be discriminated in (a) voter registration; (b) obtaining services, assistance, welfare facilities from local government and grama niladharis; (c) obtaining basic documents such as birth certificates and national identity cards in the Tamil-language.
14. Section 365A of the Penal Code (enacted in 1883) criminalises sexual activity between two consenting adults of the same sex. In 1995, the government amended the word 'males' in the original text to 'persons', thereby criminalising same-sex sexual activity between women as well.
15. There is an extensive culture of secrecy within government and the state administration. The right of the public to know, to have access to information that concerns them as individuals or as a class, and that encourages transparency, accountability and participation is critical to the protection of all human rights. A freedom of information act consistent with international standards is urgently needed.
16. In 1999, draft equal opportunities legislation prohibiting discrimination on grounds of ethnicity, gender, religious or political opinion, language, caste, age or disability, in employment, education, access to public places and means of transportation and in the provision of accommodation, goods and services; and creating an equal opportunity tribunal, was shelved. Its revival and adoption, as well as expansion to include discrimination on the basis of sexual orientation and gender identity, is imperative to removing institutional and social barriers to equality and non-discrimination, as well as post-war reconciliation and justice.
17. The main statistical sources for monitoring ESC issues are the Population and Housing Survey (last undertaken in 2001), Agricultural Surveys (last undertaken in 2002), Household Income and Expenditure Survey (last undertaken in 2007) and Consumer Finances and Socio Economic Survey (last undertaken in 2003/4), in addition to various Central Bank publications (annual). However there are weaknesses that need to be addressed to maximise their usefulness:
 - a. Lack of reference to accepted indicators as per UN Doc HRI/MC/2008/3.
 - b. Lack of coordination on indicators and definitions means that data does not corroborate across these official statistical measures.
18. Thirty three years of the export-led growth model of development has failed the poorest and most vulnerable, and is not likely to succeed in the future. Democratic rights have been weakened and political authoritarianism entrenched. An independent peoples' commission, with the assistance of the UN human rights system, should evaluate this experience and review actually existing alternatives to current strategies and policies.

⁹ There is debate among contributors and endorsers of this report as to the appropriate description of the descendants of South Indian Tamils who emigrated to Sri Lanka in the 19th and 20th century, in conditions of indenture, largely for employment on the coffee and later tea and rubber estates or plantations. Some prefer *Malaiyaha* (or 'Up-Country') Tamil to emphasise historic habitation of the hill country and legitimate right to Sri Lankan citizenship, whereas others believe it to be inappropriate because the community is also to be found in other parts of the island and in diverse occupations, and have reclaimed the older usage of 'Indian-origin Tamil'.

Article 1: Rights of Indigenous People¹⁰

19. The *adivasi* (also known as *veddah*) community now numbers only a few thousand, and through assimilation into the Sinhala and Tamil communities, are on the verge of extinction.¹¹
20. Since 1931 the *adivasis* have not been able to manage their own affairs in their areas of historic habitation. Instead they are now regulated by the state administrative structure which has at best neglected and at worst trampled on their rights.
21. Post-independence land redistribution and clearance schemes have reduced the forest coverage which was the habitation of the *adivasis* and the source of their food and traditional knowledge. Mega-development irrigation schemes such as Gal Oya and Mahaweli projects led to forest areas of the *adivasis* being taken over by the government. The concerns of the *adivasis* have been ignored completely in the development process.
22. Forest areas have been declared as nature reserves and the *adivasis* are prohibited from freely entering those areas. Their livelihood has been hunting wild animals for consumption, acquiring bee's honey, yams, and fruits and *chena* (shifting) cultivation. All these activities are linked to the forest. By prohibiting their access to the forest all their economic activities are barred and those who do enter the forest are criminalised.
23. The social status of the *adivasi* community can be described as a humiliated and marginalised section of the population, who are widely considered to be dependent on *samurdhi* benefits (cash-transfers), who possess an inferiority complex, and are considered to be 'primitive' and 'uncouth' by the majority of society.
24. *Adivasi* children have been stigmatised and ostracised in mixed ethnicity schools such as in Ratugala leading to their exclusion and drop-out from the education system.¹²
25. *Adivasi* children have been employed in hazardous occupations such as manufacture of fireworks contrary to laws regulating child labour.¹³
26. As a result of their socio-economic marginalisation and impoverishment, *adivasis* experience many physical and mental ailments and there is increased incidence of drug-abuse and alcoholism.
27. The economy shapes the culture. Once the economic livelihood is banned by the laws of the country, other-inter dependent factors pertaining to culture such as food, housing, language, art and behaviour inevitably becomes forbidden or outmoded as practical activities in life.
28. Although past governments have implemented ad-hoc programmes for the upliftment of *adivasis*, they are not involved in their planning or setting of objectives and consequently the benefits have only been enjoyed by a few individuals and not the community as a whole. There is no comprehensive programme that begins from the needs and wellbeing of *adivasis* including their socio-economic independence and cultural identity.

¹⁰ This chapter is largely based on a submission by *adivasi* rights activist Dambane Gunawardena.

¹¹ See generally, Wiveca Stegeborn, "The Disappearing Wanniyala-Aetto ('Veddahs') of Sri Lanka: A Case-Study", *Nomadic Peoples* NS (2004), Vol. 8, Issue 1, pp. 43-63.

¹² "Veddahs ask authorities to help them live", *Daily Mirror*, 26 November 2009.

¹³ "Vedda kids abused in Negombo", *Daily Mirror*, 1 March 2010, <http://www.dailymirror.lk/index.php/news/1936-vedda-kids-abused-in-negombo.html#comment-49780>; "Vedda children employed at fireworks factory", *Daily Mirror*, 19 July 2005.

29. In the past a budgetary allocation has been made for the welfare of *adivasi* community which is to be appreciated. However, due to the uncertainty of how the funding is used, and whether the budgetary allocation is annually maintained, it is doubtful how beneficial this will be.

Questions

- *Will the government recognise the identity of adivasis and monitor the realisation of their economic, social and cultural rights through their separate enumeration in the census and in other statistical measures?*
- *Will the government create an independent authority for adivasis with their participation and representation and that is resourced and empowered to protect their economic, social and cultural rights?*

Recommendations

- *Freedom of access and movement within the Maduru Oya Nature Reserve should be assured to adivasis.*
- *A comprehensive and long-term programme for the sustainability and survival of the adivasis must be launched with their full and informed participation in decision-making.*

Articles 2 and 3: Non-Discrimination and Equality

30. Women are discriminated against in the general law. For example, the application of the principle of primogeniture (or preference for males in any category of heirs) on death of a male permit holder of state lands under the Land Development Ordinance of 1935, has not been eliminated.
31. State agencies have made no effort to amend gender-discriminatory aspects of the three recognised personal laws (Kandyan, *Thesavalamai* and Muslim), in relation to married women's property rights.¹⁴
32. The minimum age of marriage has been retained as 12 in the Muslim statutory law, whereas it is 18 in the general law, as there is a perception that any harmonisation will infringe cultural or religious sensitivities.
33. In 2004 the draft Women's Rights Act *inter alia* protected women and girls from all communities against early and forced marriage and proposed the creation of an independent commission to advance women's rights. However, the 2009 draft only provides for the establishment of the National Commission on Women. Even this proposal is unsatisfactory because appointments to the Commission are to be made directly by the Executive President.¹⁵
34. Women's representation in parliament is presently 5.7% and has rarely exceeded five percent; and even in the middle-tier provincial councils has only averaged 2% despite women exercising the right of franchise along with men since 1931. No measurable steps have been taken to increase the political participation and representation of women at all levels of government.¹⁶ Women's

¹⁴ *Sri Lanka Shadow Report to the Committee on the Elimination of All Forms of Discrimination Against Women*, (facilitated by the Women and Media Collective), July 2010, p. 28, www2.ohchr.org/english/bodies/cedaw/docs/ngo/WMD_SriLanka48.pdf.

¹⁵ *Sri Lanka Shadow Report to the Committee on the Elimination of All Forms of Discrimination Against Women*, (facilitated by the Women and Media Collective), July 2010, pp. 8-9.

¹⁶ *Sri Lanka Shadow Report to the Committee on the Elimination of All Forms of Discrimination Against Women*, (facilitated by the Women and Media Collective), July 2010, pp. 12-14.

groups have urged for 30% quota of nominations for women at local government level but to no avail. There is also lack of political will among the major parties to nominate women candidates.

35. Between 2003 and 2008 women's participation rate in waged labour has stagnated at around 33%. Women workers are predominantly in clerical, skilled and semi-skilled grades and scarcest in the top-level administrative and managerial grades.¹⁷ Gendered norms on occupations and career options for women continue to be perpetuated and reinforced by family members, educators, policymakers, employers and the mass media.
36. Sri Lanka has signed the Convention on the Rights of Persons with Disabilities but has not ratified it. Current legislation (Protection of the Rights of Persons with Disabilities Act No 28 of 1996 as amended in 2003) does not fully implement Sri Lanka's obligations under the UN Convention.
37. Following the Supreme Court upholding a fundamental rights application to order the State to make public buildings accessible to persons with physical disabilities, the Accessibility Regulation of 2009 (amending the 2006 Regulation) was made. However, compliance is postponed for up to eight years from September 2009.¹⁸
38. According to the National Secretariat for Persons with Disabilities, more than 150 Divisional Secretariats are now accessible to persons with disabilities, as well as the Colombo National Museum, some public theatres in Colombo, and some post-offices and railway stations. However public transport (particularly buses and trains) as well as public spaces in general and particularly outside of Colombo, are not designed for accessibility to persons with physical disabilities.

Questions

- *Will the government amend the Land Development Ordinance to ensure women's rights to property and land are respected?*
- *Will the government ensure that in proposed electoral system and law reforms that at least 30% of nominations are earmarked for women?*

Recommendations

- *The 2009 Women's Rights Bill should be withdrawn and new legislation enacted on the basis of the 2004 Draft Bill.*
- *The UN Convention on the Rights of Persons with Disabilities should be ratified and domestic legislation enacted for its implementation.*

Articles 6, 7, 8 and 9: Rights to and at Work and Social Security

39. There is no national legislation enforcing equal pay for equal work across public and private sectors. ILO Convention No.111 on Discrimination (Employment and Occupation) was ratified in 1998. No new legislation was enacted subsequent to this ratification. Trades that are not covered by the minimum wages standards stipulated by the Wages Board¹⁹ such as domestic service are known to discriminate against women. Women workers in estates receive less than male workers for work of similar value.

¹⁷ Department of Labour, *Labour Statistics 2008*, Colombo 2009, p. 44.

¹⁸ *Gazette of the Democratic Socialist Republic of Sri Lanka Extraordinary*, No. 1619/24, 18 September 2009.

¹⁹ According to Labour Ministry officials, only 30% of industry is regulated by the Wages Board. Another 40% is regulated by the Shop & Office Employees Act which does not have a minimum wage provision, and the remaining 30% is wholly unprotected.

40. The minimum wage set by the Wages Board is Rs. 6,900. This is clearly insufficient for an adequate standard of living, and has to be supplemented by over-time (where available) in most cases. The budgetary relief allowance that applies to private-sector workers (excepting estate workers) earning under Rs. 20,000 per month is only Rs. 1,000. Estate workers continue to be daily-waged and are denied a living monthly salary.
41. According to a 2005 survey by the non-governmental Apparel Industry Labour Rights Movement (ALaRM),²⁰ a 'living wage' for a family of 2 adults and 2 children in the Western province is Rs17750 per month.²¹ The enactment of a national minimum wage law has been resisted by employers, as it would (a) raise the current floor wage, and (b) provide universal coverage including to those workers not regulated by wages boards.
42. Sexual harassment is an offence under the Penal Code (as amended in 1995). It covers incidents at place of work. However, sexual harassment is under-reported and remains neglected by the state, employers and in society.
43. There is no national labour legislation addressing the issue of sexual harassment in the workplace. The Labour Ministry does not have any specific measures to combat sexual harassment in the work place, including on estates. The Labour Ministry appears to believe that this is an issue for the Women's Affairs Ministry.
44. Although the right to form trade unions is recognised in the Sri Lankan constitution, and Sri Lanka has ratified ILO Conventions No. 87 and 98, there is declining respect for freedom of association of workers, through non-enforcement of legal provisions by the State and acts of anti-union discrimination and victimisation of worker activists by employers in the context of neo-liberal globalisation.
45. All labour laws are applicable in export processing zones (EPZs) where over 80% of workers are women. However, in practice there have been widespread violations of restrictions on over-time and night-work, as well as repression of unions. Out of 259 factories in 14 Zones, only 22 are unionised and of these only 12 unions are recognised by management, underlining the obstacles to unionisation in the Zones.
46. The management-dominated employees' councils that are promoted by the Board of Investment are not genuine workers organisations, do not have legal standing, and are not collective bargaining agents.²² Management stacks the councils with supervisors and office-based (rather than shop-floor) workers. Management also sets the schedules and agendas for meetings, limits discussions to marginal issues and avoids discussion of wages, working hours, and working conditions. The use of employees' councils to subvert the will of workers to form a union is a clear violation of the right to organise and bargain collectively.
47. The main reason behind the low level of unionisation of women workers in the EPZ is the fear of losing employment. There have also been many instances where female workers who take an active role are fired and blacklisted in the Zones under the pretext of troublemakers, making it

²⁰ ALaRM had stated that the Asian Floor Wage was Rs. 16,705.75 but that local apparel workers were only receiving an average of Rs. 6,750 a month on average –which is even below the minimum wage limit: "Lankan apparel workers demand Asian floor price", *LBO online*, 30 September 2009.

²¹ "Garment workers in 'Living Wage' campaign to raise wages", *The Sunday Times*, 23 September 2007, <http://www.sundaytimes.lk/070923/FinancialTimes/ft328.html>.

²² International Trade Union Confederation, *2010 Annual Survey of Trade Union Rights – Sri Lanka*, <http://survey.ituc-csi.org/+Sri-Lanka-+.html>.

impossible for them to find new employment. This unfortunate situation is caused primarily by the lack of genuine political will on the part of the government especially the Department of Labour to enable workers to exercise the right to freedom of association.

48. As a result of labour rights violations, an investigation by the US Trade Representative is underway to ascertain whether Sri Lanka can retain preferential trading access to the United States under its Generalised System of Preferences (GSP) scheme.²³
49. While the right to strike is implicitly recognised in statute law, there has been a recent trend of the courts intervening in labour disputes through injunctions barring strike action for e.g. the port-workers and teachers strikes in 2006 and 2007 respectively.
50. The 40 % threshold for the compulsory recognition of trade unions becomes in practice, the threshold required for a trade union to be established at the workplace with employers engaging in various union-busting tactics in order to avoid such recognition (in particular, changing the lists of employees, as the vote is based on a list furnished by the employer).²⁴
51. The ILO Governing Body Committee on Freedom of Association in Case No. 2380 on the denial of the right to freedom of association and collective bargaining in Sri Lanka recommended that the Government shall amend legislation, in the event of unions being unable to represent 40 % of the workers.²⁵ It further held that the 40 % requirement shall not preclude unions from being recognised for the purpose of collective bargaining.
52. Essential Services Orders, such as that proclaimed in response to the port-workers strike in August 2006, severely restrict the right to strike and similar trade union action and encompass a vast segment of services such as banks, financial institutions, government ministries, public corporations, health, electricity, transport, plantations, broadcasting and television services, exports, etc., which are clearly not essential and do not satisfy the ILO's strict definition.
53. Current laws dealing with offences of unfair labour practices/anti-union discrimination are improperly enforced while the present maximum fine of Rs20000 fails to provide sufficient discouragement against such offences.
54. The local law on industrial disputes authorises action before courts only to be initiated by the Department of Labour or anyone who has been granted sanction by the Commissioner General of Labour. This situation has resulted in the government neither prosecuting errant employers nor granting sanction to affected victims of anti-union discrimination to file cases on their own behalf. This mandatory requirement of having to go through the arbitrary discretion of government authorities has in practice made the law defunct.
55. Ethnic minorities especially Indian Origin Tamils and Muslims are under-represented in public employment including state administrative services even in districts where they are concentrated. According to one official survey of state sector institutions, Indian-Origin Tamils constituted only

²³ AFL-CIO (2008), *Petition to remove Sri Lanka from the list of Eligible Beneficiary Developing Countries pursuant to 19 USC 2462 (d) of the Generalized System of Preferences*, <http://www.naturesl.lk/>.

²⁴ International Labour Conference, 93rd and 96th Sessions in 2005 and 2007, Report of the Committee of Experts on the Application of Conventions and Recommendations, <http://www.ilo.org/public/english/standards/reim/ilc/ilc93/pdf/rep-iii-1a.pdf> and <http://www.ilo.org/public/english/standards/reim/ilc/ilc96/pdf/rep-iii-1a.pdf> respectively.

²⁵ ILO Governing Body Committee on Freedom of Association Case No.2380, Report No.344, Vol. XC, 2007, Series B, No.1, para 192, <http://webfusion.ilo.org/public/db/standards/normes/libsynd/getRepsCtryStatus.cfm?hdroff=1&ctry=1750&Lang=EN&status=D>.

0.31%; Muslims only 3.29%, and North-Eastern Tamils only 5.26% of all employees,²⁶ whereas their proportion in the population is 5.5%; 7.3%; and 12.7% respectively.

56. There is no adequate social security system such as pensions for the elderly; and insurance benefits for people with disabilities and unemployed youth in the estate sector. The government's 2005 election manifesto promised a monthly social welfare allowance of Rs3000 to families of persons with disabilities. In 2008, around 2125 families were beneficiaries. However, this is only a fraction of all eligible households.
57. Despite the impacts of the global financial crisis on employment and living standards, social security spending in Sri Lanka as a percentage of the national budget is estimated to have contracted by 38.3% in 2009 as compared to pre-crisis levels.²⁷
58. Protection against discrimination at employment is only guaranteed to public servants through fundamental rights action or recourse to the Human Rights Commission. In the private sector there are no mechanisms or laws to deal with discrimination in employment and occupation. Obtaining redress with respect to discrimination by private employers on the grounds enumerated in Article 1 (1) (a) of ILO Convention 111 is still an impossibility.
59. LGBT persons, especially trans-gendered persons, are discriminated through homophobic attitudes in access and admission to public and private sector employment leading to their exclusion from a range of trades and workplaces and contributing to their income poverty.
60. The inability for people of the same sex to register civil partnerships or to marry prevents them from accessing a whole range of benefits that persons in heterosexual marriages enjoy, such as naming their partners as beneficiaries to their state pension and employees' provident and trust funds.
61. The government's policy decision of 7 March 2007 to 'ban' mothers of children under the age of five from migrating abroad for work violates their rights under the UN Migrant Workers Convention to seek work and to freedom of movement.²⁸
62. The 15 day pre-departure orientation to housemaids bound for the Middle East is insufficient and does not adequately inform workers of their rights, remedies available to them, and protection mechanisms.
63. Labour Attaches in Sri Lankan missions abroad the Sri Lanka Bureau of Foreign Employment (SLBFE) are not perceived as effective and concerned to protect the rights of migrant workers in host countries: for instance in cases of breach of employment contracts, exploitative working hours and conditions, physical and sexual abuse, detention and non-compensation.
64. The 'shelter' for migrant workers in Olaya, Saudi Arabia is reputed to be more like a prison camp. One parliamentarian who has visited the facility claims that there are 350 Sri Lankan housemaids

²⁶ Department of Census and Statistics, *Census of Public and Semi-Government Sector Employment – 2006*, <http://www.statistics.gov.lk/CPSGSE06/index.html>.

²⁷ Naren Prasad and Megan Gerecke (2010), "Social Security Spending in Times of Crisis", *Global Social Policy*, Vol. 10, No. 2: 218-247 at 234.

²⁸ "Maternal bond", *Lanka Business Online*, 8 March 2007, <http://www.lankabusinessonline.com/fullstory.php?nid=723768503>; "State move to ban migrant mothers raises storm of protests", *Sunday Times*, 25 March 2007, <http://sundaytimes.lk/070325/FinancialTimes/1308.html>.

stranded there and that many of them have faced abuse and sexual assault inside the camp.²⁹ On 22 August 2010, the SLBFE belatedly claimed that it would take steps to repatriate migrant workers at the Olaya camp.³⁰

65. Workers in the informal sector, many of whom are women, are not protected by social security legislation. There are currently no known social security or pension schemes for migrant workers of any skills category or their families,³¹ offered by host-country governments. As migrant domestic workers are generally not covered by host country labour laws,³² their employers usually do not provide them with any type of social security or pension.

Questions

- *When will the government guarantee the rights of migrant workers, especially women, in the UN Migrant Workers Convention through domestic legislation?*
- *When will the government abide by ILO Conventions and recommendations of ILO expert committees for revision of national labour laws?*

Recommendations

- *The government should generate alternative livelihood options for women and men so that they are not compelled to migrate abroad, while respecting their freedom of choice and movement.*
- *The threshold to be established by law for the compulsory recognition of trade unions should be lowered to 25 % of the workers on whose behalf such trade unions seek to bargain, to facilitate both the general recognition of a trade union by the employer and the right of the union to make bargaining demands, but not exclusive collective bargaining rights.*
- *Special protection should be granted to certain persons, for example, to the members of a trade union which has applied for registration/union certification or which is in the process of being established, or to the founding members of a trade union or to trade union officers and leaders.³³*

²⁹ "UNP Calls for Return of SL Housemaids in Saudi Refugee Camp", *Sunday Leader*, 18 August 2010, <http://www.thesundayleader.lk/2010/08/18/unp-calls-for-return-of-sl-housemaids-in-saudi-refugee-camp>.

³⁰ "Steps Taken to Repatriate 150 Lankan Migrants from Olaya Camp in Saudi Arabia", *News First Online*, 22 August 2010, http://www.newsfirst.lk/index.php?option=com_content&view=article&id=12740:steps-taken-to-repatriate-150-lankan-migrants-from-olaya-camp-in-saudi-arabia&catid=97:news-items-2&Itemid=294.

³¹ Interviews with staff of the Sociology and Welfare Departments of the Sri Lanka Bureau of Foreign Employment by the Law & Society Trust between April and July 2010.

³² Human Rights Watch, *Exported and Exposed – Abuses against Sri Lankan Domestic Workers in Saudi Arabia, Kuwait, Lebanon and the UAE*, November 2007, at p.4, states that the labour laws of these countries categorically exclude domestic workers from protection, <http://www.hrw.org/en/reports/2007/11/13/exported-and-exposed-1>.

³³ *Freedom of association and collective bargaining*, General Survey of the Reports of Conventions No.87 and 98, Report III (Part 4B), International Labour Conference, 81st Session 1994, Geneva, para 207.

Article 10: Rights in the Family³⁴

66. The Prevention of Domestic Violence Act (PDVA) 2005 makes no specific reference to women despite their being at a greatest risk of violence within the family. It is mostly concerned with protection of the victim rather than punishment of the offender. Deterrent punishment against the abuser under the PDVA is only in the event of violation of the protection order.
67. The PDVA's definition of violence is by reference to offences in the Penal Code such as grievous hurt, causing miscarriage, emotional abuse etc., instead of an independent definition that would recognise the gendered dimensions of domestic violence.
68. The PDVA does not make it mandatory for medical service providers to make complaints to the police of evidence of domestic violence. Neither does the PDVA provide instructions to the police about what action should be taken with regard to responding to complaints of domestic violence.
69. When the interim protection order is issued there is provision for the court to order counselling. However, in some cases the counsellor has advised the victim to return to the abusive environment and seek reconciliation with the abuser, thereby making redundant the reason for the issuance of the protection order.
70. According to one non-governmental organisation, Women in Need (WIN), between 2005 and 2009, some 219,825 individuals sought their assistance in complaints of domestic violence. Since the enactment of the Prevention of Domestic Violence Act, WIN has documented 101 applications for protection orders, of which 85 were successful.
71. 'The Plan of Action for the Prevention of Domestic Violence Act 2005' adopted by the National Committee on Women has a comprehensive set of strategies and activities to ensure the implementation of the Domestic Violence Act. However the government appears to believe that awareness-raising and sensitisation activities are sufficient, which is not the case. In any case, awareness-raising among judicial and law-enforcement agencies is unsystematic.
72. There is lack of gender sensitivity in hearing and collection of evidence, victim testimony and sentencing. This lack of sensitivity resonates throughout the auxiliary actors of the judicial system such as law enforcement officers, judicial-medical officers, medical professionals and lawyers.
73. Marital rape has not been recognised in law despite progressive reform of the Penal Code in this regard in 1995. Currently, only if the couple are judicially separated can a husband who forces sexual relations on his wife be prosecuted for rape.
74. There are disparities in maternity benefits between public and private sectors.³⁵ Women in the private sector are entitled to 84 working days of fully paid leave but only for the first two live births. There is no entitlement to leave for women who may experience a miscarriage. Leave is reduced to 42 days from the third pregnancy onwards. However, in the public sector, women are granted paid leave for an additional 84 days, and further leave on a half-pay and no-pay basis.

³⁴ This chapter is largely based upon the *Sri Lanka Shadow Report to the Committee on the Elimination of All Forms of Discrimination Against Women*, (facilitated by the Women and Media Collective), July 2010, esp. pp. 18-19; 30-38, www2.ohchr.org/english/bodies/cedaw/docs/ngo/WMD_SriLanka48.pdf.

³⁵ Asian Development Bank, *Country Gender Assessment: Sri Lanka*, Manila 2008, pp. 5-6, <http://www.adb.org/Documents/Reports/CGA-SRI/CGA-sri.pdf>.

Fathers in government employment are entitled to three days of paternity leave, but this does not apply to the private sector.

75. 19.2 % of young people between the ages of 15 and 19 were in the labour force.³⁶ Although no official data is available on working children between the ages of 10 and 14, the Deputy Commissioner of Labour (Women and Children's Division) has estimated their number at around 30000, mostly in domestic service as well as petty trade and 'boutiques' (small shops).³⁷

Questions

- *Will the government systematically collect data on violence against women, including domestic violence, disaggregated by sex and ethnic group?*
- *Will the government recognise marital rape in all circumstances as a crime?*

Recommendations

- *Harmonise all laws relating to children to eliminate inconsistent definitions of the child across family, labour and criminal law ensuring implementation of Sri Lanka's international obligations.*
- *Eliminate child labour by addressing the root causes of the exploitation of children, through poverty eradication and access to education.*

Article 11: Right to Adequate Food

76. The right to adequate food is a directive principle of state policy and a fundamental duty of the state under Article 27 (2) (c) of the Constitution of the Democratic Republic of Sri Lanka (1978).³⁸
77. The State further guarantees the right of both men and women to "equality in distribution of family food resources" under the Right to Health Care and Nutrition in Article 13 (i) (a) of the Sri Lanka Women's Charter of 1993.
78. Sri Lanka in the early post-independence decades ensured that all people got their basic food at affordable cost. This policy was withdrawn to cut down social welfare expenses to invest more on providing tax concessions, infrastructure and other benefits to attract foreign investment. The policy of strengthening domestic food production was also withdrawn in favour of dependence on the then cheaper food imports. These policies attempted to achieve higher growth rates through higher exports. These policies have neither succeeded in increasing growth nor in poverty reduction through trickle-down.
79. The rise in global food prices in 2008 has had a significant impact on domestic food prices which have stabilised at a higher level than before the crisis. This is illustrated below based on price rises of basic commodities.

³⁶ Table 30, *Economic and Social Statistics of Sri Lanka 2008*, Central Bank of Sri Lanka, Colombo 2008, p. 22. Data excludes the Northern and Eastern provinces.

³⁷ "Over 30,000 child labourers in country", *The Island*, 26 August 2008, <http://www.island.lk/2008/08/26/news3.html/>

³⁸ Article 27 (2) (c) of the *Constitution of the Democratic Republic of Sri Lanka (1978)* states "the realisation of all citizens of adequate standards of living for all citizens, including food, clothing and housing".

Average Retail Prices of Selected Consumer Items 2000-2009

Food Item	Year / Retail Price in LKR		
	2000	2004	2009
Rice (Samba) (kg)	29.16	40.93	74.97
Beans	41.16	57.18	90.45
Spinach (Niviti)	22.19	25.70	46.17
Potato	39.82	65.98	89.81
Chicken	115.0	177.68	332.38
Sprats	123.46	171.38	330.62
Dhal	53.74	69.49	201.42
Coconut	7.48	12.75	20.03
Coconut oil	44.93	68.90	139.50
Banana (Ambul)	2.09	2.39	46.25
Fresh Milk (Dairy)	16.80	25.48	52.77
Milk Powder (Anchor)	98.26	137.24	258.60
Tea	197.29	249.14	648.20
Wheat flour	17.73	25.89	71.40
Sugar	29.86	37.55	78.61

(Source: *Economic and Social Statistics of Sri Lanka, Central Bank of Sri Lanka, 2010, Table 7.4, p.66*)

80. Sri Lanka imports 32% of its total food needs. Consumer goods consisted of 18.2% of total imports in 2008, which increased to 19.3% in 2009. Food and beverages made up 10.7% and 12.2% of imported consumer goods in 2008 and 2009 respectively.
81. Indebtedness among households is highest in rural agricultural areas, particularly where rice paddy is cultivated (for e.g. 77.8% in Polonnaruwa; 62.6% in Ampara; 62.8% in Kurunegala).³⁹
82. The daily average dietary energy consumption per capita is also applied as an indicator to measure living conditions of a society. The daily per capita calorie requirement for the country has been set at 2030 kilo calories. However, the population below this level is shown as being

³⁹ *Household Income and Expenditure Survey 2006/07*, Department of Census and Statistics, 2009, <http://www.statistics.gov.lk/poverty/PovertyIndicators.pdf>.

- 65% in the urban sector, 49.2% in the rural sector and 49.2% in the estate sector.⁴⁰
83. The Poverty Head Count Index (HCI)⁴¹ as a percentage of the total population was 15.2% (2805 people) according to the 2006/2007 survey⁴². These statistics exclude the Jaffna district. Poverty in terms of HCI is lowest in the urban sector (6.7 %) and highest in the estate sector (32.0 %) with the rural sector recording 15.7 %. This reflects that poverty incidence in the estate sector is more than four times that of the urban sector.
 84. *Samurdhi* (poverty-alleviation) services are insufficient in the plantation sector where poverty conditions (32.0%) are much higher than the national level (15.2%).⁴³ The predominantly Indian-origin Tamil Nuwara Eliya district presents the highest incidence of poverty at 33.8%.
 85. According to the Department of Health as many as 50% of estate women have a body mass index (BMI) of below 18.5% which is almost half that of the all island average of 33%.⁴⁴ Maternal under nutrition is the main causation factor for Low Birth Weight (LBW). The proportion of LBW babies in the estate sector has declined from 29.7 to 20.8 between 1993 and 2006 but is still much higher than the national average of 16.7%. Neo-natal Mortality in the estate sector is 31.0% whilst the national average is 13.9%. Under-5 mortality is 51.6% and 20.8% respectively.
 86. The Ministry of Estate Infrastructure and Livestock Development⁴⁵ was established for the social development of the estate-sector. The Ministry formulated a Three-Year Development Plan (2006-2008) in 2005 and obtained Cabinet approval for its implementation.⁴⁶ Regrettably, the present government abolished this Ministry and the National Plan of Action (NPA) has not been implemented.
 87. The nutrition/malnutrition situation among the IDPs in the North and East has been found to be: Children under five years: 5.2% severe wasting (male 28.1%: female 23.3%); 8% severe stunting (male 35.7%: female 33.5%); 11.5% severe underweight (male 46.1%: female 42.6%); and 38.8% anaemia prevalence amongst children.⁴⁷
 88. By directing the present programmes of the government such as “Let’s grow and build the Nation” (*Api Wawamu Rata Nagamu*), *gemi saviya* and *gemi diriya* in the direction of such ecological small scale farming more food, more nutrition, less pollution and a better environment and health can be achieved with no additional expenditure.
 89. The *Api Wawamu Rata Nagamu* programme aims at achieving 4 million home gardens. Adequate

⁴⁰ Table 4: Dietary energy consumption by Poverty status, Sector, Province and District, *Household Income and Expenditure Survey 2006/07*, Department of Census and Statistics, 2009, <http://www.statistics.gov.lk/poverty/PovertyIndicators.pdf>.

⁴¹ The basic measure of poverty by the size of the poor population which falls beneath the Official Poverty Line (OPL).

⁴² *Household Income and Expenditure Survey 2006/07*, Department of Census and Statistics, 2009, <http://www.statistics.gov.lk/poverty/PovertyIndicators.pdf>.

⁴³ Table 5: Poverty Headcount Index (percentage) by Sector, Province, District and Survey period – Sri Lanka from 1990/91 to 2006/07, *Household Income and Expenditure Survey 2006/07*, Department of Census and Statistics, 2009, <http://www.statistics.gov.lk/poverty/PovertyIndicators.pdf>.

⁴⁴ *National Plan of Action (NPA) for Social Development of the Plantation Community (2006-2015)*, Chapter 3, p.21.

⁴⁵ Previously the Ministry of Estate Housing Infrastructure and Community Development.

⁴⁶ The National Plan of Action was to cover economic and social infrastructure, housing and community development amounting to a needs assessment of Rs44 billion.

⁴⁷ *Rapid Assessment of Nutritional Status among the Displaced Population in Vavuniya*, Medical Research Institute, Ministry of Health, 2009.

funds have been allocated to these rural programmes. However, these programmes still try to adopt uneconomical and ecologically damaging approaches of chemical farming. In fact, some of these programmes are being utilised to produce maize as an animal food, on the demands of companies and the government supports it.

Case Study: Prevalence of Anaemia

There is widespread malnutrition and anaemia particularly among children and young mothers, and in the estate-sector and other poor districts according to the Nutrition and Food Security Assessment of the Ministry of Health, World Food Programme and UNICEF of March 2010.

Among pregnant women 13.4% are underweight, while one in five of all (lactating and non-pregnant) women are anaemic rising to 41.7% in the estate sector mainly comprising the Indian Origin Tamil minority.

Among children in the 0-59 month age-group, some 19.2% were classified as stunted, 11.7% as wasted and 21.6% as underweight. One in four children between the ages of 6 and 59 months are anaemic, rising to 34% in the conflict-affected and largely Northern Tamil minority Jaffna district.

The problem of low birth weight is most serious among marginalised and vulnerable rural communities such as in Badulla (22.6%); Nuwara Eliya (27.3%); and Hambantota (21.5%). A baby born in the estate sector is three times more likely (46.7%) to be stunted than one born in the urban sector (14.3%).

Questions

- *What measures have the Government taken to protect the right to adequate food of the most vulnerable groups in society?*
- *What measures have been taken by the Government to promote ecological agriculture as a means of combating the problems of malnutrition, improving the quality of nutrition and food, and lowering food prices?*

Recommendations

- *Re-think current economic and agrarian strategies and instead strengthen the capacity of small farmers to produce domestic food as a way of achieving greater food security for all.*
- *Revive traditionally productive sectors in the North and East such as agriculture, fisheries, livestock and small industries together with a corresponding livelihood-related infrastructure such as roads and water and sanitation systems.*

Article 11: Right to Adequate Housing

90. The right to adequate housing is a directive principle of state policy and is protected under Article 27(2).⁴⁸ Article 14 of the Constitution provides for freedom of movement and the right to choose one's residence.

⁴⁸ Article 27 (2) (c) of the *Constitution of the Democratic People's Republic of Sri Lanka (1978)* states "adequate standard of living for all citizens, including adequate food, clothing and housing".

91. The right to adequate housing and its sub-component security of tenure is of particular importance given that 49% of the workforce lives in rural locations and 32% engage in agriculture.⁴⁹ Claims of ethnic colonisation and territorial issues over land were significant drivers of the conflict and hence land related issues are also of vital importance in the post-war era if true reconciliation is to be achieved.
92. There are no clear policies in place related to housing, land, property and resettlement. The national housing and land policies remain in draft form. No clear coherent restitution policy exists in distinct contrast to the relatively clear policy developed and implemented for the *tsunami* affected.
93. The Public Security Ordinance No. 25 of 1947 (PSO) empowers the President to declare a state of emergency and adopt emergency regulations if s/he believes they are necessary “in the interests of public security and the preservation of public order”.⁵⁰ This permits the restriction of some rights in cases where this is in the interest of national security, public order and the protection of public health or morality.⁵¹
94. A series of emergency regulations have been issued creating High Security Zones (HSZs) throughout the country, typically protecting military or high value civilian targets. Conditions pertaining to these HSZs are detailed within the respective gazette notifications and broadly fall into three types. The first type places restrictions on those residing and visiting a given area usually by way of increased security checks at entry points to the area. This is the case with the HSZ in Colombo which includes the Presidential residence. The second type imposes greater restrictions and prevents people from residing and accessing a specified area without prior authority as is the case with the HSZ in Trincomalee. Finally, there are those which relate to coastal areas and restrict access to the sea by fishermen.
95. One of the largest HSZs is that in Sampoor in Trincomalee District. This is located at the mouth of Trincomalee harbour and is therefore both militarily and commercially important. The HSZ, first declared in 2007, covers an area of approximately 37 sq km.⁵² 5,438 people (1,731 families)⁵³ are from this area and cannot return due to the restrictions on access. Half of these people currently stay with host families and the rest in three ‘transit’ sites (Kilivetti, Pattithidal and Manatchenai). Compensation is yet to be paid. While many people have been offered the option to be permanently resettled elsewhere with standard IDP resettlement packages,⁵⁴ it is reported that only 160 families (or around 470 persons) have accepted this offer.⁵⁵
96. The Trincomalee HSZ is further complicated by its location within a Special Economic Zone (SEZ) and the fact that the government appears to have plans to use the land for a coal power plant and also possibly for setting up industrial or commercial parks in the surrounding area. It is felt that the HSZ is being used as a vehicle to acquire the land without following proper land acquisition processes.

⁴⁹ *Economic and Social Statistics of Sri Lanka 2010*, Central Bank of Sri Lanka, Colombo, 2010.

⁵⁰ Public Security Ordinance No. 25 of 1947, Section 5(1).

⁵¹ Article 15 (7).

⁵² *Extraordinary Gazette* No. 1499/25 of 30 May 2007 and subsequently reduced (from 105.2 sq km to 37.42 sq km) in *Extraordinary Gazette* notification 1573/19, 30 October 2008.

⁵³ UNHCR figures, IDP protection working group, May 2010

⁵⁴ The package offered would include a core house, 20 perches of land (0.125 acres) and Rs25000 (\$230 USD).

⁵⁵ The main reason for the rejection was that for many, their property within the HSZ is significantly greater than this.

97. Aside from the formally gazetted HSZs there are a range of issues with informally declared HSZs. These include large areas such as those in Jaffna District which cover approximately 190sq km and affect between 50,000 – 130,000 people.⁵⁶ At the other end of the scale, there are countless smaller installations affecting individual families and these typically involve military check points and barracks. Despite the fact that there are well defined processes to legally acquire such land either permanently or temporarily, no formal steps to do so have been taken nor have people been provided with compensation. In some instances, the Government does pay a nominal rent but few people know of this or are able to access it.
98. While the government is taking steps to reduce HSZs, this is a slow process and there are gaps inherent within the release procedure; for example, the lack of support to those returning to identify their land, leading to boundary and ownership disputes.
99. The Land Acquisition Act (LAA) No. 9 of 1950 allows for the state to acquire land for development purposes and sets out a standard open process with certain checks and balances including public notification and the opportunity to appeal at various stages. A National Involuntary Resettlement Policy (NIRP) was approved in 2001 and provides guidance on a broader range of issues beyond pure acquisition of the land including consideration of alternative options, livelihood issues and compensation to those without title.
100. In some instances, such as the Upper Kotmale Hydropower project, the acquisition of land has been in accordance with both the procedures set out in the LAA and NIRP.⁵⁷
101. However, there are also instances where serious issues may be raised regarding the following of proper procedures and the degree of transparency in the process. Two such examples would be the construction of an outer circular road and power plant in Trincomalee.⁵⁸
102. For the road, no public notifications have been issued and therefore there is no clarity on the legal basis for the acquisition. People with land within the area are prevented from returning by the army.
103. For the coal power plant (which is located within the HSZ detailed above), there appears to have been some attempt to acquire the land under the LAA by issuing public notices in Sampukalai and Katakaraichenai from 08 July 2008 to 19 July 2009. However, few of the affected people in the area received such notice and of those that have, many may not fully comprehend the implications of such notices.
104. Further, it has been reported that 42,000 people await settlement of claims for land acquisition, some of which are 25 years old. In total, approximately 8.5 billion rupees are owed.⁵⁹
105. The State Lands (Recovery of Possession) Act No. 7 of 1979 enables the state to evict people from state land and provides few protections. The notice required is only 30 days and there is no requirement for the state to provide compensation or alternative accommodation. The only defence that can be raised is to show a valid permit or written authorisation from the state

⁵⁶ The number of people affected varies greatly depending on the source. See COHRE, 'High Security Zones and the Rights to Return and Restitution in Sri Lanka', April 2009, p. 16, <http://www.cohre.org/srilanka>.

⁵⁷ "High Security Zones and the Right to Return and Restitution in Sri Lanka, April 2009, <http://www.cohre.org/srilanka>.

⁵⁸ "Trincomalee HSZ and SEZ", Centre for Policy Alternatives, September 2009, <http://www.cpalanka.org>.

⁵⁹ Secretary, Road Development Authority quoted in "Sri Lanka has not paid for some acquired land for 25 years: official", *LBO Online*, 27 July 2010, <http://www.lbo.lk/fullstory.php?nid=465033139>.

according to law. A person evicted under this legislation commits an offence if they re-enter the land within 10 years.

106. The main protection against forced evictions in Sri Lanka is the Primary Courts Procedure Act No. 44 of 1979 which allows lower courts to issue orders preventing evictions unless "by order of a competent court".⁶⁰ The same procedure can also be used to restore possession.
107. The Government has a policy of regularising encroachments on state land and the majority of new titles issued are dealing with regularisations. The Land Commissioners Report for 2006 indicates that almost one million such grants had been issued up to the end of 2002. This number is likely to be much higher now.
108. From the most recent figures dating from a 2002 survey there are 77,612 families living in 1,614 urban poor settlements in Colombo.⁶¹ There are no official figures available for the number of people evicted. Those affected by eviction face similar problems to those cited above relating to inherent deficiencies in the process and a lack of transparency in decision making. The case-study below of the Slave Island evictions is a good example.

Case Study: Slave Island Eviction

The Urban Development Authority (UDA) demolished 17 houses on Mews Street on the 8th of May 2010. This is in a neighbourhood in central Colombo which has been zoned in the Colombo Urban Development Plan as a 'Concentrated Development Zone' and is considered to be the main area of the city that would eventually constitute a Central Business District. The stated reason for the eviction is that it is government land required by an adjacent military installation.

107 people lived in the houses, 24 of whom were minors. The affected people had been living in the permanent brick houses on the site since the 1950's. Court documents indicate that some claim to have deeds. The community were given only four days notice of the eviction. There was no genuine consultation with the community regarding options available to them, no due legal process for acquisition or eviction and insufficient notice to enable people to find alternative accommodation.

On the day of the eviction, according to filed court papers and newspaper articles, approximately 2500 military and police were present. The street was sealed off and heavy machinery brought in to demolish the houses. The residents remained and were forcibly removed by police. Residents were given 30 minutes to recover personal possessions. Subsequent to the eviction many residents remained in the area sleeping in makeshift tents/shelters on the opposite side of the street to where their houses once stood.

The affected persons have filed a fundamental rights case in the Supreme Court (S.C F.R Application No 349/10) which is next due to be heard on 6 September 2010.

The Government is providing allowances to meet rental costs although this is deemed too low to enable the affected people to rent suitable accommodation. A subsequent offer of alternative housing has been made but this has been rejected as being unsuitable.

⁶⁰ Section 68(2).

⁶¹ "A formal assessment of the extremely poor settlements of Urban Colombo", Mercy Corps and Sevantha 2007, referring to survey conducted in 2002.

109. Those living in informal settlements are presently living under a significant threat of eviction. After the recent parliamentary elections the Urban Development Authority (UDA) was moved to be under the control of the Ministry of Defence⁶² and subsequently there has been considerable rhetoric from senior government officials regarding the clearance of all slums in Colombo.⁶³ A variety of reasons for the proposed clearances have been given including prevention of flooding and outbreaks of Dengue Fever, however in truth the underlying reason is to clear the land for development purposes as it is considered to be very valuable prime land.
110. The UDA plans to use the REEL (Real Estate Exchange Ltd) Programme to relocate people into new housing developments using funds received from selling the prime land on which they are presently residing. It is questionable whether there is any genuine attempt to consider 'all feasible alternatives'⁶⁴ to eviction.
111. The plantation sector is a particularly marginalised group in Sri Lanka including housing. The occupiers have no ownership rights to these properties and the properties themselves are in extremely bad condition. Such housing units tend to be very old, in poor condition with severe overcrowding. Census data shows housing in this sector to be some of the worst in the country. The data for the plantation sector is disaggregated in the indicators below to highlight the disparities present.

Indicator	Source	National	Estate
Floor area per person (Sq Mt)	(a)	16.8	7.6
Rooms per person	(a)	1.1	0.7
Percentage of housing units with 1 or less sleeping rooms	(b)	25.2	54.2
Percentage of housing units with less than 250sq ft floor area	(b)	17.4	38.3
Percentage of households with access to safe water	(b)	84.8	46.2
Percentage of households with no toilet facilities	(b)	3.6	11.8
Percentage of households using electricity for lighting	(b)	80	62.3
Percentage of households owning land	(b)	86.8	23.8
Percentage of mean income spent on housing	(b)	9.96	No data
Number of low-income settlements in Colombo and Population	(c)	1616 settlements 77,612 people	

(a) *Consumer Finances and Socio Economic Survey Report 2003/04, Central Bank of Sri Lanka*

(b) *Household and Income Expenditure Survey 2006/7, Department of Census and Statistics*

(c) *Poverty Profile of Colombo, February 2002, Colombo Municipal Council / Sevantha*

⁶² *Extraordinary Gazette No. 1651/20, 30 April 2010.*

⁶³ "Quit Colombo Notice to 66,000 squatters" 13 August 2010, *Daily Mirror*; "Ministry of Defence Gets Approval to Clear slums", *Sunday Leader*, 12 August 2010; "UDA in Rs 5bn debentures issue: The UDA to issue Rs5bn in debentures to develop Colombo city by leasing prime land", *The Island*, 13 August 2010.

⁶⁴ Para 13, General Comment No 7.

Questions

- *How many evictions were made by the government during the reporting period?*
- *How much land is presently occupied by the military and what plans are there for release of such areas?*
- *What are the government's future plans with regard to land currently covered by the Sampoor HSZ?*

Recommendations

- *The GoSL should develop a clear policy for the orderly release of areas presently identified as HSZs.*
- *The GoSL should ensure that all land acquisitions follow the National Involuntary Resettlement Policy; and strictly adhere to the guidelines in General Comment No.7.*
- *Upgrading of informal settlements should be the preferred approach to improving the right to adequate housing rather than relocation.*
- *Reform the male-biased 'head of household' concept in law and administrative practices in which women have been ignored in the allocation of state lands for agriculture and housing and recognise women's rights to housing, land and property.*
- *The GoSL should ensure it meets its minimum obligations in the plantation sector especially (a) with regard to infrastructure and provision of security of tenure; (b) vesting ownership of living quarters and home garden to estate residents; and (c) ensuring minimum of seven perches to each household for new housing units.*

Article 12: Right to Adequate Health

112. The Constitution of Sri Lanka does not recognise the right to health. Neither is there any reference to the right to health in the Directive Principles of State Policy. However, Article 27 (2)(c) of the Directive Principles acknowledges the State's commitment to environmental health which includes 'the continuous improvement of living conditions' which may be regarded as an aspect of the broader concept of the right to health.
113. Under the Penal Code, the unlawful or negligent⁶⁵ or malicious spreading⁶⁶ of any infectious disease dangerous to life is a punishable offence. Other legislation pertaining to regulation of medicine, administration of health care, control and treatment of diseases and subsidiary legislation on the right to health is also to be found in abundance within the national legal system.
114. Poor implementation of these laws; the almost three decade long war; the 'open economy' policies promoting privatisation of health-services; rising levels of external debt and debt-servicing and so on, has led to a decline in the quality of health care.
115. In 2009, the total health budget of the government was Rs. 71.4 billion which was about 1.5 % of gross domestic product.⁶⁷

⁶⁵ Section 262, *Penal Code*.

⁶⁶ Section 263, *Penal Code*.

⁶⁷ *Annual Report 2009*, Central Bank, p16.

Table 3.8		Salient Features of Health Services	
Item	2008	2009(a)	
Government			
Hospitals (practicing Western medicine) (No.)	619	555 (b)	
No. of beds	65,835	68,897	
Primary Healthcare Units (No.) (c)	411	475	
Total no. of doctors	13,026	13,633	
Total no. of assistant medical practitioners	1,229	1,198	
Total no. of nurses	22,996	25,549	
Total no. of attendants	7,184	8,301	
Private			
Hospitals (practicing Western medicine) (No.)	220	n.a.	
No. of beds	8,850	n.a.	
Total no. of Ayurvedic doctors (d)	19,054	19,529	
Total government expenditure on health (Rs.bn)			
Current expenditure	74.5	71.5	
Capital expenditure	55.9	58.8	
	18.7	12.7	
(a) Provisional		Sources: Ministry of Healthcare and Nutrition	
(b) Under the re-categorisation in 2009, 64 government hospitals were re-named as Primary Healthcare Units		Department of Ayurveda	
(c) Central dispensaries were re-named as Primary Healthcare Units and 64 government hospitals were re-categorised as Primary Healthcare Units		Ministry of Finance and Planning	
(d) Registered with the Department of Ayurvedic Commissioner		Central Bank of Sri Lanka	

Source: Central Bank, Annual Report 2009, p16

116. At present, the private sector provides services to around 5 % of in-patients and around 53 % of out-patients annually.
117. Health services and adequacy relative to population and need can be evaluated through the following Central Bank statistics: There are 555 government hospitals with 68,897 beds in the country which amounts to 3 beds per 1,000 persons. There are 13,633 qualified doctors, 1 doctor for every 1,500 persons and 25,549 qualified nurses, 1 nurse for every 800 persons.⁶⁸
118. In late 2009, Sri Lanka faced one of its worst outbreaks of dengue in years. The National Dengue Prevention Unit of the Ministry of Health reported 33,856 cases with 277 deaths.⁶⁹ Between January and April of 2010, dengue-flu infected 13,500 people, causing 76 deaths.
119. As dengue is prevalent in Sri Lanka with 88 deaths alone in 2004, the indifference towards this problem by state and local authorities and their lethargic response until very recently is sheer negligence and dereliction of their duty to safeguard the health and lives of people.
120. The WHO Essential Drugs and Medicines Policy is designed to help save lives and improve health by ensuring the quality, efficacy, safety and rational use of medicines, including traditional medicines, and by promoting equitable and sustainable access to essential medicines particularly

⁶⁸ Annual Report 2009, Central Bank, p16.

⁶⁹ "Sri Lanka: Dengue Outbreak", Disaster Relief Emergency Fund (DREF) Operation Update, International Federation of Red Cross and Red Crescent Societies, 11 March 2010, <http://www.ifrc.org/docs/appeals/09/MDRLK00102.pdf>.

for the poor and disadvantaged.⁷⁰ In pursuance of this objective, the WHO began listing what it considered a list of essential medicines.

121. The government's policy failure has resulted in the inflow of quality-failed and expensive drugs into the island. The pharmaceutical market is full of drugs bearing brand instead of generic names, which confuses consumers and encourages them to buy branded drugs at a higher rate than equally good generics. Some people risk their lives, through their failure to purchase medicines because of prohibitive cost. Sri Lanka has not implemented a national medicinal drugs policy to ensure safe, affordable, effective and appropriate medicine for all.
122. Patients' rights groups elaborated a National Medicinal Drugs Policy (NMDP) through a multi-stakeholder process in 2005. The NMDP's objective is to make available quality drugs at affordable prices, and the draft received official approval in October 2005.⁷¹ Unfortunately, the policy has not been formally adopted by the government.
123. An aspect that has improved in the health sector is the cardiovascular units, which is a prime need given the country's increasing number of heart patients. However, most government hospitals do not have enough cardiologists. The shortage of qualified staff plagues almost every hospital in the state sector. The lack of trained nurses, medical laboratory technologists and pharmacists are major causes for concern.
124. Sri Lanka is one of the few countries in the Asia and Pacific region with a low level of HIV prevalence. Recent figures reveal that transmission through homosexual and bisexual acts amount to 11%, and it is estimated that the country has a population of 24,000 – 37,000 men who have sex with men, considered to be at greatest risk.⁷²
125. Much needs to be done to address the absence of policies which reflect the needs of persons of different gender identities and the criminalisation of same sex orientations render it difficult for people from these communities to access public health services in a manner that is open and informative about their medical and personal histories. Thus, services which are available to people living with HIV/ AIDS are accessed by those who are willing to face stigmatisation or have to hide their sexual orientation.
126. Additionally, the needs of transgendered people should be understood in a supportive manner. As the existence of transgendered persons is not considered, there is a lack of information and services made available for medical services such as sex reassignment operations by public health providers. In Sri Lanka, health services are provided by public hospitals free of charge or at subsidised rates. However, services on sex reassignment are not made available in these hospitals.
127. Women's reproductive health rights are a matter of extreme concern as abortion is illegal, and as there are allegations of involuntary sterilisation of women in the estate sector.⁷³ It is estimated

⁷⁰ WHO, *Essential Medicines and Pharmaceuticals Policy*, <http://www.emro.who.int/emp>.

⁷¹ "Healthcare Doctored", *The Nation*, 27 June 2010, <http://www.nation.lk/2010/06/27/cyefca1.htm>.

⁷² Partnership for HIV prevention in Sri Lanka", *UNAIDS*, 3 August 2010, http://www.unaids.org/en/KnowledgeCentre/Resources/FeatureStories/archive/2010/20100803_SriLanka.asp.

⁷³ P. Logeswary and Bastien Fillon, *Study on the Right to Health of Plantation Women in Sri Lanka*, Human Development Organisation, Kandy, www.asianruralwomen.net/themes/health_001.doc.

that every day there are 1000 induced abortions⁷⁴ despite its criminalisation and unregulated 'back-street' provision.

128. Off-estate national health services are not easily accessible to estate residents and on-estate health services are not up to national standard. There is a severe lack of qualified medical personnel and drugs. Pregnant women and seriously ill patients have to travel long distances to get medical care. On some occasions patients die on the way to the hospital. Pregnant women are conveyed in the lorry used for transport of green-leaf and have delivered in them too endangering their lives and those of their newborn.
129. At present, there are 50 estate hospitals, 179 maternity wards and 266 dispensaries catering to the resident population of 934,313 on estates under 20 Regional Plantation Companies, the Janatha Estate Development Board, and the State Plantations Company, and Elkaduwa Plantation Company. However due to the inadequate services being provided to the estate population by plantation management, the GoSL has taken over 23 hospitals and the balance 27 are in the process of being taken over.⁷⁵ A shortage of health personnel and facilities⁷⁶ remains an issue as no proper appraisal was carried out before the take-overs. Also, estates have historically been excluded from being Medical Officer of Health (MOH) areas owing to non-availability of funds and staff. This has led to a severe lack of public health inspectors and midwives in the estate sector.
130. From 10,000 schools in the country, 3,658 did not have sufficient sanitation facilities while 2,373 did not have safe drinking water, according to a census conducted in 2007. In a 2010 survey in the Matara district, out of 350 schools, only 224 had water supply to toilets, and only 289 had sanitation facilities.⁷⁷
131. The main legislation governing mental health and disability arising out of mental illness is an antiquated law, namely the Mental Diseases Ordinance of 1873 which has not been amended thereafter. Its long title is the "care and custody of persons of unsound mind and their estates". Therefore new legislation that takes a rights-based and community approach to mental illness (and disabilities arising thereof) is highly necessary.
132. The Draft Mental Health Act of 2007 is in conformity with modern concepts and treatment. Its long title states "An Act to protect the rights of persons with mental illness, provide for the care, treatment, continuing care, rehabilitation of persons with mental illness".
133. Some of the salutary features of this draft act are the elimination of offensive terminology and replacement of terms in line with rights discourse; and provisions and mechanisms to deal with promotion, prevention, rehabilitation is given unlike the existing Ordinance which only deals with institutionalisation. However, it remains in draft and therefore has had no impact on policy.

⁷⁴ "Anti-abortion law spurs abortions", *Sunday Times*, 3 November 2009, <http://sundaytimes.lk/031109/plus/4.htm>; *Sri Lanka Shadow Report to the Committee on the Elimination of All Forms of Discrimination Against Women*, (facilitated by the Women and Media Collective), July 2010, p 23, www2.ohchr.org/english/bodies/cedaw/docs/ngo/WMD_SriLanka48.pdf.

⁷⁵ *National Plan of Action for Social Development of the Plantation Community 2006-2015*, p 7.

⁷⁶ This includes qualified practitioners, nurses and other medical staff, medicines, OPD buildings, clinic rooms, wards, mortuaries, ICUs, blood banks, furniture and equipment, electricity and water supply, ambulances, telephones etc.

⁷⁷ "Deplorable sanitary facilities in Matara schools, survey reveal", *Sunday Times*, 22 August 2010, http://Sundaytimes.lk/100822/News/nws_20.html.

134. In Sri Lanka, considerations on Occupational Safety and Health was confined to mines and machinery, and later extended to factories. It is now also covered by the Workmen's Compensation Ordinance. However, Occupational Health and Safety protection continues to be weak in Sri Lanka in the absence of overarching legislation on safety and health at work and poor implementation of existing laws.
135. Every year about 3,500 accidents are reported to the Industrial Safety Division of the Department of Labour. Out of these 50-60 accidents are fatal. It is observed that there is an increasing trend in fatal accidents since year 2000. About 30 % of the fatal accidents occur in the construction industry.⁷⁸
136. Even though the Ministry of Healthcare and Nutrition was involved in drafting a Patients' Rights Charter in 2008 with inputs from several civil society organisations, the Charter is yet to be finalised and therefore implemented.⁷⁹ The draft Charter⁸⁰ was to include: the right to access healthcare services and humane treatment, right to information and consent, right to privacy and confidentiality, right to complain, right to compensation, right to preventive measures, as well as the responsibilities of the patient.

Case Study: Safe Drinking Water and Health

Pipe-borne water coverage in Sri Lanka was estimated to be around 34% in 2008, with the remainder of the population relying on other sources such as wells and surface water.

The contamination of water sources and supply through agricultural waste, fertilisers and industrial effluent is believed to be a major cause of water-related health problems.

High levels of cadmium that is found in toxic fertilisers used by paddy and coconut cultivators may explain the high incidence of chronic kidney disease in the farming regions.

In 2003, in Anuradhapura District there were 1098 cases and 143 deaths while in Polonnaruwa, 291 cases and 55 deaths. The North Central Province contributed 22% of cases and 17% of deaths nationally – a very high per capita level. The population of the province is only 6% of the total population of the country.

In 2005, the Anuradhapura Teaching Hospital alone reported 742 live discharges and 140 deaths due to chronic kidney disease. It is postulated that there is a strong regional bias and that paddy farmers are at high risk.

Source: Asian Legal Resource Centre, Hong Kong, 30 August 2010, ALRC-CWS-15-11-2010

Questions

- *When will the government adopt the national medicinal drugs policy to ensure safe, effective drugs at affordable prices?*
- *Will the government reallocate military expenditure to social welfare sectors including health?*
- *When will the government enact the Mental Health Act which has been pending since 2007?*

⁷⁸ "Incidence of fatal accidents in workplaces on the rise — Athauda", *The Island*, 13 October 2008, <http://www.island.lk/2008/10/13/news12.html>.

⁷⁹ "Patient's Charter to ensure safety and rights of patients", *The Official Government News Portal of Sri Lanka*, 8 July 2008, http://www.news.lk/index.php?option=com_content&task=view&id=6391&Itemid=44.

⁸⁰ "Healthcare Doctored", *The Nation*, 27 June 2010, <http://www.nation.lk/2010/06/27/eyefea1.htm>.

Recommendations

- *Right to Health should be constitutionally protected; National Medicinal Drugs Policy and Patients Rights Charter should be adopted and incorporated into national laws and health policy in both public and private sectors.*
- *The plantation sector health services should be integrated with National Health Service system. The estate community should have easy access to the state national, provincial and district health services.*
- *Health service providers and medical professionals should be sensitised to treat all patients regardless of gender, ethnicity, class and sexual orientation without discrimination. Principles of confidentiality should be adopted, protected and ensured by medical service providers at all levels.*

Articles 13 & 14: Right to Education

137. Although Sri Lanka's education system has been comparatively better than in other countries of the South Asian region, the quality of services is under threat due to the diminishing budgetary allocations of the State.
138. The public education expenditure as a proportion of the government budget is much lower in Sri Lanka in relation to the status of other middle income nations. In India the allocation for education is around 4% of the GDP. In Bangladesh the education budget is 2.4% of the GDP. In Nepal, it is 3.4% while Maldives has been maintaining an allocation of 7.5%.⁸¹ In South Asia, almost all countries excepting Afghanistan, where latest relevant statistics are unavailable, and Pakistan, spend more on education than Sri Lanka.
139. In its 2009 budget, the Sri Lankan government allocated only 2.1% of GDP to the education sector. As stipulated in the Appropriation Bill of 2010, the capital expenditure in the national budget for education indicates a 42% drop in funds over the last three years.⁸²
140. Government expenditure on Education as a percentage of GDP from 2005 to 2009 is displayed below:⁸³



⁸¹Transparency International Sri Lanka, *Education Budget – India 4%, Nepal 3.4%, and SL 2.1% of GDP*, <http://www.tisrilanka.org/?p=5113>.

⁸² Transparency International Sri Lanka, *Education budget cut by 42% over 3 years: DNA*, <http://www.tisrilanka.org/?p=5098>.

⁸³ "Education Budget cut by 42% over 3 years: DNA", *Daily Mirror*, 20 May 2010, <http://www.dailymirror.lk/print/index.php/news/front-page-news/11070.html>.

141. The graph clearly illustrates the allocation of funds being below 3% from 2004 whereas according to UNICEF the national budget allocation for education in terms of the world standard is at least 6% of the GDP. The 2010 budget proposals state that despite the end of the civil war with the total military annihilation of the Liberation Tigers of Tamil Eelam, the government has increased the defence allocation to a record Rs202 billion. This figure surpasses last year's defence allocation by over Rs26 billion. The magnitude of the hike in the budgetary allocation can be seen in comparison to the allocation for education which is Rs27 billion and the budget for higher education which is Rs20 billion.
142. Pre-school and early childhood development ought to be priorities of any education system. The government has an obligation to ensure pre-school education provision for children under the age of five, according to the '*National Policy on Early Childhood Care and Development*' of 2004 developed by the then Ministry of Women's Empowerment and Social Welfare. Since 1987, responsibility for care and development of children is transferred to the provincial councils, where there are concerns over its monitoring and resourcing.⁸⁴
143. There are widening disparities in the quality of education between schools located in main towns and those in remote areas, creating several issues. For example, in the context of the admission of students to grade one in the primary level of education, the popular schools with better facilities have unmanageable demand whilst many rural schools with poorer facilities do not receive any applications for grade one admission.⁸⁵
144. Consequently, the Ministry of Education stated in July 2010 that around 2000 grade one students were still not attending schools even after more than six months since they had not been given placement in the schools of their choice due to severe competition.
145. The lack of a national policy on school admission to the primary level of education has become a serious issue to the extent of it reflecting as a social problem. Therefore, each year students who have not gained admission at the beginning of the year are admitted to schools in the final term which deprives them of two terms of the first year in school.
146. Inequalities in the provision of facilities (teacher cadre, science and IT, sports facilities etc.) between urban and rural and across regions are glaringly obvious but cannot be enumerated in the absence of disaggregated statistics and barriers of access to information.
147. The Ministry of Education has announced that a new programme will be launched from 2011 to develop 1000 schools with secondary level education spending Rs60 billion. Under this four year programme, a network of such schools surrounded by at least three schools with primary level education will be developed. Basic facilities such as classrooms, libraries, computer laboratories, science laboratories etc. will be developed in these schools.
148. Recent media reports have pointed out that since 1997, a total of 948 schools have been closed in Sri Lanka.⁸⁶ According to the Ministry of Education, the number of government schools island-wide has declined from 9662 to 9601. However, the number of students has increased from

⁸⁴ National Protection and Durable Solutions for Internally Displaced Persons Project, Human Rights Commission, Sri Lanka, *The concept paper for early childhood care and development of Northern Province of Sri Lanka*, p. 2, http://www.idpsrilanka.lk/Doc/GeneralDocuments/The_Concept_Paper_for_ECCD_of_Northern_Province_NPDS%20Project_HRCSL.pdf.

⁸⁵ "Education Budget cut by 42% over 3 years: DNA", *Daily Mirror*, 20 May 2010, <http://www.dailymirror.lk/print/index.php/news/front-page-news/11070.html>.

⁸⁶ *Ibid.*

3,929,234 in 2008 to 3,933,521 in 2009. The cause behind the situation can be easily identified as the government's failure to restructure the education system in terms of providing facilities to the schools.⁸⁷

149. The schools in the plantation sector were under the purview of the estate management for decades until the 1970s. Despite the gradual takeover of schools by the state between the period 1977-1991, the quality of education in the plantation schools has not been on par with the national standards. A survey conducted by Transparency International Sri Lanka has revealed that the school dropout rate before completing five years is significantly high at 8.4% in the plantation schools.⁸⁸
150. Early childhood education remains within the purview of the plantation management. The crèches – a centre which provides custodial care for the children while the mothers are at work – is another area which needs much attention with regards to the related issues such as the exploitation of the crèches attendants, appointment of non-qualified pre-school workers, and recruitment of non-Tamil speaking employees to work in crèches and pre-schools.
151. There are 15 government universities in Sri Lanka.⁸⁹ The student-teacher ratio in 2009 was 16:2. The percentage eligible for university admission through qualification in the GCE Advanced-Level examination in 2008 and 2009 were 61.27% and 62.78% respectively. However, admissions as a percentage of the eligible group were only 16.53% and 16.01% respectively. These statistics lucidly illustrate the larger percentage of youth who are qualified to enter the universities and the miniscule percentage that is admitted to the universities. For the 2008/9 intake, the total student enrolment to the 38 Technical Colleges in Sri Lanka was 31251.⁹⁰ A total number of 4898 students from various fields graduated from the 2007/8 intake.⁹¹
152. University students and students in other higher educational institutes are eligible to apply for the *Mahapola* scholarship where their parents' combined annual income does not exceed Rs300000. A monthly allowance of Rs2500 is paid to the students for a maximum of ten months of an academic year. However, with depreciation of currency the allowance has gradually decreased in its monetary value. On the other hand, the number of those eligible has also rapidly risen even though only a small percentage of them are selected for the scholarship.
153. In the higher education sector the National Education Commission (NEC) has drawn up a proposal for a National Policy Framework on higher education. With the backing of the government plans are underway to open the university education sector to private commercial interest.⁹² It seems that the crisis created by the slash of state investment in education is being addressed through liberalisation of tertiary education provision.

⁸⁷ "Education: dilapidated and in urgent need of reform", *Daily Mirror*, 3 June 2010, <http://www.dailymirror.lk/print/index.php/opinion/12124.html>.

⁸⁸ "Student drop-out rate in estate schools alarming" *Daily Mirror*, 23 August 2010, <http://www.dailymirror.lk/print/index.php/news/news/19252.html>.

⁸⁹ University Grants Commission – Sri Lanka, *Educational Indicators 1980-2009*, <http://www.ugc.ac.lk/en/statistics/educational-indicators.html>.

⁹⁰ Ministry of Youth Affairs, Department of Technical Education and Training, General Information – "Student Enrolment", http://www.techedu.gov.lk/web/index.php?option=com_content&view=article&id=99&Itemid=125&lang=en.

⁹¹ *Ibid.*

⁹² "Sri Lanka to open tertiary education; set up regulatory agency: official", *LBO Online*, 17 June 2010, <http://www.lankabusinessonline.com/fullstory.php?nid=1401781048>.

154. Due to the slow progress in the resettlement of internally displaced people in the Northern province, 60,000 children are estimated to have been deprived of schooling.⁹³ With the commencement of the first school term for 2010, the Government Information Department announced that a total of 897 schools have opened for studies in Mannar, Kilinochchi and Vavuniya Districts in the Northern Province from January 04, 2010. At the beginning of the year, 6051 students from Mannar, Kilinochchi and Madhu have begun attending school.
155. The widespread destruction of school buildings, lack of supplies and transport difficulties for students and teachers, are key constraints regarding the education sector in resettlement areas. A hundred & seventy-two (172) schools have reopened in the resettled areas catering for 27,160 children as of 31 May 2010, according to the United Nations Office for the Coordination of Humanitarian Affairs.⁹⁴
156. Official data indicate a total student population of 82,000. The government and UNICEF have provided furniture supplies sufficient for only 40,000 students. According to UNICEF,⁹⁵ basic support for subsistence needs to be provided to these people in addition to schooling for the children.
157. It is appropriate to mention here that significant issues such as reproductive health and rights, sexual rights as well as gender and related topics are inadequately represented in the curricula of the Sri Lankan education system including higher education which has resulted in poor awareness and even poorer understanding of most of these issues.
158. The rigid religious interpretations and traditional social perspectives have been thrusting patriarchal and hetero-normative values on children preventing them from discussing these 'social taboos' openly for a greater tolerance and understanding. Consequently, the harsh attitude extending to phobia towards different sexual orientations has led to physical and mental harassment and discrimination, resulting in dropping out from school, and even leading to suicide.
159. Corporal punishment was repealed by the Corporal Punishment (Repeal) Act, No. 23 of 2005. Some teachers and parents continue to believe in its appropriateness despite Education Ministry Circular ED/01/12/01/04/24 that discourages physical punishment in schools.⁹⁶ The assault of children for misbehaviour or even minor infractions, leading to their hospitalisation is not unknown, and is widely tolerated by education and police authorities.

Questions

- *What measures are the government taking to ensure that children in conflict-affected areas, especially those recently displaced, are reintegrated into the education system including through the provision of non-formal education and through prioritisation of the rehabilitation of school facilities and provision of water, sanitation and electricity in those areas?*

⁹³ "No schooling for 60,000 children in North", *Daily Mirror Online*, 21 May 2010, <http://www.dailymirror.lk/print/index.php/news/front-page-news/11149.html>.

⁹⁴ "Sri Lanka Humanitarian Snapshot June 2010", [http://www.reliefweb.int/rw/RWFiles2010.nsf/FilesByRWDocUnidFilename/MDCS-86QEW6-full_report.pdf/\\$File/full_report.pdf](http://www.reliefweb.int/rw/RWFiles2010.nsf/FilesByRWDocUnidFilename/MDCS-86QEW6-full_report.pdf/$File/full_report.pdf).

⁹⁵ *UNICEF Humanitarian Action 2010 Sri Lanka*, http://www.unicef.org/har2010/files/HARMYR2010_SRI_LANKA.pdf.

⁹⁶ Asian Human Rights Commission, *Sri Lanka: Another alleged assault of a 14-year-old student by the principal*, Hong Kong, 30 April 2007, <http://www.ahrchk.net/ua/mainfile.php/2007/2358>.

- *What measures are the government taking to ensure that primary education is in fact free and compulsory to all children; including ensuring that education is at all times available, accessible, acceptable, and adaptable?*

Recommendations

- *Include human rights education as part of the school curriculum from primary through to pre-university.*
- *Formulate a national education policy with monitoring mechanisms to ensure the relevance and quality of education at primary, secondary, tertiary as well as technical and vocational level.*

Article 15: Cultural Rights

160. Sri Lanka is multi-ethnic, multi-religious and multi-cultural. However, numerically small minorities such as Malays, Telugus, Malayalees and *adivasis* have not received state recognition of their linguistic and cultural identity, including in statistical measures.
161. Religious intolerance has been on the rise in tandem with Sinhala nationalist sentiments. Christian places of worship have been attacked, burned and demolished with impunity for these actions enjoyed by perpetrators and cheerleaders.⁹⁷
162. Proposed legislation on unethical conversions is regarded by some groups as an attempt to restrict freedom of religious belief.⁹⁸ Religious minorities complain of undue restrictions on construction and/or expansion of their places of worship of religious minorities.
163. Tamil has been recognised as an official language, through the 13th and 16th Amendments to the Constitution as far back as 1987, but some 23 years later, the official languages law is respected only in the breach outside of the North and East,⁹⁹ including in divisional secretariats expressly designated as bilingual administrative divisions.¹⁰⁰
164. Tamil speakers, particularly outside of the North and East, continue to complain of inability in transacting official business with authorities in the Tamil language, either through correspondence or in person; signage and information materials in Tamil are still not uniformly available in public institutions.
165. The Official Languages Commission is under-resourced, unable to adequately inspect and monitor implementation of the official languages law, and unwilling to take action against recalcitrant public institutions.¹⁰¹

⁹⁷ US Department of State, *International Religious Freedom Report 2008 – Sri Lanka* <http://www.state.gov/g/drl/rls/irf/2008/108506.htm>;

⁹⁸ Report submitted by the *Special Rapporteur on freedom of religion or belief, Asma Jahangir – Mission to Sri Lanka (2-12 May 2005)*, E/CN.4/2006/5/Add.3, 12 December 2005.

⁹⁹ Foundation for Co-Existence, *Language Discrimination to Language Equality: Report of an Audit on the status of the implementation of the Official Language Policy in Sri Lanka*, Colombo 2006.

¹⁰⁰ Paras. 2.5 & 2.6, *Memorandum of Recommendations*, Official Languages Commission, Rajagiriya 2005, p. 5. In 1998, 29 divisional secretariats including five in the majority Indian-Origin Tamil Nuwara Eliya district were declared bilingual, but in practice there has been little or no improvement in services to Tamil-speakers.

¹⁰¹ Official Languages Commission, *Annual Report 2005*, Rajagiriya 2006, p. 21.

166. Public Administration Circulars No. 3 and 7 of 2007 promoting bilingualisation of the public service is to be welcomed but will take decades to bear fruit unless reinforced by other supportive actions such as recruitment of Tamil-language speakers to central and provincial government outside of the North and East.
167. *Adivasis* have faced official harassment for speaking in their own language. In 2003, eight members of the community were detained for over six hours at Mahiyangana police station for not speaking in Sinhala.¹⁰² The recent statement by a cabinet minister of willingness to discuss official recognition of the *Veddah* language, including through its instruction in state schools is to be welcomed and must be implemented.¹⁰³
168. State support is provided for out-of-school Buddhist education (*daham pasal*) but has not been extended to other religious faiths such as Hinduism, Islam and Christianity.
169. Previously separate departments of state were established for the four main religions practised in Sri Lanka. However, the abolition of these departments has increased anxieties among religious minorities as to the protection of their respective faiths.

Questions

- *What measures are being taken to ensure that bilingual division secretariats truly deliver services in Tamil; and to increase the number of bilingual secretariats in areas with Tamil-speaking communities?*
- *Will the government strengthen the Official Languages Commission so that it performs its statutory duties more effectively?*

Recommendations

- *A National Cultural Council for Indian Origin Tamils should be established for the purposes of protection of their linguistic and cultural rights as well as heritage.*
- *Recognise and protect other languages spoken in Sri Lanka such as Malay, Veddah, Telugu and Malayalam through state resources.*

*Rights of Northern Muslim Internally Displaced Persons*¹⁰⁴

170. Contrary to the state report, the LTTE's expulsion of 90,000 Northern Muslims took place in October 1990 and not 1991. Secondly, Muslims were expelled from all five districts in the Northern Province (including Mannar, Mullaitivu, Kilinochchi and Vavuniya), and not only the Jaffna peninsula. Further, while close to 6000 families are benefiting from housing assistance, it should be noted that this is for new houses and partially completed houses, and not "partially damaged" houses as reported to the Committee.

¹⁰² "Veddah complains of discrimination", *The Island*, 4 June 2004, <http://www.island.lk/2004/06/04/news06.html>.

¹⁰³ "State recognition for Veddah language", *Daily Mirror*, 27 July 2010, <http://www.dailymirror.lk/print/index.php/news/front-page-news/16797-state-recognition-for-veddah-language.html>.

¹⁰⁴ This chapter is based upon a submission prepared by Dr Farzana Haniffa (*Citizens Commission on the Expulsion of Northern Muslims*).

171. In the current context, with the defeat of the LTTE many Northern Muslims are returning to their homes. The government's emphasis on the resettlement of the new (Vanni) IDPs – itself fraught with problems – has meant that no attention is paid, and no resources allocated for the return of the Northern Muslims.¹⁰⁵
172. Some families are poor, some are female headed households; these persons cannot conceive of returning under current conditions given that no proper housing, infrastructure facilities are available especially in villages in the Mannar district. Safety and security remains a problem. Some female-headed households are barely surviving in Puttalam and do not have the financial means to consider moving back. The concerns and needs of the community that may remain in Puttalam too should be addressed.
173. The numbers of family members have changed due to the natural increase over the past 20 years, and therefore many do not have houses in the North to go back to. Many have returned with the hope of receiving assistance in the future. Their return is spontaneous and ad-hoc. They face difficulties due to landmines, wild elephants, snake infestation etc.
174. There are difficulties with livelihood activities, restrictions on fishing, difficulty in restarting businesses in the Jaffna peninsula due to space and usage issues. Traditional tenants are not given their old shops back. IDPs are compelled to cancel food rations in Puttalam in order to claim rations in the North. However, the rations are not immediately resumed in the place that they go to: in at least one instance, there was a delay of six months.¹⁰⁶
175. Returnee Muslims uniformly report unease and fear about their reception by the local (Tamil) community. Many have said that the state administrative mechanism (divisional secretariats etc.) is unwelcoming and unsympathetic.
176. There are many complicated issues with regards to land. Many Muslim returnees have permits to land but find that it has been redistributed in their absence, for example the LTTE allocated Muslim-owned properties to families of its cadres.

Questions

- *What measures are being taken to ensure the resettlement of those displaced before 2008?*
- *What measures are being taken to facilitate the return of Northern Muslims who were expelled by the LTTE in 1990?*
- *What measures are being taken to include Northern Muslims' aspirations and concerns when undertaking development planning for the north?*

¹⁰⁵ The non-governmental *Citizens Commission* is in possession of a letter from the Ministry of Resettlement to the Jaffna Government Agent dated 03.06.2010 stating, *inter alia*, that the cash allowance that resettled persons are entitled cannot be provided for Muslim IDPs. "We regret to inform you that this Ministry is not in a position to provide the allocation required for the payment for Rs5000 allowance since it is funded by UNHCR for the IDPs displaced only after September 2008".

¹⁰⁶ Testimony at the *Citizens Commission* sitting in Mannar on 25 March 2010.

Recommendations

- *The government must recognise the right of Northern Muslims to return, and facilitate their return through providing resettlement assistance.*
- *The government should establish a land commission, with participation of all communities, to resolve issues of access to land for Muslim returnees and their natural increase.*
- *The government should recognise that Muslims are returning to areas that have been virtually mono-ethnic for twenty years; all state employees and institutions must facilitate the reestablishment of Muslim communities in the areas.*
- *The government should take measures to ensure adequate representation of Muslims within the administrative service in the Northern Province.*
- *The government should formulate a compensation scheme taking into account the different experiences of displacement.*

1. All Ceylon Plantation Workers Congress (ACPWC)
2. Arising Sun Community Development Organization (ASCDO) – Nuwara Eliya
3. Action Network for Migrant Workers (ATCFORM)
4. Bhikku Organisation for Protection of Natural Resources
5. BRIT – Badulla
6. Centre for Housing Rights and Evictions (COHRE), Sri Lanka
7. Centre for Human Resource Development (CHRD) – Mattala
8. Centre for Human Rights and Community Development – Rideegama
9. Centre for Social Concern (CSC) – Hatton
10. Centre for Sustainable Agriculture Research and Development (SARD)
11. Ceylon Plantation Worker Union (CPWU)
12. Christian Workers Fellowship (CWF) – Hatton
13. Cultural and Environment Society (CES)
14. Devesarana Development Centre – Kurunegala
15. Environmental Cooperative Assembly (ECA)
16. Equal Ground (EQ)
17. Free Trade Zones & General Services Employees Union (FTZGSEU)
18. Future in Our Hands (FIOH) – Badulla
19. Government Printers' Union
20. Hatton Tamil Sangam (HTS)
21. Home for Human Rights (HHR)
22. Human Need Action (HNA) – Badulla
23. INFORM Human Rights Documentation Centre
24. Institute of Social Development (ISD) – Kandy
25. Inter-Religious Peace Foundation (IRPF)
26. Isuru Jeewithodaya Foundation (IJF)
27. Janawaboda Kendraya (JK) – Negombo
28. Kandukara Development Foundation – Monaragala
29. Kandurata Women's Foundation (KWF)
30. Lanka Estate Workers Union (LEWU)

31. Law & Society Trust (LST)
32. Movement for Land and Agricultural Reforms (MONLAR)
33. National Farmers' Assembly (NFA)
34. National Fisheries Solidarity (NAFSO)
35. National Union of Workers (NUW)
36. Navodaya Foundation (NF) – Ratnapura
37. New Environmental Resource Alliance – Hambantota
38. Organisation for the Protection of Human Resources – Monaragala
39. Pahala Uva Community Development Institution – Monaragala
40. Pahala Uva Women's Development Organisation (PUWDO)
41. Penn Wimosana Gnanodayam (PWG) – Hatton
42. People's Health Movement (PHM)
43. Plantation Rural Education Development Organisation (PREDO) – Kandy
44. Plantation Women Development Society (PWDS) – Kegalle
45. PREDO People's Forum
46. Pulse Sri Lanka
47. Rural and Community Development Corporation (RCDC)
48. Savistri
49. Social Democrats Collective (SDC)
50. Social Development Society – Hatton
51. Social Economic Technical Institution (SETI)
52. Social Welfare Mandram (SWM) – Norwood
53. Society for Welfare, Education and Awareness Training (SWEAT) – Hatton
54. Sri Lanka Human Rights Foundation (SLHRF)
55. Sri Lanka People's Peace Foundation (SLPPF)
56. Sustainable Agriculture Welfare Organisation – Welimada
57. Swashakthi Development Foundation – Mahiyanganaya
58. United Federation of Labour (UFL)
59. United Welfare Organisation (UNIWELO) – Nawalapitiya
60. Up-Country People's Front (UPF)
61. Up-Country Social Action Centre (UPSAC) – Dickoya
62. Up-Country Workers Information Development Foundation (UWIDF)
63. Uva Farmers' Collective for Poison-Free Agriculture (UFCPFA)
64. Uva Workers Development Foundation (UWDF) – Badulla
65. Uva-Wellassa Peasant Women's Organisation (UVPWO)
66. V & R Peoples' Foundation (VRPF)
67. Wave Women's Network (WWN)
68. Women and Media Collective (WMC)
69. Women's Resource Centre (WRC) – Kurunegala
70. Women's Support Group (WSG)
71. Women's Development Foundation – Badulla
72. Workers' Liberation Front (WLF)

Statement by Members of Sri Lankan Civil Society to the 45th Session of the UN Committee on Economic, Social and Cultural Rights, Geneva, 9 November 2010

01. We are members of the Collective for Economic, Social and Cultural Rights in Sri Lanka (CESCR – SL)¹ gathered in Geneva on the 8th & 9th of November 2010, for the review of the State Report on Sri Lanka's implementation of the International Covenant on Economic, Social and Cultural Rights.

02. We welcome the long overdue submission of the combined second, third and fourth periodic report (E/C.12/LKA/2-4). We are not aware of any consultations with civil society in the preparation of the State Report, and regret the absence of an environment conducive to constructive and mutually respectful dialogue between the government and civil society organisations on our shared goal of achieving the full realisation of the rights contained in the Covenant.

03. While noting that the State Report was prepared and submitted in June 2008, that is before the adoption of the Committee's guidelines on treaty-specific documents (E/C.12.2008/2), we regret that it has been structured entirely in response to the Concluding Observations and Recommendations of the Committee at its eighteenth session in 1998 (E/C.12/1/Add.24), and does not adequately detail the concrete measures taken towards the implementation, in law and in fact, of Articles 1-15 of the Covenant since Sri Lanka's first periodic review in 1998.

04. We further regret that the replies by the Government of Sri Lanka (E/C.12/LKA/Q/2-4/Add.1) to the list of issues raised by the Committee have been selective and partial: through omission of certain questions, and elsewhere through the uneven quality of information presented.

Our collective concerns include the following:

05. Although the 26 year long war ended in May 2009, the island-wide state of emergency has not been lifted nor the Prevention of Terrorism Act reviewed for non-compliance with international standards. There is a legal vacuum and protection concerns over the 11000 Tamil ex-combatants and surrendees (4485 of who have been released as at August 2010). Human rights defenders and dissenting civil society and political activists, as well as independent media-workers, continue to face the threat of violence, abduction, arbitrary arrest and hate-campaigns for legitimate activities. The abolition of the Human Rights Ministry in April 2010 and the annexation of some of its function by the Ministry of External Affairs was a retrograde measure. There has been no progress in evolving political and constitutional reforms supported by all communities for the devolution of power to territorial and non-territorial ethnic minorities. The democratic space has not expanded in the absence of armed conflict.

06. Mega-development projects and national and regional development plans are advanced by the government as measures to resolve long-standing issues of poverty, inequity in provision and access to public services, and marginalisation of vulnerable communities and groups. The overall failure of

¹ The CESCR-SL is a plural and broad-based coalition of 72 non-governmental organisations, community-based organisations, and trade unions, that submitted in advance of the 45th Session of the UN Committee on Economic, Social and Cultural Rights, a joint civil society report (<http://www2.ohchr.org/english/bodies/cescr/cescrs45.htm>) raising selected issues and recommendations concerning implementation of the International Covenant on Economic, Social and Cultural Rights.

accelerated and higher growth as the strategy for reduction of poverty, over the last 33 years, has not been recognised. There has been no consultative and participatory process for project-affected people and civil society organisations in these projects and plans, nor their sources of financing and means of repayment. Forced evictions and the expropriation of land and property are justified in the name of 'development'. Decision-making and information is centralised in Colombo to the exclusion of even elected officials at local and provincial-level. There is continuing militarisation of the civilian administration, particularly but not exclusively in the conflict-affected Northern and Eastern provinces. There is no reason to believe based on past national and international experience, that the construction of airports, ports, power-stations and highways; coupled with subsidies and tax holidays to the private sector and foreign investors, will in and of itself be sufficient to address local issues of unemployment, livelihood, environmental degradation and the quality of life.

07. Sri Lanka's reasonably good human development indicators and rising per capita levels of national income mask the existence of deprivation, violence in society and within the family, rising poverty, prevalence of anaemia, low labour force participation rate of women, exploitation of women's waged and unwaged labour, abysmal representation of women in political office, and inequalities based upon gender, age, ethnicity and region among other factors. Expenditure on defence increases year-on-year and is greater than spending on health and education combined. While some progress has been made in the refinement of statistical measures, most socio-economic indicators are only disaggregated on the basis of the administrative unit (district).

08. The progressive realisation of the economic, social and cultural rights of Sri Lankans and the mainstreaming of those rights in national policy and law requires the legal enforcement of those rights within the constitutional and statutory framework; the sensitisation of judicial officers and public officials to violations and imminent infringements of those rights, the minimum core obligations under international law, and the remedies that ought to be available; the expansion of the investigative mandate of the National Human Rights Commission to include all human rights and not only "fundamental rights" as at present; and enabling citizens to seek relief and remedy in appropriate international human rights mechanisms including through right of individual complaint to the Committee on Economic, Social and Cultural Rights.

We, members of Sri Lankan civil society, therefore respectfully urge the Committee to include the following among its recommendations to the State Party:

09. The stigmatisation and de-legitimisation of civil society activists and their work must end. Democratic rights and institutions and the rule of law must be upheld. State and society should be demilitarised. The human rights and freedoms of all must be respected and safeguarded including through ensuring adherence to the rule of law; enhancing the human rights consciousness of the judiciary; and strengthening the independence and effectiveness of national human rights institutions and protection mechanisms.

10. Local communities, displaced persons, and project-affected people, must be recognised as rights-holders and should be fully informed and consulted in the formulation, implementation and review of development strategies and at all stages of the project cycle. Their freedom to receive, seek and impart information should be recognised and safeguarded through a right to information act.

11. The official poverty line and measurement of poverty should be revised taking into account the cost-of-living and the multi-dimensional nature and experience of the poor and the process of impoverishment. Official indicators that measure performance and achievement in the realisation of economic, social and cultural rights should be disaggregated on the basis of gender, age and ethnicity as well as between urban, rural and estate communities to identify inequalities.

12. Sri Lanka should speedily ratify the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, through appropriate constitutional, legal and administrative measures, and the right to this remedy should be publicised to the senior judiciary, legal practitioners, and citizens through human rights education.

13. The State Party should conduct regular follow-up meetings, with the participation of the plurality of civil society, the National Human Rights Commission, and relevant line-ministries to take forward the Concluding Observations of the Committee; and publicise its recommendations through translation into Sinhala and Tamil and wide dissemination.

Fr. S. Benedict (Centre for Social Concern, Hatton); Ashila Mapalagama (Standup Movement, Katunayake), S. Murugaiyah (Plantation Sector Social Forum, Hatton); P. Muthulingam (Institute of Social Development, Kandy); Sumika Perera (Women's Resource Centre, Kurunegala); B. Skanthakumar (Law & Society Trust, Colombo), Sandun Thudugala (Movement for Land and Agricultural Reform, Rajagiriya); Pradeepa Warnakulasuriya (Janawaboda Kendraya, Negombo); S. Wijeletchumy (Arising Sun Development Organisation, Nuwara Eliya).

**IMPLEMENTATION OF THE INTERNATIONAL COVENANT ON
ECONOMIC, SOCIAL AND CULTURAL RIGHTS –
COMBINED SECOND, THIRD AND FOURTH PERIODIC REPORTS
SUBMITTED BY STATES PARTIES UNDER ARTICLES 16 AND 17
OF THE COVENANT**

Economic and Social Council
Substantive session of 2010
27 January 2010, UN Doc Ref: E/C.12/LKA/2-4

Sri Lanka**

[9 June 2008]

Extracts from the State Party Report

I. Introduction

1. The policy of Sri Lanka on economic, social and cultural rights is derived from fundamental consideration that promotion, fostering and protection of human rights is an obligation devolving on the State by virtue of the fact that Sri Lanka is a State party to 16 major international human rights conventions, including the International Covenant on Economic, Social and Cultural Rights.
2. In keeping with its policy on human rights, Sri Lanka has made sustained and determined efforts on a broad front, encompassing national and international means, to promote and protect human rights.
3. The Government of Sri Lanka ratified the Covenant on 11 June 1980. The initial report under articles 16 and 17 of the Covenant was submitted on 5 March 1996 and considered by the Committee at its 3rd to 5th meetings held on 28 and 29 April 1998. The present report responds in detail to the conclusions and recommendations of the Committee.
4. In addition, it should be noted that in 2006 in its candidature to the Human Rights Council, Sri Lanka pledged to promote treaty body reform. Sri Lanka's Aide Memoire contained the following pledge: "to work with likeminded countries to assist the Office of the High Commissioner for Human Rights (OHCHR) to formulate proposals for treaty body reform with a view to strengthening and making the United Nations treaty body system more effective and in line with present day requirements of member States".¹ Accordingly, the Government of Sri Lanka prepared the Common Core Document, which contains all relevant general information and statistics pertaining to the country and submitted it to the OHCHR in April 2008. This present periodic report should therefore be read along with the Core Document.

^{*}In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not edited before being sent to the United Nations translation services.

^{**}Annexes are available for consultation from the Secretariat.

¹Aide Memoire for the Candidature of Sri Lanka to the Human Rights Council 2006.

5. In Sri Lanka, important economic and social measures have been sustained which have ensured a high quality of life for all its citizens. These include the availability of basic food items, health services, educational facilities, housing and other essentials. These are not conceived purely as measures of social welfare. In their totality, they have helped citizens of the country to realise their full personality consistent with the political and civil rights they enjoy. All these measures are interrelated and have contributed in sum to the practical realisation of the rights enshrined in the International Covenant on Economic, Social and Cultural Rights. Special programmes such as the Samurdhi Movement have enhanced the quality of life of even those Sri Lankans who may have, relatively speaking, been in less advantageous circumstances, giving them encouragement and the means to participate productively in the country's development process. State policies have also helped to reduce income disparities between different economic sectors and among different social groups in the country.
6. The realisation of the rights embodied in the Covenant has been facilitated in Sri Lanka by a multiparty democratic system where Governments are voted into power through the regular exercise of universal adult franchise. Since independence in 1948, successive Governments also followed a consistent policy of promoting social welfare among the population. The nature of the benefits of social welfare programmes in Sri Lanka have been analyzed and quantified and are reflected in consistent improvements in key indicators such as under-five mortality rate, maternal mortality, higher life expectancy at birth for both men and women, high levels of literacy, school enrolment etc.² It could be said that broadly speaking the provision of comprehensive national free education and health is now regarded by the people as a fundamental human right.

Main contemporary challenges

7. For nearly 25 years, Sri Lanka has been compelled to combat terrorism unleashed by a separatist terrorist organisation – the Liberation Tigers of Tamil Eelam (LTTE). The LTTE has been designated as a terrorist organisation by many UN member States including the 27 countries of the European Union, India, USA, and Canada and is considered to be one of the most ruthless terrorist organisations in the world. The LTTE has been fighting for a separate state in the northern and eastern parts of the country. In July 2007, the Government eliminated the presence of this terrorist group from the entirety of the Eastern Province, and is now taking steps to harmonise the economic, social and political life of people who have lived in a conflict affected environment for over two decades. These efforts include reestablishment of civil administration, short-term and long-term economic development activity and infrastructure development to sustain economic progress. Political structures at the local level are being reinvigorated in order that the democratic rights of people of the East can be safeguarded and advanced. Direct fallouts of the conflict include: death and destruction of personal and collective property, internal displacement of persons and refugees, impeded economic development and strain on limited economic resources, psycho-social trauma, the need for rehabilitation and reintegration of ex-combatants including child soldiers, and a climate of insecurity and fear due to threats posed by terrorist activity.

²See Central Bank Annual Report 2007 (www.cbsl.gov.lk).

8. In December 2004, the Indian Ocean *tsunami* devastated approximately two-thirds of Sri Lanka's coastline actuating heavy loss to life and property from which the country is still recovering. Despite the terrorist conflict and the destruction caused by the *tsunami*, the Government's commitment to human rights has remained steadfast; the Government has taken steps to promote and protect the human rights of all – irrespective of religion, ethnicity or language.

II. Responses to the concluding observations and recommendations of the Committee after consideration of Sri Lanka's initial report

9. The submissions made hereunder are in addition to the submissions made by the delegation of the Government of Sri Lanka to the Committee on Economic, Social and Cultural Rights at the time of the consideration of its initial report in 1998, and the submissions made in response to the queries raised by several members of the Committee at the said meeting.
10. Additional information on national strategies, collated statistics and analysis of conformity of Sri Lankan law with key international instruments on human rights and labour rights to which Sri Lanka is a State party, in accordance with the guidelines for reporting by States parties, is contained in the Common Core Document submitted by Sri Lanka in April 2008.
11. The Government of Sri Lanka wishes to reaffirm its commitment to continue and maintain the constructive dialogue with the Committee and to answer all questions and queries to the best of its ability and to consider adopting the recommendations made by the Committee. In this report, the Government of Sri Lanka will respond to the conclusions and recommendations of the Committee (E/C.12/1/Add.24).
12. The Government of Sri Lanka notes and acknowledges the satisfaction of the Committee and the positive comments listed in paragraphs 2 to 3 of the Committee's concluding observations.
13. The Government of Sri Lanka wishes to make the following submissions in response to paragraphs 6 to 30 of the Committee's concluding observations.

Ceasefire Agreement, root causes of the armed conflict, and finding a peaceful settlement to the ethnic conflict

14. A Ceasefire Agreement (CFA) was signed between the Government of Sri Lanka and the Liberation Tigers of Tamil Eelam (LTTE) in February 2002. Direct talks between the Government and LTTE with Norwegian facilitation began in October 2002 following the formal ceasefire. Six rounds of negotiations were held between the Government and the LTTE. The Government has remained committed to a negotiated settlement despite the LTTE's walking away from talks in April 2003.
15. Despite the LTTE launching a wave of attacks against the security forces only 14 days after the assumption of office by President Mahinda Rajapaksa in November 2005, every effort was made by the new Government to engage in political negotiations with the LTTE, which had unilaterally pulled out of the peace process in April 2003. This included two rounds of talks held in Geneva and technical talks scheduled in Oslo. In fact, in Oslo, the LTTE delegation having arrived in the city, refused to show-up for negotiations, once again underlying its lack of

commitment to the Peace Process. The LTTE spurned all opportunities for discussing the core issues aimed at arriving at a political settlement, and continued its duplicitous action of escalating the violations of the CFA.

16. Notwithstanding LTTE attacks on the Army Commander, the Secretary to the Defence Ministry and the assassination of Major General Parami Kulatunge, the third highest ranking officer in the Sri Lanka Army, the Deputy Secretary General of the Government Peace Secretariat Ketheshwaran Loganathan and numerous attacks targeting innocent civilians including bus bombings in Kebitigollawa, Nittambuwa, Seenigama and Cheddikulam, the Government of President Mahinda Rajapaksa remained steadfast in its efforts to seek an honourable peace with the LTTE, even as it pursued negotiations on a political settlement with all political parties represented in the Parliament (the All Party Representative Committee process).
17. It should be noted that it was only following the LTTE blocking of water supply to the East at the Mavilaru sluice gate, that the Government was compelled to undertake military operations against the LTTE in order to protect the civilian population and vital strategic assets including the Trincomalee Port.
18. It must be noted that throughout the period of the CFA, protestations by the Government to the Norwegian Government as well as to the Sri Lanka Monitoring Mission (SLMM), about the increased illegal activities of the LTTE under the cloak of the CFA including development of its air wing and unabated child recruitment amounting to 1743 cases as ruled by the SLMM as at 30 April 2007, were to go unheeded.
19. In addition to the LTTE's thousands of ceasefire violations already committed by its stepping up of deliberate and indiscriminate targeting of civilians including women and children including bomb blasts in Nugegoda, Kebitigollawa, Slave Island as well as the killing of UNP Parliamentarian T. Maheswaran on the first day of 2008 and the failed assassination attempt using a paraplegic female suicide cadre on Social Services and Social Welfare Minister Douglas Devananda in December 2007, it became obvious that the LTTE sought to continue to engage in provocative activities that could create unrest in the South, making mockery of the CFA.
20. In view of the above, the Government of Sri Lanka on 2 January 2008 formally notified the Royal Norwegian Government of its decision to terminate the CFA.
21. The decision of the Government to terminate the Ceasefire Agreement has been taken after very careful consideration of all relevant facts.
22. Firstly, it must be underlined that this Agreement with the LTTE was seriously flawed from the very inception. It was entered into without proper consultation by the Government of the day, with even the Cabinet of Ministers not being privy to its contents. Legitimate concerns of the security forces had not even been taken into account. It had the effect of alienating the democratic Tamil political forces and focused solely on the LTTE. However, notwithstanding these shortcomings evidently made in the hope that sustainable peace could be achieved, at no stage in its six rounds of talks from September 2002 – March 2003 with the then Government did the LTTE seek to engage in any substantive political discussion aimed at moving towards a political settlement.

23. On the contrary, under the cover of the CFA, the LTTE continued to take strategic advantage on the ground as they had in all previous peace processes, seeking to dominate areas such as Sampur in the Eastern Province, as well as continuing to smuggle in large hauls of lethal arms, explosives and ammunition. It must be noted that it was during this period of ceasefire the LTTE most brazenly assassinated among others, the serving Foreign Minister, moderate Tamil Member of Parliament, Lakshman Kadirgamar on 12 August 2005 and eliminated many of Sri Lanka's intelligence officers through attacks including in Kiribathgoda, Dehiwala, Bambalapitiya (in the Western Province) and Jaffna (in the Northern Province).
24. Honourable Rohitha Bogollagama Minister of Foreign Affairs addressing the Diplomatic Corps on 4 January 2008 stated that "the termination of the CFA does not in anyway hamper the process of moving towards a negotiated political settlement. In fact, it gives us broader space to pursue this goal in a manner that involves all sections of the Sri Lankan polity, which remained sidelined due to the CFA, an agreement solely between the Government and the LTTE. As stated by His Excellency the President Mahinda Rajapaksa on 26 December 2007 in Matara, the doors remain open for the LTTE to join this process. It should be recalled that the Thimpu Talks of 1985, the Indo-Sri Lanka Agreement of 1987, the 1990 talks between President Premadasa and the LTTE, as well as talks between President Kumaratunga's administration and the LTTE in 1994, were not done with the presence of a CFA. The Government of Sri Lanka will, while dealing militarily to eliminate the scourge of terrorism from our land, will spare no effort in our bid to arrive at a practical and sustainable political settlement. In doing so, our Government is conscious that the 13th Amendment to the Constitution signed following the Indo-Sri Lanka Agreement of 1987 itself, is yet to be fully implemented". The Government has expressed its appreciation of the Norwegian facilitators and the SLMM as well as the role played by the Co-chairs³ in their efforts to assist the peace process in Sri Lanka.
25. Sri Lanka reiterated its sincere commitment to a negotiated political settlement through an inclusive process which includes all minority groups and looked to the support of the international community, in working towards securing a sustainable peace.
26. The Government of Sri Lanka clearly stated and reiterated on numerous occasions that it was committed to a negotiated political settlement of the conflict and that its aim is to move the country forward to the realisation of a just and honourable peace. The Government adopted an inclusive approach to this goal and taken a number of initiatives to facilitate the realisation of a negotiated settlement. Significant among them were the initiatives to reach a political consensus, the human rights initiatives, humanitarian assistance initiatives as well as the continued efforts to fulfil all essential supplies, facilities and infrastructure requirements of the people in the North and the East. The Government has simultaneously given priority to developing the North and the East.
27. Since April 2006, the Government of Sri Lanka has taken a number of initiatives for the realisation of a negotiated settlement to resolve the national problem. Significant among them is the endeavour to develop constitutional proposals with a view to find a "home grown solution" to end decades of initial strife and enable all people to live in dignity and peace in Sri Lanka. The aim of the All Party Representative Committee (APRC) was to engage the various political

³ EU, Japan, Norway, and USA.

parties, discuss their different approaches and through their deliberations arrive at a broad framework that would generate consensus.

28. President Mahinda Rajapaksa on 23 January 2008 received from Minister Tissa Vitharana, Chairman of the APRC, the proposals to address the reasons for the conflict. These include full implementation of the relevant provisions of the present Constitution. The APRC will continue to explore additional proposals. The present proposals have sought to identify a course of action to achieve maximum and effective devolution of power to the Provinces to meet the aspirations of the minorities, including the Tamil speaking peoples, as well as other communities, especially those living in the North and the East. What is most important is that this could be done most expeditiously within the framework of the present Constitution. It is a new approach, and a pragmatic way forward following a series of failed attempts at bringing about constitutional reforms. It is envisaged that the momentum generated by working together on the basis of these proposals will enable all communities to build trust that is a pre-requisite to embark on greater reforms.
29. The ceasefire should have ideally created conditions for the rapid development of all parts of the country. However, the LTTE dominance in some areas of the North and the East prevented this, depriving the people of benefits of such development. The East, since it was liberated by the security forces by July 2007, has been earmarked for rapid economic development including with the assistance of the international donor community and United Nations and International non-governmental organisations (INGOs).
30. It is a little known fact that throughout the years of conflict, humanitarian and developmental needs of the civilian population of the North and the East, including in conflict areas were continuously met by the Government of Sri Lanka together with some assistance from the donor community. The administrative machinery including the free national health, education and infrastructure facilities in conflict areas are continuing to be maintained by the Government despite the fact that the LTTE siphons off such funding for its own illegal purposes.
31. State hospitals and State run health-care centres provide a totally free service, both preventative and curative and are funded by the Government. The State meets the recurrent costs of doctors, nurses and minor employees' salaries, drugs, equipment and maintenance of hospitals. In the North and the East, there are over 53 hospital institutions with more than 4427 hospital beds providing free curative healthcare.
32. The State also funds the education system, including schools, non-formal education institutions, and technical colleges and provides free education. The salaries of teachers, administrative, clerical and elementary staff are met by state funds. There are no private schools in operation in Kilinochchi, Mannar, Vavuniya, Ampara and Trincomalee Districts. School children in these areas are entirely dependent on Government run schools for their primary and secondary education, which the Government continues to provide.
33. There are an estimated 1848 functioning State funded schools with over 700,000 students in the North and the East. These schools include 411 in Jaffna, 94 in Kilinochchi, 93 in Mannar, 187 in Vavuniya, 102 in Mullativu, 314 in Batticaloa, 388 in Ampara and 259 in Trincomalee. Thus 18.9 % of the schools administered by the Ministry of Education are located in the North and

the East. The scope of the Government provision of education is apparent for instance, in the latest report of the Office of the United Nations High Commissioner for Refugees (UNHCR) on Welfare Centres in Jaffna, which indicates that 1251 of 1252 Primary Level children are in school even from these centres, and 1434 out of 1716 secondary school children.

34. The Government of Sri Lanka is presently taking all steps to provide the essential services that people need in the uncleared areas. In fact, even today the Government Agents in Kilinochchi and Mullaitivu LTTE dominated districts are actively delivering all essential services. The salaries and pensions and other expenses of these services are fully met by the Government, and the Government also monitors these activities to ensure that the services reach the people as extensively as possible. However, given the hazardous ground conditions that prevail in these areas it is necessary for the LTTE to cooperate to ensure that these efforts are made more effectively. Already, massive programmes for housing, roads, bridges, electrification, livelihood development, hospitals, and schools have been planned. The completed projects and other projects in progress and in the pipeline are valued at approximately US\$ 1,250 million. This is a massive sum, and the investment of such an amount would need stable ground and safe conditions that are essential for the effective realisation of the benefits of this vast investment.
35. Private investment has played a vital role in the development of the South of Sri Lanka and it is hoped that it will contribute to the development of the conflict affected areas of the country. The Government is making every effort to attract both foreign and local private capital into the conflict affected areas to spread the economic benefits of private investment. The Government has sought the assistance of the Multilateral Investment Guaranty Agency (MIGA) of the World Bank Group in developing and implementing an initiative to make available insurance cover for private investors in these areas.
36. Government's policy in encouraging private investment in the North and the East is aimed at creating job opportunities for the youth in these regions which would in turn enable them to realise life's higher aspirations – a better life for them and their families. Development of the North and the East offers an alternative pathway to lives which are otherwise marred by violence and destruction.
37. The Government is committed to promote an investment drive in the North and the East not only among local investors but also among the diaspora, which is already investing substantially in Colombo. Diaspora funds could play a critical role in changing the lives of the people in the North and the East.
38. The Government has identified the need to focus on developing regional infrastructure facilities in order to stimulate economic activities in the regions as well as to quickly distribute the gains of higher economic growth to the people who are living in remote areas. The ongoing "Maga Neguma" (Road Development), "Gama Neguma" (Development of the Village), "Jathika Saviya" (National Empowerment) and "Neganahira Navodaya" (Renaissance of the East) programmes are particularly aimed at fulfilling this need.
39. The Government has taken a number of steps to address the humanitarian concerns and needs of the people in the Jaffna peninsula since the temporary closure of the Muhamalai checkpoint on the A9 highway following the massive attack by the LTTE on Government positions on 11

August 2006. The Government has supplied adequate food and medicine and other essential items through the sea route and ensuring free movement of people from the peninsula to other parts of the country. There was a shortage in supplies to the Jaffna peninsula following LTTE attacks on supply ships, but supplies and prices have rapidly improved since February 2007 and staples are available and affordable as the UNHCR statistics indicate.

40. The road northward into uncleared areas was open only three days a week on the recommendation of the ICRC, which had not obtained the required security guarantees to keep it open. Following a request made by the Government at a meeting of the Consultative Committee on Humanitarian Assistance (CCHA), the International Committee of the Red Cross (ICRC) was able to get the required guarantees, and open the road for six days a week, which facilitates still further the provision of supplies by the Government, private sector and Non Governmental Organisations (NGOs) to those areas. Prices of goods have remained relatively stable in those areas and goods are generally available.
41. This is despite the LTTE refusal to guarantee the safety of supply and passenger ships and the attacks on civilian vessels carrying supplies and passengers. The ICRC and the United Nations have both offered to assist the Government in ferrying supplies if the LTTE were to assure their safety. The LTTE continues to refuse this basic humanitarian assurance. Arrangements have been put in place to facilitate passenger transfer on charter vessels from Jaffna to Trincomalee; to airlift civilians in need of urgent medical treatment; to facilitate domestic flights which operate to Jaffna, and to ease fishing restrictions in the lagoons off the Peninsula.

Displaced persons and facilitation of humanitarian assistance

42. The Government of Sri Lanka takes note of the grave concern expressed by the Committee about displaced persons due to the armed conflict. The internally displaced in Sri Lanka is the result of the conflict as well as the unprecedented *tsunami* disaster of December 2004. The Government has a clear resettlement plan for the Internally Displaced Persons (IDPs). A Resettlement Authority has been established by Act No. 9 of 2007.
43. The 2004 *tsunami* claimed 35,322 lives, displaced over 500,000 persons and damaged or destroyed 114,000 homes. It resulted in over 150,000 persons losing their livelihood. The cost of *tsunami* damage to the economy has been estimated at around 4.5 % of Gross Domestic Product (GDP) and amounted to over Rs. 100 billion (or US\$ 1 billion), including outputs from fisheries, agriculture, tourism, and small enterprises, as well as livelihoods in those sectors. In Sri Lanka, the additional poverty figure is estimated at 287,000. Around 79,000 houses have been completely destroyed and another 41,000 damaged, rendering between 500,000 to 600,000 people homeless. Although the overall impact on macroeconomic growth was not as significant as feared, the Government is still struggling to overcome the *tsunami*'s devastating impacts. The estimated loss of output in 2005 and 2006 was US\$ 330 million and the loss of employment as much as 275,000. Though the *tsunami* damage was enormous, the reconstruction process presented opportunities to improve on the status quo ante. Progress on reconstruction has been slower in conflict affected areas but the Government is committed to completing all development projects. Hospitals and schools damaged during this period have been restored. Livelihood restoration has been initiated via cash grants, asset replacement and micro-finance schemes.

44. On an invitation extended by the Government of Sri Lanka, Prof. Walter Kaelin, Special Representative of the United Nations Secretary-General on the Human Rights of Internally Displaced Persons, visited Sri Lanka from 14–22 December 2007. He expressed his appreciation for the Government's cooperation and facilitation of his visit and further stated that he was encouraged by the willingness of officials to acknowledge existing problems as well as their readiness to take up his recommendations on key issues. The Government is taking measures to implement Professor Kaelin's recommendations.

Eastern Province

45. Mahinda Chinthana (Vision of the Government) firmly stipulates solutions to the problem of IDPs. The proposals contained therein led to the establishment of a Resettlement Authority. After the Government took full control of the Eastern Province, resettlement of the IDPs in the Province was expedited. The Government has launched a massive programme to restore normalcy in this area with the assistance of United Nations agencies such as UNHCR, which are fully involved in the voluntary return process. While proactively engaging in the return of IDPs to their homes in the East, the Government is not coercing them to return. In the Sri Lankan culture people are reluctant to leave their homes and those who had left would return at the first opportunity. The settlement of IDPs back in their homes has been a voluntary process and it has been undertaken according to international standards. This has been acknowledged by the international community including the UNHCR and the World Food Programme (WFP). UNHCR staff monitoring the situation on the ground had confirmed that majority of people were eager to return home, the returns are voluntary and in line with international protection standards.
46. With the restoration of peace and order, the main task of the Government is to resettle the IDPs in their place of origin in a dignified manner. After displacement when they are in the welfare centres, they are protected and provided with immediate relief assistance such as food, non-food items etc.
47. The re-settlement process begins when the area is certified as clear of mines by a United Nations Development Programme (UNDP) clarification. In the resettlement process, an identity card has been issued to each displaced person by registering his/her particulars and transport facilities were also provided to travel to the place of origin. Action is being taken to issue dry rations for two weeks, clothing and kitchen utensils for each family. Further action is being taken to clean and reconstruct common places including wells and the places of essential services such as hospitals, schools and highways.
48. The Government has already taken steps to restore the livelihood of IDPs. Fishing gear is being provided to fishermen while agricultural equipment is being provided to farmers. Projects are underway to enhance the private sector participation in the development process. Bank loans are also being arranged through the Bank of Ceylon and the People's Bank. The Government is also making an assessment of damaged houses in order to pay compensation.
49. Immediate attention is being focused on provision of shelters as houses were fully and partly damaged during the conflict. In order to restart their economic life, livelihood assistance of Rs. 25,000 each is being given for the resettled families. Due to the shortage of funds, this coverage

is not complete. United Nations agencies and the INGOs complement the livelihood assistance programmes. Similarly education and health needs are being addressed, and the restoration of places of worship is being given priority in order to enable the resettled people to enjoy their religious and cultural rights.

50. The re-settlement process in certain areas has been slow due to LTTE landmines. Only once all the landmines are cleared and the UNDP has certified this, can the re-settlement be completed.
51. The Government has, in partnership with UNHCR, developed a comprehensive strategy on confidence-building and stabilisation measures which will assist in overcoming challenges in the post-return phase in the East and will ensure sustainability of resettlement by restoring confidence amongst and between former displaced and host communities. The focus for the immediate future will be on economic recovery, safety and security, livelihood development and infrastructure. The Government has successfully resettled nearly 120,000 IDPs as of end of 2007 and, with further de-mining of 23 % of uncleared land in Batticaloa District, will be able to resettle the remaining IDPs. The drafting of a comprehensive Bill on the rights of the internally displaced and returnees to supplement and complement other relevant legislation such as the Resettlement Authority Act (2007) is an initiative which has been undertaken by the IDP Unit of the Human Rights Commission of Sri Lanka (HRCSL) with the assistance of the UNHCR under the aegis of the National Protection and Durable Solution for IDPs Project.
52. A manifestation of the Government's success in restoring normalcy in the Eastern Province was the holding of the local government election after 14 years in Batticaloa on 10th March 2008 which witnessed a voter turn-out of 57 % and was considered free and fair by independent monitors.

Jaffna

53. Food Security in Jaffna is at a satisfactory level and there are ample stocks of essential items. There is no shortage of food or other commodities in Jaffna as the Government has taken every possible step to send essential items to normalise food storage. Since the land routes are sealed off, the Jaffna Peninsula depends entirely on sea transportation where ten ships are in operation in transporting goods as a joint effort by the Government and the private sector. Food distribution is done through Co-operative outlets but over 4000 private traders, who had temporarily stopped their business after LTTE threats are now actively engaged in business. At the time of compiling the present report, Jaffna had a stock of over 2000 metric tonnes of wheat flour, 6887 metric tonnes of rice, 1697 metric tonnes of sugar, 775 metric tonnes of red dhal, 95 metric tonnes of soaps and other laundry products.⁴ There is no shortage of petroleum products in Jaffna. Fuel is freely available. Two ships are carrying petrol, diesel and kerosene to Jaffna. The Government is committed to send pesticides, seed paddy and fertiliser in time to the farmers in Jaffna. Arrangements have also been set up to open a grape wine factory in Jaffna with the help of the UNDP to facilitate these farmers and also to encourage them to continue cultivation.
54. In Puttalam, of around 15,000 families, of Muslim IDPs evicted from Jaffna by the LTTE in 1991, 7885 families will be provided with new houses and assistance to repair the partly

⁴See SCOPP (www.peaceinsrilanka.org).

damaged houses under a World Bank assisted project. Action is being pursued to provide housing assistance to the remaining families. It is noteworthy that the Muslim community in Sri Lanka has suffered disproportionately due to the conflict. The LTTE was responsible for evicting about 90,000 Muslims from the Jaffna peninsula in 1991 who have not been able to return to their original homes since then.

Consultative Committee on Humanitarian Assistance (CCHA)

55. A decision was made in October 2006, following H.E. the President's meeting with the Ambassadors of the Co-Chair countries, that a CCHA be chaired by Hon. Mahinda Samarasinghe, Minister of Disaster Management and Human Rights and meet once a month to discuss issues concerning humanitarian assistance.
56. The CCHA deals with important policy issues and its membership is limited. Secretaries from the following Ministries are represented: Defence; Foreign Affairs; Nation Building and Estate Infrastructure Development; and Resettlement and Disaster Relief Services. Senior Presidential Advisor, Commissioner General of Essential Services (CGES), and Secretary-General of the Secretariat for Coordinating the Peace Process also attend, as well as the Government Agents/District Secretaries of the areas concerned.
57. The international community is represented by the Heads of Mission of the Co-chair countries, United Nations resident coordinator/humanitarian coordinator/designated official and United Nations country team (UN RC/HC); Representative of UNHCR; Head of the United Nations Office for the Coordination of Humanitarian Affairs (OCHA); European Commission's Humanitarian Aid Office (ECHO) Head of Office; ICRC Head of Delegation, and Consortium of Humanitarian Agencies (CHA). Five sub-committees have been formed under the apex body of the CCHA. These sub-committees are co-chaired by a representative of the Government and a United Nations agency, and address the following areas:
 - Logistics and Essential Services (co-chairs: CGES and WFP)
 - IDPs, Resettlement and Welfare (co-chairs: Ministry of Resettlement and Disaster Relief Services and UNHCR)
 - Livelihoods (co-chairs: Ministry of Fisheries and Aquatic Resources and ILO)
 - Education (co-chairs: Ministry of Education and UNICEF)
 - Health (co-chairs: Ministry of Health and WHO)
58. The sub-committees meet regularly, discuss and resolve all operational issues that fall within their respective area, and submit a monthly report to the CCHA indicating policy areas that the CCHA needs to address as well as any issues that cannot be implemented by the respective sub-committee.
59. The CCHA has been instrumental in gaining access and providing humanitarian assistance to IDPs in the north and the east of Sri Lanka. It provides a forum for key decisions to be made

and implemented as all relevant stakeholders attend the meeting. Moreover, the sub-committees established under the CCHA allow for broader consultation with specialised agencies.

60. Though the National Coordination Meeting on IDPs and the Consultative Committee on Humanitarian Assistance focus on providing assistance to recently displaced persons; both have been used as a platform to lobby for *tsunami* related activities and long-term development projects.

Mode of operations for all stakeholders involved in humanitarian and development work in Sri Lanka (a committee established under the CCHA)

61. A sixth sub-committee, has been established under the CCHA consisting of Government, donor, United Nations and INGO representatives was convened in order to agree on and draft the terms of reference [highlighting the scope, and laying the framework] for the development of a Mode of Operations for all stakeholders involved in humanitarian and development work in Sri Lanka. The Mode of Operations is currently being drafted.

Citizenship Act, Tamils of Indian origin living in Sri Lanka

62. The Government, considering that it was in the national interest to conclusively resolve the problem of citizenship for the residue of persons of Indian origin not covered by the bilateral agreements between Sri Lanka and India, enacted legislation in 2003 (*Grant of Citizenship to Persons of Indian Origin (Amendment) Act No. 35 of 2003*) whereby every person who had been a permanent resident of Sri Lanka since October 30, 1964 or was a descendent resident of Sri Lanka since October 30, 1964 was granted the status of a citizen of Sri Lanka with effect from the date of coming into operation of that legislation and was guaranteed economic, social and cultural rights and privileges to which a citizen of Sri Lanka is entitled by law. Thus the Government ensured that there would be absolutely no discrimination and that they would have the same rights, privileges, and entitlements to which a citizen was entitled.

Disparities between statutory law and customary law, children born out of wedlock, and minimum age of marriage

63. The Government of Sri Lanka takes note of the serious concern expressed by the Committee about the existence of disparities between statutory law and customary law.
64. Sri Lanka has been subject to centuries of Portuguese, Dutch and British domination. The legal system of Sri Lanka has over the years developed into a rich, varied complex system comprising a mixture of Roman Dutch law which is the Common Law, the English Law which applies in commercial matters, and personal laws namely Muslim Law, Kandyan Law, and Thesavalamai Law (applicable to Jaffna Tamil community). The basis of Criminal Law and procedure is the English Law included in statutory provisions; Sri Lanka has an adversarial system of justice. The Attorney-General is the principal law officer of the State. *Sir Richard Ottley*, in 1830 answering a question addressed to him by a Royal Commission of Inquiry said that "*the laws, in the Island are multifarious*". In *Casim v. Dingihamy* (1906) 9 NLR at p. 274, Middleton PJ, it was mentioned that "*Ceylon is a polygenous country with diverse systems of law*". In any such legal system there are bound to be some disparities in the interplay of different legal principles and values.

65. In 1997, the Government introduced legislation to the effect that no marriage will be valid unless both parties to the marriage have completed 18 years of age. However, the provision regarding consent to the marriage of a minor was not changed. Courts have interpreted the law to effect an absolute prohibition on the marriage of any person who has not completed the age of 18 years. The National Child Protection Authority (NCPA) forwards complaints regarding under age marriages to the Registrar General aimed at taking action against Registrars of marriage who solemnise such marriage. The Registrar General has issued a circular to all Registrars of Marriages to check the intended partners' identity cards or birth certificates to ascertain the age (Age of Majority (Amendment) Act No. 17 of 1989). Thus no person under the age of 18 years can contract a legal marriage even with the consent of the parents or guardians. This has given rise to some social problems since there are instances where girls and boys under the age of 18 have sexual intercourse with the consent of both parties, sometimes resulting in pregnancy.
66. Sri Lankan law decrees that a man who has sexual intercourse with a woman with or without her consent when she is under 16 years of age commits rape, unless the woman is his wife who is over 12 years of age and is not judicially separated from him. The reference to 12 years here is a result of the Muslim Customary Law which allows a woman of 12 years to contract a legal marriage.
67. Under the Muslim Marriage and Divorce Act, which is a codification of customary Muslim laws and practices, it is not necessary to obtain in writing the consent of a Muslim bride.
68. Therefore though the law conforms to international standards regarding the minimum age for marriage except in the case of Muslims, there are attendant problems that call for considered action and resolution, while taking into account the sensitivities of particular ethnic or religious groups.
69. The Sri Lankan legal system has long recognised the equality of married women being able to enjoy the status of an equal partner (*femme sole*) in terms of full rights relating to ownership of property independent of their spouses and also independent capacity to contract. Non-discrimination on the grounds of sex is a seminal principle underlying the *corpus* of human rights law in Sri Lanka. In the area of inheritance, some discrimination against women still exists in certain personal laws, entrenched in the customs, traditions and culture of the various ethnic groups of Sri Lanka. Several initiatives taken by the Government to create awareness on the subject as a prelude to changing the personal law has met with resistance from those very ethnic groups.

Anti-discrimination mechanisms in the area of employment with regard to women and minority groups

70. The Constitution embodies provisions on equality and non-discrimination in article 12 which further states that nothing in this article shall prevent special provisions being made by law, subordinate legislation or executive action for the advancement of women, children or disabled persons.

71. In order to give a justifiable safeguard against gender discrimination, article 12 (2) of the Constitution provides that “no citizen shall be discriminated against on grounds of race, religion, language, caste, sex, political opinion, place of birth or any such grounds”. Further, article 12 (3) by stating “no person shall, on the grounds of race, religion, language, caste, sex or any one of such grounds, be subject to any disability, liability, restriction or condition with regard to access to shops, public restaurants, hotels, places of public entertainment and places of public worship of his own religion”, seeks to extend the protection against gender discrimination to the realm of acts done by private individuals. These provisions are reinforced by the Directive Principles of State Policy and Fundamental Duties, which enunciate the duty of the state to ensure the equality of opportunity to citizens regardless of race, religion, language, caste, sex and political opinion.
72. Male and female employees of the private sector establishments are equally covered by the labour laws in Sri Lanka. There is an implied commitment on the part of the employers and the society at large to ensure fair treatment to women in the field of employment. Although there are no specific provisions under the labour laws mainly focusing on discrimination against women, special protections are afforded to women on employment conditions, and safety and health. Employment of Females in Mines Ordinance No. 13 of 1937 prohibits employment of women on underground work; the Factories Ordinance No. 45 of 1942, Employment of Women Young Persons and Children’s Act No. 47 of 1956 and the Shop and Office Employees (Regulation of Employment and a Remuneration) Act No. 19 of 1954 restrict employment of women on excessive over time work and night work. The Maternity Benefits Ordinance No. 32 of 1939 provides for the payment of Maternity Benefits and protection for other matters incidental to the employment of women before and after their confinement. Any dispute arising out of discrimination could be brought to the notice of the Commissioner of Labour in order to settle by way of conciliation or arbitration under the Industrial Disputes Act No. 43 of 1950.
73. The National Human Rights Commission is vested with powers to conduct inquiries and investigations in relation to fundamental rights. An aggrieved party can make complaints to the National Human Rights Commission against discrimination in employment in the public sector. It is observed that the Commission’s recommendations on women and minority groups have been implemented by the State authorities. As sexual harassment is an aspect of discrimination, the Commission has introduced ‘Sexual Harassment Policy: Guidelines for State Sector Institutions.’ These Guidelines recommend that all State sector institutions adopt a policy of eradicating sexual harassment in the workplace and provide remedies to victims.

Implementation of laws in respect of children

74. The Government of Sri Lanka has taken several measures to combat the problem of exploitation and abuse of children. Sequel to the ratification of International Labour Organisation (ILO) Convention 138 (1973) on Minimum Age for Admission to Employment on 11 February 2000, the Employment of Women Young Persons and Children’s Act No. 47 of 1956, and the Minimum Wage (Indian Labour) Ordinance No. 27 of 1927 were amended imposing a total prohibition of employment of children under the age of 14 years. The penal provisions of the Employment of Women Young Persons and Children’s Act No. 47 of 1956 were amended by its Amendment Act No. 08 of 2003 enhancing the maximum limits of the fines from Rs. 1,000 to Rs. 10,000, and maximum imprisonment period from six months to twelve months.

Additional provisions have been made under each section to enable the judiciary to order compensation for the child victim. One important feature of these provisions is that, the judiciary is empowered to assess the compensation at its discretion and on the merit of the case.

75. In 1995, the Government enacted legislation incorporating several new offences relating to the abuse of children. Thus the Government incorporated the offences of obscene publications, exploitation of children, cruelty to children, procurement, sexual exploitation of children and trafficking.
76. In 1998, the Government further expanded the offence of obscene publications relating to children to provide that a developer of photographs or films who discovers any indecent or obscene photograph or film of a child has a duty to inform the police. Failure to do so would attract a heavy penalty.
77. In 1998, Government enacted legislation creating the offences of causing or procuring children to beg, hiring or employing children to trafficking in restricted articles.
78. In 2006, the Government enacted legislation further enlarging the scope and ambit of the offences relating to children thus:
 - (a) A person who provides a service by use of computer was required to take all necessary measures to prevent such computer being used for the commission of an act constituting the sexual abuse of a child;
 - (b) A person who has the charge, care, control or possession of any premises and who has knowledge that such premises is being used for the commission of an act constituting the abuse of a child was required to inform the officer in charge of the nearest police station of such fact;
 - (c) The recruiting of a child for use in armed conflict was prohibited;
 - (d) The scope and ambit of acts which constitute offences relating to adoption was enlarged;
 - (e) Soliciting a child was made an offence.

Violation of the law carried with it stringent punishment

79. The 2006 legislation also awards compensation to victims for the psychological or mental trauma in addition to the penalties attaching to such offences (Penal Code (Amendment) Acts, Nos. 22 of 1995, 29 of 1998 and 16 of 2006).
80. In January 2008, a free child helpline called Child Helpline Sri Lanka was established by the Ministry of Child Development and Women's Empowerment – a nation-wide effort to prevent and protect children from abuse, as advertised widely in print and other media. Anyone can access this helpline by calling the free phone number 1929.
81. The Ministry of Child Development and Women's Empowerment has established a National Child Development Fund in 2007. Any deserving child from any part of the country can obtain

financial assistance/educational scholarship from this Fund up to General Certificate of Education (Advanced /Level).

82. The Ministry has also established a Task Force on Children Affected by the Armed Conflict for the purpose of focusing on both the monitoring and reporting of incidents in relation to children affected by conflict. Other than the Ministry, the NCPA, Department of Probation and Child Care Services, Police Department (Women's and Children's Bureau), Secretariat for Coordinating the Peace Process (SCOPP), National Human Rights Commission, the United Nations Children's Fund (UNICEF) and some other experts are members of this Task Force.
83. The institutional framework in investigating, addressing and monitoring of worst forms of child labour constitute:

The National Child Protection Authority (NCPA)
The Department of Labour
The Department of Police
The Department of Probation and Child Care Services

84. The relevant authorities have taken steps to obtain recent data from a Child Activity survey conducted in 1999 which revealed that around 19,000 children were employed as child domestic workers. Awareness programmes are being carried out by the NCPA to strengthen legal enforcement of the child labour laws. For obvious reasons it is difficult to obtain reliable data on child prostitution. However, the figures mentioned by the Committee on ESCR appear exaggerated and unfounded.

The National Child Protection Authority (NCPA)

85. The Government established the National Child Protection Authority in 1998 by the National Child Protection Authority Act, No. 50 of 1998 as a response to growing concerns regarding the escalation of child abuse cases and in recognition of the need to provide a central authority to deal with the problem. Included in the functions of the Authority is the duty to advise the Government in the formulation of a national policy on the prevention of child abuse and the protection and treatment of children who are victims of such abuse. The Authority also has an obligation to create awareness on the rights of the child to be protected from abuse and on the methods of preventing child abuse. Its mandate empowers it, inter alia:

(a) To recommend all measures necessary for the purpose of preventing child abuse and for protecting and safeguarding the interest of victims of such abuse in consultation with relevant Provisional and local authorities and with Government officials at regional and district levels as well as public and private organisations;

(b) To recommend measures to address the humanitarian concerns relating to children affected by armed conflict and the protection of such children including measures for their mental and physical well being and their reintegration into society;

(c) To supervise and monitor all religious and charitable institutions which provide child care services to children, in consultation with the relevant Ministries and other authorities;

(d) To take measures in order to minimise the opportunities for child abuse in consultation with all actors in the tourism sector.

86. The members of the Authority include Senior Psychiatrists, Senior Pediatrician, Medical Practitioners engaged in the field of forensic medicine, Senior Psychologist and senior officer of the Attorney General's Department, Department of Police and other persons who have wide experience and recognition in law, child welfare, education or any related field. The Commissioner of Probation and Child Care, the Commissioner of Labour, the Chairperson of the National Committee established by the Children's Charter on the Rights of the Child for the purpose of implementing the provisions of that Charter, serve on the Board as ex-officio members.
87. The Authority has wide powers to authorise its officers to enter and search premises including any institution by which child care services are provided, and any hospital or maternity home where the Authority has any reason to believe that illegal adoption are being facilitated. The authorised officer may also examine books, registers or records maintained by such institution, hospital or maternity home and make extracts or copies there from and interrogate any person in any such premises. Stringent punishments are provided for obstructing or resisting such officers. The authorised officers also have the power to seize any article by means of or in relation to which the offence has been committed and to seize books, registered records or other documents which in his opinion may constitute evidence in relation to the prosecution of any person for any such offence.
88. The NCPA enlightens the police on issues relating to child abuse, and educates children on the laws of the country, especially on laws pertaining to child protection and child rights through the establishment of child protection committee in schools.
89. The Authority also conducts awareness programmes on child labour. Training programmes are conducted to develop the skills of the officials dealing with the victims of child labour, i.e. the Police, Labour and Probation and Child Care Services.
90. Public awareness programmes are also conducted to sensitise the general public and to instill in them the need to provide information on child labour.
91. A cyber surveillance unit was set up to monitor activities on the internet relating to the sexual exploitation of children. Awareness programmes are conducted for children on safe cyber surfing, and skills development programmes are conducted for police officers on new legal amendments on cyber related crime.
92. The NCPA is a member of the Committee chaired by Commissioner General of Rehabilitation established for rehabilitation and reintegration of children who have been used as child soldiers and who have voluntarily surrendered. That Committee has formulated a National Policy which will be submitted to the Cabinet of Ministers for approval.

The Department of Labour

93. The Department of Labour is the Government body dealing with all matters pertaining to child labour. The Department of Labour has also taken measures to strengthen the enforcement of the

Employment of Women, Young Persons, and Children's Act by making the officers of the Probation and Child Care Services as authorised officers under that Act. The Department has a network of 12 Zonal offices, 37 district offices and 18 sub-offices all over the country including in un-cleared areas⁵ in the North. It has an inspectorate of around 400 persons who visits workplaces on inspections as routine visits or on complaints to ensure compliance with labour laws including laws pertaining to child labour. The persons violating the provisions of the labour laws are subject to prosecution. The Department of Labour also carries out programmes for creating awareness among the school children, general public and other stakeholders using different methodology such as in-house educational programmes, seminars, workshops, different competitions, development of posters, educational films, the use of mass media and printed material.

94. A separate division, namely, Women and Children's Affairs Division, has been set up in the Department of Labour to deal with employment of women and children. The division functions as the focal point of the International Programme on the Elimination of Child Labour (IPEC) of the ILO. The IPEC implements programmes for elimination of child labour with the assistance of the stakeholders. The activities of the IPEC are monitored by a committee of stakeholders chaired by the Secretary, Ministry of Labour Relations and Manpower of which the Department of Labour functions as the implementation arm.

The Police Department

95. Please see the official website of the Sri Lanka Police Service — www.police.lk — for a comprehensive introduction to the activities of the Sri Lanka Police, including its history, organisational chart, crime statistics, and information on its Human Rights Division, Women and Child Bureau etc.
96. The Sri Lanka Police has placed great emphasis in recent years on striving to enhance capacity building and the professionalism of the Service. The importance of Policing in any Peace Process is widely acknowledged.
97. Swedish Assistance was sought and a programme to enhance capacity in civilian policing, crime scene investigation and related areas was initiated in 2005. Training in human rights and professionalism is given high priority. Another important area of focus is Community Policing and training in aspects of community policing has been undertaken in the United Kingdom.
98. In January 2008, a newly built child-friendly District Head Office for the Children and Women's Bureau in Anuradhapura was handed over to the Police. It will become the coordinating head office of the Children and Women Desks of 23 police stations in the District. It was built with NGO assistance involving all stake-holders.

Childcare services

99. The Department of Probation and Child Care Services is responsible for childcare and protection. The Department deals with all cases requiring the care and protection of victims and

⁵Areas where LTTE dominates.

child offenders. Officers of this Department assist the officers of the Department of Labour for investigating the complaints on child labour.

100. The Government has also appointed a Commissioner General of Rehabilitation who is in charge of the rehabilitation of child surrendeers (children who had been recruited for armed conflict and who have voluntarily surrendered). A rehabilitation centre has been set up with educational and all other facilities necessary to prepare the children for reintegration into society. New regulations are presently being drafted incorporating child friendly procedures for the care, rehabilitation and reintegration of child surrendeers.
101. In 2005, the Government also enacted the Prevention of Domestic Violence Act whereby an aggrieved person can obtain a Protection Order by application made to Magistrate's Court. The Act also makes provision for obtaining an interim Protection Order until the conclusion of the inquiry into the application. An aggrieved person is a person in respect of whom an act of domestic violence has been, is, or is likely to be committed. Domestic Violence has been defined to mean an act, which constitutes an offence, specified in Schedule 1 to the Act as well as any emotional abuse. Where a child is the aggrieved person the application can be made on behalf of such child by:
- (a) A parent or guardian of such child;
 - (b) A person with whom the child resides;
 - (c) A person authorised in writing by the NCPA. (Prevention of Domestic Violence Act, No. 34 of 2005).

Sexual exploitation of Sri Lankan children by foreign tourists

102. The Government of Sri Lanka has a number of laws on child protection and the prevention of child abuse, including having ratified the Convention on the Rights of the Child in 1991. In 2006 the Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography was ratified and the ILO Convention No. 182 (1999) on the Worst Forms of Child Labour was ratified in 2002 (additional information is provided in paragraphs 58–67 above).
103. The law prohibits the use of children in exploitative labour or illegal activities. The penalties for sexual exploitation and child trafficking range from an unspecified fine to 5–20 years of imprisonment. Procurers and those who knowingly allow a child to be abused on their premises also face the same sentences as those directly abusing a child. The NCPA also operates a Cyber Surveillance Unit, which contains a database of suspected sex offenders. The Tourism Ministry is conducting a special awareness campaign in this regard and also mobilises its Tourism Police Units to counter such illegal activities.

Negative impact of migration by women workers on their children

104. As Sri Lanka is concerned with the welfare of its expatriates, Sri Lanka ratified the Convention on the Protection of Rights of All Migrant Workers and Members of their Families (CMW) on 11 March 1996.

105. While the Government is concerned about the plight of some migrant women who work abroad as domestic helpers and their exploitation, it is important to recognise that migrant remittances would have contributed substantially to family incomes and improvements in living standards.
106. In the pre-departure training programmes conducted by the Ministry of Foreign Employment Promotion and Welfare for the prospective women migrant workers, a session was introduced to discuss the family security, including the protection of children and their education etc. while the mother is abroad, to emphasise on the importance of ensuring the well-being of children, well before the mother's departure. The Ministry also provides guidance for obtaining different services needed for the children of migrant workers through specially trained officers at village level. Providing scholarships and school material for the children of migrant workers have also been implemented as regular programmes.
107. A study was conducted by the Human Rights Commission in 2005/2006 which made several recommendations to the Sri Lanka Bureau of Foreign Employment (SLBFE) for implementation. The Cabinet of Ministers adopted a decision in 2006 to discourage mothers with children below five years from proceeding abroad as migrant workers. However this met with strong objections from human rights activists. The SLBFE is conducting awareness programmes in this regard..."

** Editor's Note; The full text of the State Party Report, List of Issues framed by the Committee and Replies submitted thereto by the Government of Sri Lanka can be accessed at <http://www2.ohchr.org/english/bodies/cescr/cescrwg44.htm>.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLES 16 AND 17 OF THE COVENANT - CONCLUDING OBSERVATIONS OF THE COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

SRI LANKA

1. The Committee considered the combined second to fourth periodic report of Sri Lanka on the implementation of the Covenant (E/C.12/LKA/2-4) at its 40th, 41st and 42nd meetings, held on 8 and 9 November 2010 (see E/C.12/2010/SR. 40, 41 and 42), and adopted, at its 55th meeting, held on 19 November 2010, the following concluding observations.

A. Introduction

2. The Committee welcomes the open and constructive dialogue with the delegation of the State party. However, it expresses concern that the State party's report, which was submitted with a 15-year delay, contained limited information, disaggregated data or relevant statistics on the practical implementation of Covenant rights in the State party. The Committee regrets that the State party did not provide responses to half of the Committee's list of issues. The Committee calls upon the State party to ensure full compliance of its next periodic report with the Committee's reporting guidelines so as to enable a full assessment of the degree of implementation of Covenant rights in the State party. The Committee recommends that the State party consult civil society organisations during the preparatory process of its next periodic report.

B. Positive aspects

3. The Committee welcomes the ratification of the two optional protocols to the Convention on the Rights of the Child, namely on the involvement of children in armed conflict in 2000 and on the sale of children, child prostitution and child pornography in 2006 and the Optional Protocol to the Convention on the Elimination of all forms of Discrimination Against Women in 2002. It also welcomes the ratification of ILO Conventions No. 111 on discrimination in respect of employment and occupation, in 1998, No. 138 on the minimum age for admission to employment, in 2000 and the No. 182 on the worst forms of child labour, in 2001.
4. The Committee notes with appreciation the positive developments related to the implementation of the Covenant, such as the adoption of:
 - The Prevention of Domestic Violence Act No. 34 of 2005;
 - The Employment of Women, Young Persons and Children (Amendment) Act No. 8 of 2003 which increases the minimum age of employment from 12 to 14 years; and
 - The National Policy on Disability in 2003.
5. The Committee commends the State party for its significant progress towards the achievement of the Millennium Development Goals, especially in the field of health and education and notes with appreciation that the State party is on track to achieve the targets for most of the indicators by 2015.

C. Principal subjects of concern and recommendations

6. The Committee is concerned that the Covenant has not been given full effect in the domestic legal order and that although some of its provisions are justiciable before the Supreme Court, they are rarely invoked which reveals a limited knowledge of the Covenant in the State party. The Committee also expresses serious concern that the legally binding nature of international human rights treaties and more specifically of ILO conventions to which the State is a party has been questioned by the Supreme Court on numerous occasions.
The Committee calls upon the State party to ensure that the Covenant enjoys full legal effects in the domestic legal order and prevails over domestic legislation in case of conflict. It also urges the State party to bring its domestic legislation in conformity with rights contained in the Covenant. The Committee calls upon the State party to improve human rights training programmes in such a way as to ensure better knowledge, awareness and application of the Covenant and other international human rights instruments, in particular among the judiciary, law enforcement officials and other actors responsible for the implementation of the Covenant.
7. The Committee is concerned that, although partially lifted, the continuation of the state of emergency is hampering the full realisation of the economic, social and cultural rights. The Committee urges the State party to consider repealing all remaining emergency regulations which jeopardise the realisation of the economic, social and cultural rights.
8. The Committee expresses concern about the lack of independence of the National Human Rights Commission which was downgraded to B status, notably for this reason, by the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC) in December 2007. The Committee also notes with concern that posts on the National Human Rights Commission remain vacant and that the National Human Rights Commission is effectively in abeyance.
The Committee urges the State party to ensure that the National Commission on Human Rights meets the requirements of independence and autonomy set out in the principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles, General Assembly resolution 48/134).
9. The Committee is concerned that the judiciary and important oversight bodies lack independence to effectively carry out their role in the promotion and protection of economic, social and cultural rights. The Committee is also concerned about the 18th amendment of the Constitution passed on 8 September 2010 which further reduces the independence of the judiciary and other oversight bodies as it provides for direct appointments by the president of, inter alia, chairpersons and members of the Commission to Investigate Allegations of Bribery or Corruption, members of the Judicial Service Commission and the Parliamentary Commissioner for Administration (Ombudsman).
The Committee calls upon the State party to take all the necessary measures to ensure the independence and integrity of the judiciary and oversight bodies. It also recommends that the State party consider reviewing the provisions of the 18th amendment to the Constitution related to the appointment procedure of chairpersons and members of oversight bodies.

10. The Committee expresses serious concern about widespread threats, attacks, defamation campaigns and various forms of stigmatisation against human rights defenders in the State party as well as about illegitimate restrictions of their activities.

The Committee urges the State party to take the necessary action in accordance with the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms of 9 December 1998 to end the ongoing harassment and persecution of human rights defenders and ensure that those responsible for the threats and attacks are duly prosecuted and punished. The Committee calls upon the State party to engage in a constant dialogue with civil society actors, including those carrying out human rights advocacy campaigns and human rights defenders to formulate and implement strategies for the protection and promotion of economic, social and cultural rights throughout the country, including the current formulation of a national plan of action for human rights. It also urges the State party to speed up the process of adoption of a Right to Information Act.

11. The Committee is concerned that the conversion of the *Veddahs*'s traditional land into a national park has led to their socio-economic marginalisation and impoverishment, *Veddahs* having been prohibited access to their traditional hunting grounds and honey sites. The Committee is also concerned that *Veddahs* are highly stigmatised in the State party, in particular *Veddah* children who are the victim of ostracism in the school system and often employed in hazardous occupations. (Article 1 paragraph 2)

The Committee urges the State party to ensure that the *Veddahs* can return to and remain undisturbed on the lands from which they were evicted, in particular in the Maduru Oya reserve, to establish a state authority for the representation of *Veddahs* which should be consulted and should give consent prior to the implementation of any project or public policy affecting their lives. The Committee also recommends that the State party consider ratifying ILO Convention No. 169 (1989) concerning Indigenous and Tribal Peoples in Independent Countries.

12. The Committee expresses concern about the high levels of corruption which undermines the realisation of economic, social and cultural rights for all and the fact that the State party has not yet taken firm and effective measures to combat corruption and impunity associated with it. (Article 2 para.1)

The Committee calls upon the State party to take all necessary measures to combat corruption and impunity associated with it. In this regard, it encourages the State party to train the police and other law enforcement officers, as well as prosecutors and judges in the strict application of anti-corruption laws, to require the public authorities, in law and in practice, to operate in a transparent manner, and to ensure that prosecution cases are brought to justice. The Committee encourages the State party to seek the cooperation of international organisations with special expertise in the field of combating corruption and requests the State party to provide detailed information in its next periodic report about progress made in combating corruption and impunity.

13. The Committee is concerned about the harsh working and living conditions of plantation workers and their families, a high proportion of them living in extreme poverty. It also expresses concern that Citizenship Act No.18 of 1948 which deprived Tamils of Indian origin of citizenship has still not been abrogated and that thousands of Tamils of Indian origin are still

awaiting to be granted citizenship on the basis of the 2003 Grant of Citizenship to Persons of Indian Origin Act, and as stateless persons do not enjoy their economic, social and cultural rights. (Article 2 para. 2)

The Committee calls upon the State party to provide the necessary resources for the implementation of the National Plan of Action for the Social Development of the Plantation Community adopted in 2006 and to provide comprehensive information in its next periodic report on the concrete measures taken to ensure that plantation workers and their families as well as Tamils of Indian origin are no longer subject to discrimination and live in decent conditions. The Committee calls upon the State party to repeal Citizenship Act No. 18 of 1948 and to speed up the process of issuing identity documents for Tamils of Indian origin in accordance with the 2003 Grant of Citizenship to Persons of Indian Origin Act.

14. The Committee is concerned that in spite of the recent establishment of quotas for the employment of persons with disabilities, they remain discriminated against in their access to employment and highly stigmatised in the society. The Committee is also concerned that the 2003 National Policy on Disability has not yet been implemented and that families of disabled persons have so far only received limited support from the State party and therefore continue to resort to institutionalisation of their children with disabilities, often for long periods. The Committee also expresses concern that a large proportion of children with disabilities, most of them girls, remains deprived of any type of education opportunities. (Article 2 para. 2)

The Committee calls upon the State party to take concrete steps to implement its 2003 National Policy on Disability and to strengthen its efforts to promote inclusion of persons with disabilities into the labour market, including by strengthening the system of job quotas for persons with disabilities. The Committee also calls upon the State party to gather accurate disaggregated statistical data on children with disabilities and ensure that all these children, particularly girls, have access to education. The Committee encourages the State party to ratify the Convention on the Rights of Persons with Disabilities and its Optional Protocol.

15. The Committee is concerned that in spite of repeated recommendations made by treaty bodies since 1998, the State party has still not repealed statutory and personal laws that discriminate against women and girls, such as the 1935 Land Development Ordinance and the provisions of Muslim personal law allowing early marriage of girls as young as 12 years old, and has taken limited steps to address the persistence of stereotypes, attitudes and patriarchal traditions on family and societal roles of men and women. The Committee notes with serious concern that the State party relies on the communities themselves to amend their personal status laws and that the Women's Bill does not protect women and girls from all communities from early and forced marriage. (Article 3)

The Committee reminds the State party that the equal right of men and women to the enjoyment of all economic, social and cultural rights is an immediate obligation of the States parties which cannot be conditioned to willingness of concerned communities to amend their laws. The Committee therefore calls upon the State party to take immediate action to repeal all statutory laws that discriminate against women and to amend the Muslim Personal Law and to put it in conformity with its national legislation with the view to outlaw early marriage. The Committee also encourages the State party to vigorously promote equality between women and men at all levels of society, including through targeted educational programmes and mass media campaigns against stereotypes which prevent women from enjoying their economic, social and

cultural rights. The Committee draws the attention of the State party to its General Comment No. 16 on the equal right of men and women,

16. The Committee notes with concern that despite the decrease in unemployment in recent years, the female unemployment rate has remained twice as high as that of males for the past decades and that almost half of the 15-29 age group, especially educated youths, remain unemployed. The Committee is also seriously concerned that about 300 000 women are at risk of losing their employment as a result of the withdrawal by the European Union (EU) of the preferential trading scheme called GSP due to significant shortcomings in respect of Sri Lanka's implementation of three UN human rights conventions relevant for benefits under the scheme.(Article6)

The Committee recommends that the State party adopt a national action plan for the promotion of stable employment opportunities for women and younger Sri Lankans containing numerical targets and a time frame for its implementation and establish a national mechanism to monitor the implementation of the plan of action. The Committee also encourages the State party to monitor closely the situation of the women at risk of losing their employment due to the withdrawal of the GSP so as to enable them to enjoy their economic, social and cultural rights.

17. The Committee expresses concern that several statutory provisions and emergency regulations of the State party allow for the recourse to compulsory labour, in particular the Compulsory Public Service Act, No. 70 of 1961, under which compulsory public service of up to five years may be imposed on graduates, has still not been repealed. (Article 6)

The Committee welcomes the State party's assertion during the interactive dialogue that measures are being taken to repeal Compulsory Public Service Act No. 70.

18. The Committee expresses concern about the low and declining representation of women in decision-making and public positions and their concentration in only a few sectors of the economy and in low-skilled and low-paid jobs. The Committee is also concerned that the prohibition of direct and indirect discrimination in employment and occupation and the principle of equal remuneration for men and women for work of equal value have still not been reflected in national legislation. (Article 7 and 3)

The Committee also calls upon the State party to ensure that its legislation prohibits direct and indirect discrimination in employment and occupation and reflects the principle of equal remuneration for men and women for work of equal value and is enforced with adequate mechanisms. The Committee encourages the State party to adopt temporary special measures to increase the number of women in decision-making and public positions and to effectively combat women's discrimination in the workplace.

19. The Committee is concerned that workers in sectors not covered by wage boards are not entitled to any minimum wage. The Committee is also concerned that tea plantation workers are denied a monthly salary and receive extremely low daily wages. (Article7)

The Committee recommends that the State party ensure that minimum wages enable all workers and their families to enjoy an adequate standard of living and that these are regularly adjusted to the cost of living. The Committee further strongly recommends the State party to take urgent measures to ensure that plantation workers are provided with a decent monthly salary.

20. The Committee expresses serious concern that sexual harassment is particularly widespread in tea plantations and in export processing zones (EPZs). (Article 7)

The Committee calls upon the State party to include provisions prohibiting and preventing sexual harassment in its national labour law and to provide its labour inspectorate with the necessary human, technical and financial resources to deal with cases of sexual harassment in an efficient manner.

21. The Committee expresses deep concern that Sri Lankan women have often no other choice but to migrate to find employment and that one million of them work abroad as domestic workers, often in slavery-like conditions. The Committee is also concerned that the State party has not studied the impact of such massive labour migration on Sri Lankan families, nor provided women with alternative employment opportunities. (Article 7, 9 and 10)

The Committee reiterates its recommendation (E/C.12/1/Add.24 para. 27) to the State party to conduct a comprehensive assessment of women labour migration. It urges the State party to give priority to the development of employment opportunities for women within the State party, including through the introduction of innovative micro-credit schemes. The Committee also urges the State party to strengthen its efforts to adequately inform women prior to their departure, and strengthen the role of Labour Attaches in Sri Lankan missions abroad in protecting the rights of migrant workers in host countries. The Committee also encourages the State party to take all necessary measures to ensure that families, in particular children of migrant workers residing in the State party are able to fully enjoy all their economic, social and cultural rights.

22. The Committee is concerned about the restrictions on trade unions activities, the widespread harassment of trade unionists and the low protection against anti-union discrimination in the State party, especially in export processing zones (EPZs). In particular, the Committee is concerned that the Public Security Ordinance of 1947 and the Essential Public Services Act of 1979 impose restrictions on the right to strike enforceable with sanctions involving compulsory labour. The Committee is also concerned that legal recognition is only granted to unions representing over 40% of workers at any given workplace and that the Emergency Regulation No. 01 2006 amendment gives such a broad definition of essential services, that restrictions of trade union rights may be imposed on almost any sector of the economy. The Committee is further concerned that trade unions are strongly discouraged in EPZs through suspension, demotion, dismissal of unionists, warning of new workers not to join unions, prohibition of trade unionists to enter EPZs and creation of employees' councils funded by and functioning under the aegis of the employer. (Article 8)

The Committee calls upon the State party to:

- (a) ensure that no sanctions involving compulsory labour be imposed for disciplinary offences or participation in peaceful strikes in services other than essential services defined in the strict sense of the term and to amend its legislation accordingly;
- (b) remove legal obstacles to trade unions' rights notably by providing a clear definition and limiting the scope of "essential services" to services where interruption would endanger the life, personal safety or health of the whole or

part of the population and by reviewing the 40% requirement for legal recognition in accordance with ILO recommendations;

- (c) increase penalties applicable to anti-union discrimination, allow trade unions to bring anti-union discrimination claims directly before the courts and ensure that anti-union actions are duly investigated and examined by courts within a short period of time;
- (d) take urgent measures to ensure the freedom to form and join trade unions, to prevent interference in the management and operation of trade unions in EPZs and to allow labour inspectors to make unannounced visits.

23. The Committee is concerned that in spite of the existence of a large number of social assistance schemes in the State party, the social security system remains highly fragmented and does not adequately cover all workers. The Committee is also concerned that disadvantaged and marginalised groups, notably families in the plantation sector and older persons, remain excluded or under-covered by the Samurdhi poverty alleviation programme due to shortcomings in its management and coordination, corruption and fraud. (Article 9)

The Committee urges the State party to take all the necessary measures to ensure that poverty alleviation and social assistance programmes are managed in an adequate and transparent manner and targeted at the most disadvantaged and marginalised individuals and groups, including families in the plantation sector and older persons. The Committee encourages the State party to continue its collaboration with the ILO to expand social security coverage, including through the establishment of the social protection floor.

24. The Committee expresses deep concern that in spite of the high incidence of domestic violence against women and children in the State party, the provisions of the Prevention of Domestic Violence Act No.3 of 2005 remain insufficiently known, notably by the police, and that protection orders are seldom issued and perpetrators rarely prosecuted. The Committee also notes with concern the absence of temporary shelter for women and children victims of domestic violence and the considerable delays to obtain court decisions in this matter.

The Committee urges the State party to take active measures to combat domestic violence and to enforce the 2005 Prevention of Domestic Violence Act No.3 including through public awareness and education campaigns and recruitment of additional female police officers within the Bureaus for the Protection of Children and Women (BPCW). The Committee also recommends that the State party ensure that crisis centres and shelters where victims of domestic violence can find safe lodging and counselling are available and accessible throughout the country.

25. The Committee expresses serious concern that cultural sensitivities are used as a justification by the State party not to criminalise marital rape in all circumstances. (Article 10)

The Committee urges the State party to take immediate steps to criminalise marital rape in all circumstances.

26. The Committee is deeply concerned that no effective measures have been taken by the State party to enforce child labour laws as previously recommended by the Committee (E/C.12/1/Add.24 para. 26) and that almost one million children continue to be exploited

economically in agriculture or as domestics, the latter being often subjected to various forms of violence. (Article 10 para.3)

The Committee urges the State party to adopt effective measures to combat child labour.

27. The Committee is deeply concerned that thousands of children remain sexually abused and exploited including in child sex tourism. The Committee notes with grave concern that perpetrators of child sexual exploitation and abuse, including child traffickers are rarely prosecuted while child victims may still be excluded from protection of the law and placed on remand for conducting prostitution. (Article 10 para.3)
- The Committee calls upon the State party to amend its legislation against child sexual exploitation and ensure that it covers all children and does not criminalise child prostitutes. The Committee also urges the State party to implement the 2006 national Plan of Action against Child Sex Tourism and to report on the results achieved in its next periodic report to the Committee. The Committee further requests the State party to take more active measures to bring perpetrators of child sexual exploitation and abuse to justice. The Committee calls upon the State party to take immediate measures to establish shelters and trained professionals to meet the recovery and rehabilitation needs of children victims of sexual abuse and exploitation.
28. The Committee expresses deep concern about allegations according to which during the last months of the armed conflict in 2009, civilians were deliberately deprived of food, medical care and humanitarian assistance which constitute violations of article 11 of the Covenant as well as of the international humanitarian prohibition of starvation and may amount to a war crime. (Article 11)
- In light of its general comment No.12 of 1999 on the right to adequate food (E/C.12/1999/5), the Committee draws the attention of the State party to the fact that the prevention of access to humanitarian food aid in internal conflicts constitutes a violation of article 11 of the Covenant as well as a grave violation of international humanitarian law. The Committee encourages the State party to fully cooperate with the UN Secretary-General's panel on accountability.
29. The Committee is concerned that in spite of progress made by the State party to resettle internally displaced persons (IDPs) and to rebuild damaged infrastructure in conflict-affected areas, thousands of IDPs are still prevented from returning due to the establishment of High Security Zones (HSZs) on their homelands. The Committee is also concerned about the conditions of resettlement of internally displaced persons who often lack basic shelter, access to sanitation and water and livelihood opportunities, a situation aggravated by the regular restrictions placed on United Nations agencies, international organisations and international and national NGOs to access internally displaced persons requiring urgent assistance. (Article 11 and 12)
- The Committee urges the State party to speed up the closing of HSZs as indicated during the interactive dialogue, to restore housing land and/or property of which IDPs have been arbitrarily or unlawfully deprived and to establish adequate mechanisms at local levels to resolve land and property disputes and to provide compensation to land owners for the occupation of their land. The Committee draws the attention of the State party to its obligation to respect and protect the work of UN agencies, human rights advocates and other members of civil society who assist internally displaced persons in the realisation of their economic, social and cultural rights and to refrain from imposing further restrictions on access to IDPs, especially those who are living in

food insecurity. The Committee requests the State party to provide detailed information on the situation of internally displaced persons in its next periodic report.

30. The Committee notes with concern the persistence of significant disparities in levels of economic development between the Western region and the rest of the country that affect the equal enjoyment by all of economic, social and cultural rights such as employment, welfare benefits, health and social services. The Committee is also concerned that while poverty has decreased in urban areas, it has grown by over 40% in the estate sector. (Article 11 and 12)
The Committee recommends that the State party take all necessary remedial measures to address the regional disparities that affect the equal enjoyment of economic, social and cultural rights and to ensure that its poverty reduction strategies specifically address, through targeted measures, the needs of the most disadvantaged and marginalised individuals and groups, especially in the estate sector. The Committee encourages the State party to further develop indicators and benchmarks, disaggregated by sex, age, urban/rural population and social and ethnic group, for monitoring progress achieved in combating poverty, and that it report on such progress in its next periodic report. In this regard, the State party is referred to the Committee's statement on "Poverty and the International Covenant on Economic, Social and Cultural Rights" of 10 May 2001 (E/C.12/2001/10).
31. The Committee is concerned about the acute housing shortage in the State party and the large number of homeless persons. The Committee is also concerned that slum dwellers are vulnerable to forced evictions. (Article 11)
The Committee recommends that the State party addresses the acute housing shortage by adopting a national strategy and a plan of action on adequate housing; drastically increase its national housing budget to an appropriate level commensurate with the extent of the problem; and to ensure that plans to construct new social housing units are fully implemented, especially those intended for disadvantaged and marginalised individuals and groups, including those living in slums. The Committee also urges the State party to ensure that persons who are forcibly evicted are provided with adequate compensation or alternative accommodation in accordance with a legal framework that complies with the guidelines adopted by the Committee in its General Comment No. 7 on forced evictions. The Committee further requests the State party to provide in its next periodic report detailed information on the incidence of forced evictions and on the extent of homelessness in the State party, as well as the measures taken to address these problems.
32. The Committee is concerned about the acute overcrowding and the inhuman detention conditions which prevail in many of the State party's prisons. The Committee is also concerned that children are not regularly separated from adults. (Articles 10 para.3, 11 and 12)
The Committee calls upon the State party to take urgent active measures to combat prison overcrowding, in particular by focusing on alternatives to custodial measures. The Committee also recommends that the State party remove children from adult detention facilities.
33. The Committee expresses concern that malnutrition affects nearly one-third of children and one quarter of women and that the nutrition status of internally displaced persons, especially children, remains an issue of serious concern. (Articles 11 and 12)

The Committee urges the State party to adopt the necessary measures to protect the right to adequate food, including through the setting up of a public food distribution system for the most disadvantaged and marginalised individuals and groups. It also encourages the State party to formulate and implement an Integrated Nutrition Programme throughout the State party.

34. The Committee is deeply concerned that 10% of maternal mortality is reported as the direct result of clandestine abortions. The Committee also notes with concern the lack of basic sexual and reproductive health services, the limited information available on safe contraceptive methods, in the State party and the insufficient and educational programmes about sexual and reproductive health, especially in the curricula of the Sri Lankan education system. (Article 12)
- The Committee urges the State party to amend abortion laws and to consider providing for exceptions to the prohibition on abortion in cases of therapeutic abortion or pregnancies resulting from rape or incest to help women not to have to resort to illegal abortions that expose them to a high risk of morbidity and mortality. The Committee also urges the State party to establish basic sexual and reproductive health services throughout the State party, to set up comprehensive educational programmes on sexual and reproductive health, including public awareness-raising campaigns about safe contraceptive methods programmes and inclusion of appropriate information on sexual and reproductive health in the curricula of the Sri Lankan education system.
35. The Committee is concerned that mental health services remain insufficient to cope with widespread post-conflict mental disorders. The Committee is also concerned that the 2007 draft Mental Health Act has still not been adopted. (Article 12)
- The Committee urges the State party to adopt the draft Mental Health Act of 2007 and to formulate strategies to strengthen available psycho-social assistance, especially for children and recruit more mental health workers and other specialised professionals to address post-conflict mental disorders.
36. The Committee commends the achievements of the State party in primary school enrolment and gender parity. However, The Committee notes with concern that public investment in education is at a relatively low level in spite of the needs of rebuilding school infrastructure in conflict-affected areas, reducing persistent disparities in accessing education between the State party's provinces and providing schools with water, sanitation and electricity. The Committee is also concerned about the high school drop out (one in five children) before completion of the compulsory nine-year cycle due mainly to the existence of school fees despite the constitutional guarantee of free education and the low quality of education. The Committee also regrets that insufficient efforts have been made to include human rights and peace education in the school curricula. (Articles 13 and 14)
- The Committee recommends that the State party significantly increase the funding of the public education system and to ensure the effective abolition of school fees. The Committee also calls upon the State party to take active measures to reintegrate children in conflict-affected areas into education through rehabilitation of school facilities, to reduce disparities among provinces and districts in access to and full enjoyment of the right to education and to ensure that schools are adequately equipped with water, sanitation and electricity facilities. The Committee further calls upon the State party to improve the quality of education by ensuring that teachers are well-

trained and fully qualified and to ensure that human rights and peace education is fully included in school curricula.

37. The Committee encourages the State party to consider signing and ratifying the Optional Protocol to the Covenant.
38. The Committee requests the State party to disseminate the present concluding observations widely among all levels of society, in particular among State officials, the judiciary and civil society organisations, to translate and publicise them as far as possible, and to inform the Committee on the steps taken to implement them in its next periodic report. It also encourages the State party to continue engaging national human rights institutions, non-governmental organisations and other members of civil society in the process of discussion at the national level prior to the submission of its next periodic report.
39. The Committee encourages the State party to consider signing and ratifying the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the International Convention for the Protection of All Persons from Enforced Disappearance. The Committee also encourages the State party to proceed with the ratification of the Convention on the Rights of Persons with Disabilities and its Optional Protocol as indicated in its written responses to the Committee.
40. The Committee requests the State party to submit its fifth periodic report, prepared in accordance with the revised reporting guidelines of the Committee, adopted in 2008 (E/C.12/2008/2), by 30 June 2013.

OPTIONAL PROTOCOL TO THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

The General Assembly adopted resolution A/RES/63/117, on 10 December 2008

The General Assembly,

Taking note of the adoption by the Human Rights Council, by its resolution 8/2 of 18 June 2008, of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights,

1. *Adopts* the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, the text of which is annexed to the present resolution;
2. *Recommends* that the Optional Protocol be opened for signature at a signing ceremony to be held in 2009, and requests the Secretary-General and the United Nations High Commissioner for Human Rights to provide the necessary assistance.

Annex Optional Protocol to the International Covenant on Economic, Social and Cultural Rights

Preamble

The States Parties to the present Protocol,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Noting that the Universal Declaration of Human Rights¹ proclaims that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status,

Recalling that the Universal Declaration of Human Rights and the International Covenants on Human Rights² recognise that the ideal of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy civil, cultural, economic, political and social rights,

Reaffirming the universality, indivisibility, interdependence and interrelatedness of all human rights and fundamental freedoms,

Recalling that each State Party to the International Covenant on Economic, Social and Cultural Rights (hereinafter referred to as the Covenant) undertakes to take steps, individually and through international assistance and cooperation,

¹Resolution 217 A (III).

²Resolution 2200 A (XXI), annex

especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realisation of the rights recognised in the Covenant by all appropriate means, including particularly the adoption of legislative measures,

Considering that, in order further to achieve the purposes of the Covenant and the implementation of its provisions, it would be appropriate to enable the Committee on Economic, Social and Cultural Rights (hereinafter referred to as the Committee) to carry out the functions provided for in the present Protocol,

Have agreed as follows:

Article 1 Competence of the Committee to receive and consider communications

1. A State Party to the Covenant that becomes a Party to the present Protocol recognises the competence of the Committee to receive and consider communications as provided for by the provisions of the present Protocol.
2. No communication shall be received by the Committee if it concerns a State Party to the Covenant which is not a Party to the present Protocol.

Article 2 Communications

Communications may be submitted by or on behalf of individuals or groups of individuals, under the jurisdiction of a State Party, claiming to be victims of a violation of any of the economic, social and cultural rights set forth in the Covenant by that State Party. Where a communication is submitted on behalf of individuals or groups of individuals, this shall be with their consent unless the author can justify acting on their behalf without such consent.

Article 3 Admissibility

1. The Committee shall not consider a communication unless it has ascertained that all available domestic remedies have been exhausted. This shall not be the rule where the application of such remedies is unreasonably prolonged.
2. The Committee shall declare a communication inadmissible when:
 - (a) It is not submitted within one year after the exhaustion of domestic remedies, except in cases where the author can demonstrate that it had not been possible to submit the communication within that time limit;
 - (b) The facts that are the subject of the communication occurred prior to the entry into force of the present Protocol for the State Party concerned unless those facts continued after that date;
 - (c) The same matter has already been examined by the Committee or has been or is being examined under another procedure of international investigation or settlement;
 - (d) It is incompatible with the provisions of the Covenant;
 - (e) It is manifestly ill-founded, not sufficiently substantiated or exclusively based on reports disseminated by mass media;
 - (f) It is an abuse of the right to submit a communication; or when

(g) It is anonymous or not in writing.

Article 4 Communications not revealing a clear disadvantage

The Committee may, if necessary, decline to consider a communication where it does not reveal that the author has suffered a clear disadvantage, unless the Committee considers that the communication raises a serious issue of general importance.

Article 5 Interim measures

1. At any time after the receipt of a communication and before a determination on the merits has been reached, the Committee may transmit to the State Party concerned for its urgent consideration a request that the State Party take such interim measures as may be necessary in exceptional circumstances to avoid possible irreparable damage to the victim or victims of the alleged violations.
2. Where the Committee exercises its discretion under paragraph 1 of the present article, this does not imply a determination on admissibility or on the merits of the communication.

Article 6 Transmission of the communication

1. Unless the Committee considers a communication inadmissible without reference to the State Party concerned, the Committee shall bring any communication submitted to it under the present Protocol confidentially to the attention of the State Party concerned.
2. Within six months, the receiving State Party shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been provided by that State Party.

Article 7 Friendly settlement

1. The Committee shall make available its good offices to the parties concerned with a view to reaching a friendly settlement of the matter on the basis of the respect for the obligations set forth in the Covenant.
2. An agreement on a friendly settlement closes consideration of the communication under the present Protocol.

Article 8 Examination of communications

1. The Committee shall examine communications received under article 2 of the present Protocol in the light of all documentation submitted to it, provided that this documentation is transmitted to the parties concerned.
2. The Committee shall hold closed meetings when examining communications under the present Protocol.
3. When examining a communication under the present Protocol, the Committee may consult, as appropriate, relevant documentation emanating from other United Nations bodies, specialised

agencies, funds, programmes and mechanisms, and other international organisations, including from regional human rights systems, and any observations or comments by the State Party concerned.

4. When examining communications under the present Protocol, the Committee shall consider the reasonableness of the steps taken by the State Party in accordance with part II of the Covenant. In doing so, the Committee shall bear in mind that the State Party may adopt a range of possible policy measures for the implementation of the rights set forth in the Covenant.

Article 9 Follow-up to the views of the Committee

1. After examining a communication, the Committee shall transmit its views on the communication, together with its recommendations, if any, to the parties concerned.

2. The State Party shall give due consideration to the views of the Committee, together with its recommendations, if any, and shall submit to the Committee, within six months, a written response, including information on any action taken in the light of the views and recommendations of the Committee.

3. The Committee may invite the State Party to submit further information about any measures the State Party has taken in response to its views or recommendations, if any, including as deemed appropriate by the Committee, in the State Party's subsequent reports under articles 16 and 17 of the Covenant.

Article 10 Inter-State Communications

1. A State Party to the present Protocol may at any time declare under the present article that it recognises the competence of the Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under the Covenant. Communications under the present article may be received and considered only if submitted by a State Party that has made a declaration recognising in regard to itself the competence of the Committee. No communication shall be received by the Committee if it concerns a State Party which has not made such a declaration. Communications received under the present article shall be dealt with in accordance with the following procedure:

(a) If a State Party to the present Protocol considers that another State Party is not fulfilling its obligations under the Covenant, it may, by written communication, bring the matter to the attention of that State Party. The State Party may also inform the Committee of the matter. Within three months after the receipt of the communication the receiving State shall afford the State that sent the communication an explanation, or any other statement in writing clarifying the matter, which should include, to the extent possible and pertinent, reference to domestic procedures and remedies taken, pending or available in the matter;

(b) If the matter is not settled to the satisfaction of both States Parties concerned within six months after the receipt by the receiving State of the initial communication, either State shall have the right to refer the matter to the Committee, by notice given to the Committee and to the other State;

(c) The Committee shall deal with a matter referred to it only after it has ascertained that all available domestic remedies have been invoked and exhausted in the matter. This shall not be the rule where the application of the remedies is unreasonably prolonged;

- (d) Subject to the provisions of subparagraph (c) of the present paragraph the Committee shall make available its good offices to the States Parties concerned with a view to a friendly solution of the matter on the basis of the respect for the obligations set forth in the Covenant;
- (e) The Committee shall hold closed meetings when examining communications under the present article;
- (f) In any matter referred to it in accordance with subparagraph (b) of the present paragraph, the Committee may call upon the States Parties concerned, referred to in subparagraph (b), to supply any relevant information;
- (g) The States Parties concerned, referred to in subparagraph (b) of the present paragraph, shall have the right to be represented when the matter is being considered by the Committee and to make submissions orally and/or in writing;
- (h) The Committee shall, with all due expediency after the date of receipt of notice under subparagraph (b) of the present paragraph, submit a report, as follows:
- (i) If a solution within the terms of subparagraph (d) of the present paragraph is reached, the Committee shall confine its report to a brief statement of the facts and of the solution reached;
- (ii) If a solution within the terms of subparagraph (d) is not reached, the Committee shall, in its report, set forth the relevant facts concerning the issue between the States Parties concerned. The written submissions and record of the oral submissions made by the States Parties concerned shall be attached to the report. The Committee may also communicate only to the States Parties concerned any views that it may consider relevant to the issue between them.

In every matter, the report shall be communicated to the States Parties concerned.

2. A declaration under paragraph 1 of the present article shall be deposited by the States Parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter that is the subject of a communication already transmitted under the present article; no further communication by any State Party shall be received under the present article after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State Party concerned has made a new declaration.

Article 11 Inquiry procedure

1. A State Party to the present Protocol may at any time declare that it recognises the competence of the Committee provided for under the present article.
2. If the Committee receives reliable information indicating grave or systematic violations by a State Party of any of the economic, social and cultural rights set forth in the Covenant, the Committee shall invite that State Party to cooperate in the examination of the information and to this end to submit observations with regard to the information concerned.
3. Taking into account any observations that may have been submitted by the State Party concerned as well as any other reliable information available to it, the Committee may designate one or more of its

members to conduct an inquiry and to report urgently to the Committee. Where warranted and with the consent of the State Party, the inquiry may include a visit to its territory.

4. Such an inquiry shall be conducted confidentially and the cooperation of the State Party shall be sought at all stages of the proceedings.

5. After examining the findings of such an inquiry, the Committee shall transmit these findings to the State Party concerned together with any comments and recommendations.

6. The State Party concerned shall, within six months of receiving the findings, comments and recommendations transmitted by the Committee, submit its observations to the Committee.

7. After such proceedings have been completed with regard to an inquiry made in accordance with paragraph 2 of the present article, the Committee may, after consultations with the State Party concerned, decide to include a summary account of the results of the proceedings in its annual report provided for in article 15 of the present Protocol.

8. Any State Party having made a declaration in accordance with paragraph 1 of the present article may, at any time, withdraw this declaration by notification to the Secretary-General.

Article 12 Follow-up to the inquiry procedure

1. The Committee may invite the State Party concerned to include in its report under articles 16 and 17 of the Covenant details of any measures taken in response to an inquiry conducted under article 11 of the present Protocol.

2. The Committee may, if necessary, after the end of the period of six months referred to in article 11, paragraph 6, invite the State Party concerned to inform it of the measures taken in response to such an inquiry.

Article 13 Protection measures

A State Party shall take all appropriate measures to ensure that individuals under its jurisdiction are not subjected to any form of ill-treatment or intimidation as a consequence of communicating with the Committee pursuant to the present Protocol.

Article 14 International assistance and cooperation

1. The Committee shall transmit, as it may consider appropriate, and with the consent of the State Party concerned, to United Nations specialised agencies, funds and programmes and other competent bodies, its views or recommendations concerning communications and inquiries that indicate a need for technical advice or assistance, along with the State Party's observations and suggestions, if any, on these views or recommendations.

2. The Committee may also bring to the attention of such bodies, with the consent of the State Party concerned, any matter arising out of communications considered under the present Protocol which may assist them in deciding, each within its field of competence, on the advisability of international measures likely to contribute to assisting States Parties in achieving progress in implementation of the rights recognised in the Covenant.

3. A trust fund shall be established in accordance with the relevant procedures of the General Assembly, to be administered in accordance with the financial regulations and rules of the United Nations, with a view to providing expert and technical assistance to States Parties, with the consent of the State Party concerned, for the enhanced implementation of the rights contained in the Covenant, thus contributing to building national capacities in the area of economic, social and cultural rights in the context of the present Protocol.

4. The provisions of the present article are without prejudice to the obligations of each State Party to fulfil its obligations under the Covenant.

Article 15 Annual report

The Committee shall include in its annual report a summary of its activities under the present Protocol.

Article 16 Dissemination and information

Each State Party undertakes to make widely known and to disseminate the Covenant and the present Protocol and to facilitate access to information about the views and recommendations of the Committee, in particular, on matters involving that State Party, and to do so in accessible formats for persons with disabilities.

Article 17 Signature, ratification and accession

1. The present Protocol is open for signature by any State that has signed, ratified or acceded to the Covenant.

2. The present Protocol is subject to ratification by any State that has ratified or acceded to the Covenant. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

3. The present Protocol shall be open to accession by any State that has ratified or acceded to the Covenant.

4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

Article 18 Entry into force

1. The present Protocol shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations of the tenth instrument of ratification or accession.

2. For each State ratifying or acceding to the present Protocol, after the deposit of the tenth instrument of ratification or accession, the Protocol shall enter into force three months after the date of the deposit of its instrument of ratification or accession.

Article 19 Amendments

1. Any State Party may propose an amendment to the present Protocol and submit it to the Secretary-General of the United Nations. The Secretary-General shall communicate any proposed amendments to States Parties, with a request to be notified whether they favour a meeting of States Parties for the purpose of considering and deciding upon the proposals. In the event that, within four months from the date of such communication, at least one third of the States Parties favour such a meeting, the Secretary-General shall convene the meeting under the auspices of the United Nations. Any amendment adopted by a majority of two thirds of the States Parties present and voting shall be submitted by the Secretary-General to the General Assembly for approval and thereafter to all States Parties for acceptance.

2. An amendment adopted and approved in accordance with paragraph 1 of the present article shall enter into force on the thirtieth day after the number of instruments of acceptance deposited reaches two thirds of the number of States Parties at the date of adoption of the amendment. Thereafter, the amendment shall enter into force for any State Party on the thirtieth day following the deposit of its own instrument of acceptance. An amendment shall be binding only on those States Parties which have accepted it.

Article 20 Denunciation

1. Any State Party may denounce the present Protocol at any time by written notification addressed to the Secretary-General of the United Nations. Denunciation shall take effect six months after the date of receipt of the notification by the Secretary-General.

2. Denunciation shall be without prejudice to the continued application of the provisions of the present Protocol to any communication submitted under articles 2 and 10 or to any procedure initiated under article 11 before the effective date of denunciation.

Article 21 Notification by the Secretary-General

The Secretary-General of the United Nations shall notify all States referred to in article 26, paragraph 1, of the Covenant of the following particulars:

- (a) Signatures, ratifications and accessions under the present Protocol;
- (b) The date of entry into force of the present Protocol and of any amendment under article 19;
- (c) Any denunciation under article 20.

Article 22 Official languages

1. The present Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Protocol to all States referred to in article 26 of the Covenant.

REFLECTIONS ON THE OPTIONAL PROTOCOL TO THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS (OP-ICESCR)

*Sandra Paola Quintero Carrillo**

Introduction

The effective protection of human rights by States has been an issue of special concern for the different international actors e.g. states, international organisations, NGOs and civil society in general. Nevertheless, the protection of Economic, Social and Cultural Rights (ESCR) in the world has been relatively weak at both national and international levels. Such low level of protection contributes to the perpetuation of the gap between civil and political rights and economic, social and cultural rights, undermines the principle of indivisibility and interdependency of all human rights and reinforces the consideration of ESCR as “second class”¹ rights.

The quest towards the effective protection of ESCR started since 1950 when Human Rights were divided into two different Covenants i.e. the International Covenant for Civil and Political Rights (ICCPR) and the International Covenant for Economic Social and Cultural Rights (ICESCR). In 1966 an optional protocol for the ICCPR was adopted and the need for a special monitoring mechanism to the ICESCR became more evident. But it was only in 1993 when the Committee on Economic, Social and Cultural Rights formally decided to start working on the possibility of an optional Protocol to the ICESCR. By 2007 the ICESCR was one of the two human rights instruments lacking a special monitoring mechanism². Finally, on December 10, 2008 – the 60th Anniversary of the Universal Declaration of Human Rights – the UN General Assembly adopted the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (OP-ICESCR).

The significance of the adoption of this instrument has been stressed by many states, NGOs and known academicians. The former UN High Commissioner for Human Rights, Ms. Louise Arbour, has considered it a “milestone in the history of the universal human rights system”³. It could be a

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¹ See Sepúlveda, Magdalena, “La justiciabilidad de los derechos económicos, sociales y culturales frente a la supuesta dicotomía entre las obligaciones impuestas por los pactos de naciones Unidas”, p. 109, in Cantón, Octavio and Santiago Corcuera, *Derechos económicos, sociales y culturales ensayos y materiales*, Ed. Porrúa, U. Iberoamericana, México, 2004.

² The Convention on the Rights of the Child, 1989 is the other instrument lacking an individual communications mechanism. On the other hand such mechanism can be found in the International Covenant on Civil and Political Rights 1966, 999 UNTS 171 (ICCPR) through its first Optional Protocol; the International Convention on the Elimination of all Forms of Racial Discrimination (Article 14); the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984, (Article 22); the Convention on the Elimination of all Forms of Discrimination against Women 1979, through its Optional Protocol; the International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families 1990, (Article 76); and the Optional Protocol to the Convention on the Rights of Persons with Disabilities (OP-CRPD).

³ Statement by Ms Louise Arbour, High Commissioner for Human Rights to the Open-Ended Working Group on OP-ICESCR, Fifth session, 31 March 2008.

mechanism that truly improves access to remedies and relief for victims of violations of ESC rights. Nevertheless, the scepticism that surrounded the long process the OP-IESCER underwent has extended to its implementation and the impact it might have in the effective protection of ESCR. Therefore, this new instrument of protection calls for careful analysis, review and wide distribution among all citizens and human rights workers to know it, understand it, and use it when it enters into force.

In order to contribute to such an endeavour this paper will give a short overview of the protocol, present briefly its background and mention its benefits and its key provisions in Section 1; it will address some of its main achievements in Section 2; examine the most contentious aspects of it in Section 3 and finally draw some conclusions.

1. The Optional Protocol to the International Convention on Economic, Social and Cultural Rights

The OP-ICESCR is a non-legally binding treaty. Governments are not obliged to sign, ratify or accede to the Protocol; yet if a State becomes a party it will be legally obligated to its terms. In this sense, the OP-ICESCR establishes a new quasi-judicial function to the Committee on Economic, Social and Cultural Rights. It introduces a mechanism whereby individuals or groups of individuals, nationals of the States parties of the Protocol are allowed to bring complaints to the attention of the Committee on Economic, Social & Cultural Rights (Article 2). The procedure is set out in the OP itself, and requires among others, that domestic remedies be exhausted before an individual can go to the Committee. The Committee will review the complaints received and write an opinion.⁴ The OP-ICESCR also includes, among others, an inquiry procedure, interim measures, inter-State communications, offers the possibility of a friendly settlement and even establishes a Trust Fund within the framework of international assistance and cooperation.

1.1. Background

The adoption of the OP-ICESCR in 2008 is the result of almost two decades of a quest undertaken by human rights advocates all over the world. From 1990 to 1996 the Committee held several discussions on the need of a complaints procedure and the desirability of an Optional Protocol to the ICESCR. In 1993 the Committee agreed upon an analytical paper based on the reports prepared by Philip Alston.⁵ The paper was presented in the Vienna World Conference on Human Rights and the Vienna Programme of Action encouraged the Commission on Human Rights (CHR) to work together with the Committee on the elaboration of a draft of an Optional Protocol.⁶

In 1997 a first draft of the OP was presented to the UN Commission on Human Rights.⁷ Such draft was the subject of an almost four years lasting debate wherein only a limited number of states submitted different opinions and during which the draft created great division even among NGOs.⁸ In 2001 Professor Hatem Kotrane was appointed by the Commission on Human Rights as independent

⁴ See Center for Economic Social and Cultural Rights, <http://www.cesr.org/>.

⁵ UN Docs. E/C. 12/1991/WP.2 and E/C. 12/1992/WP.9. See UN Doc. E/C. 12/1992/SR.11, para. 53.

⁶ Vienna Declaration and Program of Action, A/CONF.157/23, at para. 75.

⁷ UN Doc. E/CN.4/1997/105.

⁸ See Vandenhoe, Wouter, 'Completing the UN Complaint Mechanisms for Human rights Violations Step by Step: Towards a complaints Procedure complementing the International Covenant on Economic, Social and Cultural rights', *Netherlands Quarterly of Human Rights*, Vol. 21, No. 3, p. 425.

expert to examine the question of the draft of an OP.⁹ As recommended by him, an Open-Ended Working Group (OEWG) was established to consider an Optional Protocol.¹⁰ In 2003 the OEWG held its first meeting and in four years had 4 sessions. In its fourth session in 2007 the OEWG groups discussed thoroughly the chairman's first Draft Optional Protocol.¹¹ Finally on April 4th, 2008 the text of the OP-ICESCR was submitted to the Human Rights Council.¹² On 10 December 2008, the General Assembly unanimously adopted an Optional Protocol to the International Covenant on Economic, Social and Cultural Rights¹³ and was opened for signature in 2009.

1.2. Importance of an OP-ICESCR

The process towards the adoption of this "milestone" instrument of protection of human rights has been characterised by ambiguity, reluctance and scepticism. The more reason why its adoption represents a remarkable achievement in terms of protection of the human rights and implies numerous benefits that can be summarised as follows:

- It represents a huge step forward to bridging the gap between civil and political rights and economic, social rights by bringing them into the same level of protection.
- It strengthens the principles of indivisibility and interdependence of Human Rights.
- It finally recognises the right of victims of violations of ESCR to an effective remedy of equal status within the human rights system.
- It will contribute to developing a solid body of jurisprudence regarding ESCR whereby the Committee will continue its work of clarifying their content and the State's obligations regarding ESCR.
- It introduces a follow-up mechanism which will enrich the Committee's work by contributing to the expertise of its members on country situations. Consequently developing a solid body of jurisprudence in which the Committee could clarify and interpret treaties, State's obligations and give legal content to vague concepts and provisions.¹⁴
- As stressed by the UN Economic and Social Council (ECOSOC) it will serve to monitor the progressive realisation of rights and consequently to clarify the so contested issue of justiciability of ESCR.¹⁵
- Finally, due to the scope given to the Protocol the judicial function of the Committee could be a last resource for the victims of ESCR whose rights cannot be protected by other international and regional instruments.¹⁶

⁹ Commission on Human Rights Res. 2001/30, 20 April 2001, E/CN.4/RES/2001/30.

¹⁰ Commission on Human Rights Res. 2002/24, 22 April 2002, E/CN.4/RES/2002/24 at para. 9(f).

¹¹ Fourth report of the Open-Ended Working Group on an Optional Protocol, 30 August 2006, A/HRC/6/8 (Fourth Working Group Session Report); Draft OP-ICESCR, prepared by the Chairperson/Rapporteur, Catarina de Albuquerque, 23 April 2007, A/HRC/6/WG.4/2 (containing the Explanatory Memorandum) (Chair's First Draft).

¹² Annex I to the Human Rights Council Res. A/HRC/8/2, 18 June 2008.

¹³ GA resolution A/RES/63/117.

¹⁴ Mahon, Claire, "Progress at the Front: the Draft Optional Protocol to the International Covenant on Economic, Social and Cultural Rights", *Human Rights Law Review*, Vol. 8, No. 4, 2008.

¹⁵ ECOSOC, E/2007/82. Report on progressive realisation, p. 6, para. 66.

¹⁶ The OP-ICESCR provides for victims to claim for violations of any of the economic, social and cultural rights set forth in the Covenant (Article 2) unlike the Protocol of San Salvador – Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural – which only endows the option of individual petitions to the right to education (Article 13) and trade union (Article 8) or the European Social Charter which allows for the states to choose which rights they can be obliged to (Article 20).

2. Key Achievements

Overall the Protocol contains several remarkable provisions particularly due to the debate they provoked during the drafting process. Some of them are considered an achievement of the ESCR advocates, academicians and experts monitoring the developments of the process.¹⁷ For the purpose of this paper we will examine three relevant provisions which have the potential of strengthening the monitoring of the ICESCR: scope of the OP (Article 2); the inter-State communications (Article 10); and the inquiry procedure (Article 11).

2.1. Scope of the Protocol

Perhaps Article 2 of the Protocol was one of the most debated articles during the discussions of an OP-ICESCR.¹⁸ This provision deals with three main issues: who can present complaints; against whom they can be presented; and over which ESC rights can communications be submitted. The two first issues are still a subject of some concern and will be addressed in Chapter 3. On the other hand, the third issue related to the scope of the Protocol has been welcomed by many as an important achievement. According to Article 2 a complaint can be presented regarding a violation of “any of the economic, social and cultural rights set forth in the Covenant”.

The decision regarding the range of rights covered by the Protocol implied various discussions around the great deal of difficulties of taking a comprehensive approach on the scope of the OP. A great majority of States supported the ‘a la carte’ approach which gives the States the option to select the rights for which a complaint can be submitted. This approach has the problem of having a wide range of rights for the Committee to deal with and its potential overlap with the International Labour Organisation (ILO) and the UNESCO procedures.¹⁹

The shortcomings of an ‘a la carte’ approach for an OP-ICESCR were a general concern for those advocating for ESCR and for the Working Group on the Protocol.²⁰ Such a selective approach could have signified a backward step with regard to the achievements made in national and regional jurisdictions in terms of justiciability of ESCR; entails the existence of a hierarchy between ESCR; “it disregard the interrelatedness of the Covenant provisions, amend the substance of the Covenant, disregards the interest of the victims, and defy the purpose of the optional protocol to strengthen the implementation of all economic, social and cultural rights.”²¹

¹⁷ The different drafts presented along the process of adopting an OP-ICESCR were subject to review by different academicians as well as examined in International seminars, workshops, among others. Some examples are: the 1995 Utrecht draft see F. Coomans and F. van Hoof (eds.), *The Right to Complain about Economic, Social and Cultural Rights*. (Proceedings of the Expert Meeting on the Adoption of an Optional Protocol to the International Covenant on Economic, Social and Cultural Rights held from 25-28 January 1995 in Utrecht), SIM, Utrecht, 1995, pp. 233-239; and the 1999 Arambulo draft, see K. Arambulo, *Strengthening the Supervision of the International Covenant on Economic, Social and Cultural Rights: Theoretical and Procedural Aspects*, Intersentia, Antwerp, 1999, pp. 342-346; the 2001 Leuven Statement on an Optional Protocol to the International Covenant on Economic, Social and Cultural Rights in annex to the Report of the International Seminar (note 43). Most of the recommendations and amendments suggested by these experts and academicians were included in the final draft and many of the remarkable provisions of the OP are the result of these contributions.

¹⁸ See UN Doc. E/CN.4/1997/105, paras. 25.

¹⁹ See UN Docs. E/CN.4/2002/57, paras. 26-37 and E/CN.4/2003/53, paras. 62-70.

²⁰ Fourth Working Group Session Report, *supra* n. 50 at para. 33.

²¹ *Ibid.* para. 33.

Evidently the arguments in favour of a comprehensive approach and the concerns of implementing an 'a la carte' or any other restrictive approach resulted in the wide scope of the OP-ICESCR. Yet, concerning the right to self-determination (Article 1 ICESCR) the Committee has clarified that communications can only be submitted as long as it is in relation with other rights.²²

A final and determinant element to make this provision to be considered as an achievement is the fact that the OP-ICESCR has an edge over the two regional instruments on the matter by adopting a comprehensive approach in respect of individual complaints procedures for ESCR. In the Inter-American System for example the Protocol of San Salvador – Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural – only endows the option of individual petitions to the right to education (Article 13) and trade union (Article 8). The European Social Charter allows for the States to declare upon ratification to which rights they can be obliged (Article 20). Only the African Charter contemplates individual complaints for violations of all ESCR.

2.2. Inter-State Communications

Article 10 of the Protocol permits a State to complain about the alleged non-compliance of the Covenant by another State. However, such a complaint can only be submitted by a State party which has to declare that it recognises the competence of the Committee. The procedure established in the OP provides all the elements for the States to solve the matter among themselves before referring it to the Committee. The language used in the OP denotes a friendly settlement oriented procedure and emphasises the fact that consideration by the Committee of the matter is a last resort when all the available domestic remedies have been exhausted. Finally, the OP provides for an opt-out clause whereby a State party is allowed to withdraw at any time considering that it will not prejudice an ongoing communication.

The same kind of procedure is found in other human rights instruments like the OPI-ICCPR, the Convention Against Torture (CAT), and the Convention on Migrant Workers (CMW). Yet, due to the complexity of international relations where the sovereignty of States is a fundamental principle this procedure is highly sensitive and therefore rarely used. This is the main reason why the inclusion of this procedure in the OP can be regarded as an achievement. It opens a window of opportunities for the effective protection of ESCR through the development of international jurisprudence.²³

2.3. Inquiry Procedure

An inquiry procedure provides for a supervisory body to scrutinise and respond to gross or systematic human rights violations. Such procedure is established in CAT (Article 20) and in the Optional Protocol to the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) (Article 8). The inclusion of such procedure within the OP-ICESCR was largely deliberated by the OEWG in its fourth session. States like Australia, China, Egypt and the USA strongly argued against it, but thanks to the support of Austria, Brazil, Chile, Costa Rica, Ecuador, Finland, Liechtenstein, Portugal, Senegal, South Africa, Sweden and the NGO Coalition the procedure was ultimately approved and included in the OP.²⁴

²² See UN Doc. E/CN.4/1997/105, paras. 25.

²³ *Ibid.*, Mahon, 2008, p. 642.

²⁴ Fourth Working Group Session Report, *supra* n. 50 at para. 111.

Under the OP-ICESCR for an inquiry procedure to be initiated State Parties have to declare they recognise the competence of the Committee. Such special recognition of the Committee's competence follows the opt-in method whereby the mechanism will require positive support by States. The decision of an opt-in procedure is unique in the sense that the other instruments establishing this type of procedure – CAT and OP-CEDAW – have an opt-out method allowing States to enter a reservation declaring they do not recognise the competence of the Committee in relation to that procedure.

The OP-ICESCR inquiry procedure implies several positive elements. Due to its expeditious character the Committee can respond to the violation of ESCR without waiting for the next State report, and it favours those individuals and groups of individuals who are unable to submit communications or are facing danger or reprisals.²⁵

Finally it is relevant to mention that the OP established follow-up mechanisms for both the individual communications procedure and the inquiry procedure which is a novelty compared to other optional protocols. Such mechanism would contribute to strengthen the work of the Committee and to the effectiveness of the Protocol itself. In addition, following the practice of the Inter-American Commission on Human Rights,²⁶ and the European Court of Human Rights²⁷ the protocol stipulates a friendly settlement procedure offering the good services of the Committee.

3. Contentious Elements and Provisions

As the OP-ICESCR is welcomed as an extraordinary achievement towards the realisation of ESCR it has at the same time a number of contentious elements that need to be examined: The question of who can bring complaints (*locus standi*), the criteria for the examination of the communications (reasonableness), interim measures, and the provision on international assistance and cooperation.

3.1. *Locus Standi*

The OP-ICESCR in its Article 2 determines who can submit a communication to the Committee and set up particular requirements. These raised several concerns during the drafting process, concerns that still remain now after the OP has been adopted.

On the one hand the protocol indicates that communications can be submitted by individuals or group of individuals or on their behalf (Article 2) leaving NGOs without the possibility to file communications on their own right. Such provision constitutes a step backwards for the purpose of this mechanism, e.g. to provide access to justice for victims of ESCR violations. By not giving *locus standi* to NGOs – which are the ones “bridging the gap between grass roots human rights violations and international redress mechanisms”²⁸ – the protocol is limiting access to justice of those victims who often lack the resources and capacity to access the domestic remedies.

On the other hand the submission of a complaint has to fulfil requirements of temporality, compatibility and *res judicata*. It cannot be ill founded, anonymous or not in writing (Article 3). Moreover, the victim must be under the jurisdiction of a State party (Article 2) and must have suffered

²⁵ Sepulveda, Magdalena, 'Obligations of 'International Assistance and Cooperation' in an Optional Protocol to the International Covenant on Economic, Social and Cultural Rights', *Netherlands Quarterly of Human Rights*, Vol. 24, No. 2, 271-303, 2006, p. 299.

²⁶ Article 48(1) (f), American Convention on Human Rights.

²⁷ Article 38(1) (b), European Convention on Human Rights.

²⁸ *Ibidem*, Mahon, 2008, p. 646.

a “clear disadvantage” or the communication must raise “a serious issue of general importance”. Although the admissibility requirements in Article 3 do not generate much controversy the last two: jurisdiction (Article 2) and clear disadvantage (Article 4) do.

First, the fact that the Protocol requires the victim to be under the jurisdiction of a State Party suggests that those violations committed out of the States’ jurisdiction could not be considered by the Committee. Yet, this requirement has been interpreted by the HRC for the OP-ICCPR (Article 1)²⁹ from the perspective of the relationship between the State and the complainant regardless of the nationality of the victim. Furthermore, according to international law if the rights of a person are being undermined by any State, legal entity or individual – not only by a State with jurisdiction – the victim is entitled to bring a complaint before an international body.³⁰

Second, the facility given to the Committee to consider a case as long as the victim has suffered a ‘clear disadvantage’ unless the communication raises a ‘serious issue of general importance’ is, according to some experts, the result of a “unfounded or at least unproven” correlation between the number of people living under the poverty line and the potential load of individual claims such a mechanism could trigger. The vagueness of these phrases is evident and there is no legal interpretation for them yet. Thus, it is expected that the Committee will study this provision and give legal content to it.

3.2. Progressive realisation and available resources: reasonableness criteria

One of the main characteristics dividing civil and political rights and the economic and social rights is the emphasis on “progressive realisation” of the latter. Article 2.1 in the ICESCR establishes the obligation of States to undertake steps to the “maximum of their available resources with the view of achieving progressively the full realisation of the rights recognised” in it. The relation between available resources and the realisation of ESCR is the main reason for the concession on its progressive realisation. Thus many States excuse themselves, using the argument of their difficult economic situation, from fulfilling their obligations regarding economic, social and cultural rights.³¹ Nevertheless, the progressive realisation of these rights “does not mean that governments do not have the *immediate obligation* to make efforts to attain the full realisation of these rights.”³² (emphasis added)

The ‘progressive realisation’ of ESCR and the ‘available resources’ arguments are both highly controversial elements, particularly when dealing with the justiciability of these rights. States like the US and Canada argue that the progressive nature of the right “make justiciability difficult, if not impossible, at the universal level.”³³ Given the contended nature of this issue the approach taken by the OP-ICESCR on the examination criteria for the communications is understandable. The Committee has established that it “shall consider the reasonableness of the steps taken by the State Party” (Article 8.4). In this sense the jurisprudence on ESCR of the South African Constitutional

²⁹ See HRC, López Burgos, *supra*; *Lilian Celiberti de Casariego v Uruguay*, Communication No. 56/1979, 29. July 1981.

³⁰ See UN Docs. E/C.12/1995/SR.50, paras. 39-46 and E/CN.4/1998/84, paras. 8-27.

³¹ See, Quintero, Sandra, “Assessing the interpretation of the two supervisory organs of the American system of the right to health: A justiciable economic, social and cultural right”. Master’s Thesis edn. Rotterdam, The Netherlands, 2007

³² See, Inter-American Commission Annual Report 1993. Chapter five, section II.

³³ *Ibid*, Mahon, p. 635.

Court has served as a precedent for the implementation of the 'reasonableness' standard.³⁴ This criteria was not strongly supported by NGOs in particular and the inclusion of supplementary wording as 'effectiveness and appropriateness' was suggested but not included in the final draft.

The way the Committee on Economic, Social and Cultural Rights might examine communications was clarified by its statement in May 10, 2007. According to it when assessing the 'reasonableness' of measures taken by a State party the Committee would consider "whether the decision-making process had taken full account of the norms and standards recognised in the Covenant and whether the measures taken were targeted towards the realisation of economic, social and cultural rights."³⁵

The Committee has additionally specified that a State will be breaking their obligation under the ICESCR if it cannot convincingly justify its failure to take 'reasonable' steps or to take any steps at all by the lack of resources. In such cases, the Committee would respect

"the margin of appreciation of States to take steps and adopt measures most suited to their specific circumstances"

and

"to determine the optimum use of ... resources and to adopt national policies and prioritise certain resource demands over others."³⁶

If the Committee concludes there has been a failure to take reasonable measures it would recommend that remedial action be taken, leaving to the State's discretion the means of doing so.³⁷ Yet, regarding this last point, ECOSOC asserts that States discretion in setting policy and budget priorities is limited by the human rights standards a State has committed itself to uphold.³⁸

Interim Measures

Following one of the most progressive features of the OP-CEDAW, the OP-ICESCR provides for the Committee to request interim measures to avoid possible irreparable damage to the victim. In this sense the OP-ICESCR surpasses other human rights instruments e.g. CAT, CERD, ICCPR. Notwithstanding the importance of this provision and the positive reaction of NGOs and States supporting this measure, the inclusion of the wording 'exceptional circumstances' creates a threshold of uncertainty regarding the effectiveness this provision could have.

Additionally, the provision does not protect the identity of the victim leaving in this way another gap to the effective protection of the victim of the alleged violation. Considering the potential reprisals a victim could be subject to by the State concerned if he/she/their identity is disclosed the inclusion of the sentence 'The Committee shall disclose the identity of the author of the communication only when the author has consented to such disclosure' was proposed by the Leuven Statement in 2001.³⁹ Despite

³⁴ See *The Government of the Republic of South Africa and others v Irene Grootboom and others* [2001] (1) SA 46 (CC).

³⁵ ECOSOC, E/2007/82 Report on Progressive Realisation, para. 71.

³⁶ CESCR Statement, 10 May 2007, available at http://www.ohchr.org/english/bodies/cescr/docs/e_c_12_2007_1.pdf, paras. 11 and 12, in ECOSOC, E/2007/82 Report on Progressive Realisation, para. 71.

³⁷ *Ibid.*, CESCR Statement, 10 May 2007, para.13, in ECOSOC, E/2007/82 Report on Progressive Realisation, para. 75.

³⁸ *Ibid.*, ECOSOC, para. 72.

³⁹ See, Leuven Statement, Belgium, 30 November 2001, para. 3(d).

the efforts of the supporters of this inclusion the article on interim measures does not protect the victim from the disclosure of his/her identity.

3.3. International Assistance and cooperation

During the drafting process of the OP-ICESCR, Egypt and the African Union supported the inclusion of clauses related to international cooperation (i.e. development assistance) whereby the non-fulfilment by States of these international obligations could be the object of an individual communication procedure. Nevertheless 'Western' countries opposed such possibility considering these obligations of a moral character and therefore non-justiciable. In this regard, the UN Independent Expert on Human Rights and Extreme Poverty, Magdalena Sepúlveda elaborates on the possible benefits of an eventual examination by the Committee of states' international assistance and cooperation by an individual complaints mechanism.⁴⁰ She states that such possibility could contribute to:

- mainstream a human rights perspective into the international assistance programmes;
- raise awareness on the need to respect the principle of non-discrimination and the need to allow for the greatest possible participation;
- increase States' willingness to integrate safeguards and compensation mechanisms against unintentional harm caused during the implementation of a given project;
- increase transparency in the design and implementation of such programme;
- enhance the involvement of the individuals and communities affected by these programmes;
- incentives for social mobilisation.

Sepúlveda has illustrated these benefits in the following example: "an inquiry might be in order if a dam construction scheme in a developing State is funded by a developed State and both States are party to the Covenant and the Committee receives reliable information that the construction of this dam has a serious impact on the right to food (by limiting access to land) and adequate housing (due to evictions) of people living in the affected area. If an inquiry mechanism is available, the Committee would be able to evaluate compliance with the Covenant's obligations by both States."⁴¹

Notwithstanding these positive elements and the considerable work of the Committee and the doctrine on clarifying the content of States' obligations on international cooperation, the OP-ICESCR does not elaborate on this matter in the way ESCR's advocates would have wanted.⁴² Article 14 of the OP-ICESCR makes no reference to the possibility to examine these obligations. Instead the focus goes to the technical and administrative cooperation the UN specialised agencies, funds, programmes and other competent bodies could provide to those States violating their obligations regarding the Covenant. Moreover, it stipulates the establishment of a Trust Fund to provide assistance to the States Parties. This Fund raises concerns due to its voluntary nature which makes its practical operation unlikely.⁴³

⁴⁰ *Ibid*, Sepulveda, 2006, p. 301.

⁴¹ *Ibid*.

⁴² *Ibid*, Sepulveda, 2006.

⁴³ *Ibid*, Mahon, p. 645.

4. Conclusion

The long process towards the adoption of the OP-ICESCR reflects the hard work ESCR advocates have been doing during for more than two decades to achieve equal protection for these rights. Thus, the adoption of the OP-ICESCR constitutes a remarkable step towards ending the hierarchy between human rights. The scepticism of many academics, NGOs and supporters of the OP on the adoption of an OP-ICESCR is reasonable when considering the countless obstacles presented along the process, the reluctance of states, and the little commitment showed towards such an aim. Accordingly, the decision of the General Assembly to adopt the Protocol has been positively received. Yet, the OP urges for deep review, wide diffusion and mostly for a follow-up of both the ratification process as of the judicial work of the Committee.

The OP-ICESCR offers a speedy and effective mechanism of protection for the victims of ESCR's violations. It stipulates several progressive provisions in terms of defence for the victims of ESCR and for the fulfilment of States' obligations. Thanks to the wide scope of the protection of the OP the victims of violations of ESCR finally have a strong international mechanism to complain against States actions or omissions – obligation to protect, respect and fulfil – with respect to the ICESCR.

Several OP-ICESCR's provisions stand out for the potential they have to build a solid body of jurisprudence: its scope, offers a wide range including all ESCR except for the right to self-determination which needs to be in relation to other rights; the inter-State communications, although it's hardly used it nevertheless leaves a door opened⁴⁴ for a possible union of the treaty body communications procedure; and finally the inquiry procedure which establishes the possibility of an expeditious investigation of gross and systematic violations of ESCR and has the innovation of a follow-up mechanism.

On the other hand, the Protocol contemplates contested elements that have been examined and closely followed by those advocating for economic, social and cultural rights. Some of these elements were underscored in this paper: the provision of standing (Article 2) which does not allow NGOs to submit a claim on their own is highly contested for the effects it can have on those victims who struggle to access justice or cannot access it at all. Furthermore, the provision regulating *locus standi* requires the victim to be under the jurisdiction of a State (Article 3) and to have suffered a clear disadvantage (Article 4). These requirements create a debate around the issue of jurisdiction of the state and what could happen to violations of ESCR committed by those other than the State of jurisdiction. Moreover, the wording 'clear disadvantage' included in the provision also raises concerns in terms of the legal content of it; reason why it is expected for the Committee to interpret it in a non-restrictive way in order to solve the vagueness of the provision having special consideration for the interests of the victims.

The progressive realisation of ESCR has always been a much contested aspect. The OP stipulates that while acknowledging the progressive nature of rights the Committee must examine the reasonableness of the steps taken by the State. Such reasonableness criterion has no interpretation within the OP itself. Nonetheless, the Committee has already clarified this criterion by asserting that the Committee must take into consideration the use of norms and standards of the Covenant in the decision-making

⁴⁴ *Ibid*, Mahon, 2008, p. 642.

process of the measures taken by a State. Additionally, it must review whether these measures were targeted towards the realisation of ESCR.⁴⁵

Finally, the provision on interim measures and international assistance and cooperation were reviewed in this paper considering the gaps they leave. First, the OP requires for the interim measures to be taken only on 'exceptional circumstances' and does not clarify the content of such wording. In addition, the identity of the victim is not protected by the OP leaving the victims under the risk of reprisals. Second, the way the OP addresses the element of international assistance does not meet the expectation of many ESCR advocates who have been promoting the examination of international obligations of assistance by the Committee.⁴⁶ The OP limits itself by relying only on the UN to endow technical and administrative cooperation to those States who are not realising their obligations under the ICESCR.

As a final observation, it is relevant to note that the review of the OP-ICESCR certainly underscores the importance of such mechanism for the protection of ESCR. Nonetheless, based strictly on the Protocol's stipulations it is easy to observe that the role of the victims – subjects of these rights and to whom States must be accountable- raises concern. A number of provisions of the Protocol leave several gaps in terms of real protection of the victims: the fact that NGOs cannot submit communications, the lack of regulation regarding the non-disclosure of the victim's identity, the vagueness of the interim measures provision, the opt-in option for the inquiry procedure and the lack of reference to a system of reparations put forward the need for the 'human rights advocates community to continue working "gathering an accurate picture as to whether the campaign for access to justice for victims of ESC rights violations has truly been enhanced through the adoption of this mechanism."⁴⁷

⁴⁵ *Ibid*, ECOSOC, E/2007/82 Report on progressive Realisation, para.71.

⁴⁶ See, Sepulveda, 2006.

⁴⁷ *Ibid*, Mahon, 2008, p. 643.

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