

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

Second periodic report

365. The Committee considered the second periodic report of Sri Lanka (CEDAW/C/13/Add.18) at its 202nd meeting, on 28 January 1992.

366. The Committee noted that it was easily evident from a review of the situation of women in Sri Lanka (both initial and second periodic reports) that the problems of women did not lie in the sphere of the national law. Sri Lankan national law, based on the Constitution of 1973, provided for the fundamental right of equality between the sexes. A progressive Charter of Women was furthermore formulated (although reportedly not officially adopted) in 1991, and several levels of bureaucracies had been put in place with the objective of pushing for true equality.

367. The Committee said that despite a liberal constitutional framework and a tradition of progressive legislation, gender discrimination, both in its overt and covert forms, abounded in the country. The imperative need was to identify and address the factors that constituted the obstacles to de facto equality.

368. There were six areas, including one on violence, that were suggested for close investigation as constituting major sources of continuing discrimination against women.

369. The representative of Sri Lanka stated in her opening remarks that discrimination as such was not prevalent in any part of the country. The situation created by the armed conflict was considered a national problem, and special treatment of women in that situation was not possible.

The impact of the internal armed conflict

370. The representative first replied to the questions asked under the heading "The impact of the internal armed conflict". She said that military spending had increased from 2.3 per cent of the budget to 10 per cent. A complete recovery with regard to development programmes had however taken place over the last three years, facilitated by strong economic growth. Her country had also obtained concessional assistance for development and economic restructuring with a focus on rural marginalized subgroups. Those would undoubtedly have the effect of benefiting women. She stressed that even the worst of times had not seen the perpetration of discriminatory practices against women. Issues relating to displaced persons, refugees and their resettlement and rehabilitation were dealt with by the highest authorities. The peak of displaced persons had been reached with 1.2 million, a number currently reduced to 696,000 (163,500 families). No sex-disaggregated statistics were kept in that field. Five hundred and twenty-nine welfare centres had been established to house displaced persons and other assistance measures had been taken as well. The measures focused on the family unit and

the assistance was given to the breadwinner, whether man or woman. The representative said that there were no women placed under military detention nor had any been forced into exile. Women arrested in conjunction with the insurrection were being treated under statutory law and were subject to established judicial tribunals. No sex-disaggregated statistics were kept concerning persons who had fled Sri Lanka. Measures for redress of grievances were available at courts of law irrespective of sex.

Effectiveness of government machinery (articles 1 to 4)

371. The Committee asked how many staff were working on women's issues in the Ministry of Women's Affairs and Teaching Hospitals (MWATH) compared to the staff of the Women's Bureau; who worked in the Women's Bureau as director, deputies and officers; whether it was women only or also men; and if they had separate budgets, and of what size.

372. It asked what the relationship was between MWATH and the Commission for the Elimination of Discrimination and the Monitoring of Fundamental Human Rights (CEDMFR).

373. The Committee requested further information on the objectives of the Women's Bureau, and the exact meaning of the phrase: "ensuring the preservation of Sri Lankan culture and traditions by fostering moral and ethnical values so far as they affect the role of women in the process of modernization".

374. It asked how many and which recommendations had been made concerning the equality of women before the law, what legislative proposals the Women's Bureau had put forward to the Government, and which had been accepted.

375. It wanted to know the number of complaints of sex discrimination, and in what areas, filed with CEDMFR since 1986. It asked how many had been handled by the Commission, and with what results.

376. The Committee also asked why no sex discrimination complaint had been brought to the Supreme Court, and what the relationship was between the Supreme Court and the Commission in such matters. Did complaints have to be filed by individuals or could women's organizations file them. It was asked why the Government did not use the instrument of temporary special measures to overcome obstacles to the equality of women, and whether it had any plans to extend to women the special measures it had developed to advance the status of other disadvantaged groups. It asked what the status was of the Charter of Women; whether it had been formally adopted as legal or executive action; and if not, why not. It asked if the idea of a Charter had been scrapped, and if so, why.

377. The Committee asked if the national commission on women proposed in the Charter of Women had been established, what its relationship was to the other bodies concerned with women's rights, and what its programme of action was in pursuit of the stated objectives. If it has not been set up, the Committee asked if the Government had plans along these lines.

378. The Committee noted that more than many other countries, Sri Lanka had established a firm legal and justiciable basis for gender equality and had established a number of governmental bodies to be responsible for government action on the issue. However, many observers had noted that, while the mandates of those agencies were comprehensive, actual achievements in advancing women's rights had been scarce.

379. The representative replied that the national machinery had the following structure: at the top was the Ministry of Health and Women's Affairs (MHWA), headed by a woman cabinet minister. Within its infrastructure operated the State Ministry of Women's Affairs (headed by a woman State Minister), which had been assigned specific responsibilities in relation solely to women's affairs. The Women's Bureau was the implementing organ in relation to projects. Staff assigned to women's issues were as follows: three persons in the State Ministry (of which two were women, namely, the State Secretary and the Senior Minister); 17 in the Women's Bureau (of which 13 were women, including the Director, the two Deputy Directors and two of the three Assistant Directors); and 98 in the districts (field offices). The State Ministry and the Women's Bureau had their independent budgetary allocations. Development programmes were funded through foreign aid. As to the question relating to the links between MHWA and the Commission CEDMFR, which had been established in Sri Lanka in 1986, she replied that there were no special organizational links. The Ministry was involved in policy formulation and implementation, and the Commission had its strict guidelines. The purpose of CEDMFR was to receive complaints on discrimination on a broader spectrum. A total of 39 complaints of sex discrimination had been filed with CEDMFR. The Commission looked at all grounds of discrimination, sex being one of them. Of the complaints, 22 were by women and 17 from men. In 11 of the 22 cases, no discrimination had been found, 6 applications had been settled or withdrawn and 5 cases were pending. The majority of cases alleged discrimination on more grounds than sex. CEDMFR used a conciliatory and mediatory process. No legal representation was required. Applications before the Supreme Court must be argued by Counsel and could be a costly exercise. The absence of sex discrimination complaints before the Supreme Court might perhaps also have to do with the inability to actually prove discrimination in a court of law. The Supreme Court was the highest court, and CEDMFR was empowered to attempt settlement by conciliation of any matter that might be referred to it by the Supreme Court. Only the aggrieved party could file a complaint with the Supreme Court. Complaints to CEDMFR could be made by women's organizations.

380. To date, the use of temporary special measures had not been resorted to. No plans had been formulated for the purpose so far. The Charter for Women was available in draft form and was awaiting governmental approval. The Ministry of Women's Affairs was considering and would formulate the mechanism to monitor implementation of the Convention on the Elimination of All Forms of Discrimination against Women. That might include the appointment of a National Commission on Women. As to the objects and functions of the Women's Bureau, the representative said that they were reviewed as necessary to set desired priorities. Recently, the Bureau had been focusing on the promotion of economic activities among women, and no recommendations concerning equality of women before the law had been made. The Bureau had not dealt with the area of legislative reform. The representative also said that Sri Lankan women, in their quest for advancement and equality, must not shed the positive features of moral and ethical standards.

Discrimination due to personal laws (articles 2, 3, 5 and 16)

381. The Committee said that from the initial report of Sri Lanka, the most disturbing feature that had emerged was the existence or application of several systems of "personal laws", based on differing social and cultural practices of ethnic or religious groups that denied women equal status with men before the law. The Government has given the information that a proposal to eradicate personal laws had been resisted by the parties concerned. Beyond identifying the specific issues raised by the existence of conflicting laws, the attempt needed to be made to draw up a legal framework that will adhere to the constitutional principle of gender equality within the context of a multicultural and pluralistic society.

382. It was asked whether the State made a move to identify and codify all the personal laws that were discriminatory towards women. Those included laws that provide for preference for males in intestate succession (Muslim law); no obligation for the father to maintain an illegitimate child (Muslim); women's consent not being a prerequisite for a valid marriage (Muslim); and inability to dispose of immovable property without the husband's consent, etc.

383. Since Sri Lanka made no reservations when it ratified the Convention, the question was raised of how the Government intended to resolve the contradiction between the constitutional provision and the teaching of human rights and the continued existence of discriminatory laws for women.

384. The Committee asked why personal status law was the only area in which religious and ethnic laws remained intact, while all other legal fields (e.g., criminal, contractual, civil) were governed by a single general law. It asked whether there was any system of redress for women covered by personal laws; if women had been effectively consulted on their feelings and proposals regarding the disposition of personal laws; if temporary special measures had a role in beginning to dislodge the application of personal laws; and what other legal avenues were open to redress the situation.

385. The representative stated that it was indeed a difficult matter. An awareness of differences in personal law concerning men and women did exist. The attempted introduction of one national personal law had been met with resistance. A Muslim Law Reform Committee composed of women had been established to recommend reforms, where necessary. Areas that appeared to discriminate against women and that were being looked into by the Reform Committee included the preference for males to intestate succession. The justification used was that the husband had a duty to support the wife. Also, upon marriage, a Muslim was required to give Mehr (a kind of dowry) to the wife that she could claim at any time during marriage or she had a first charge on his estate. Another area of apparent discrimination was the lack of obligation by the father to maintain an illegitimate child. It was hoped that the Reform Committee would consider a change in attitude. Concerning the fact that the woman's consent was not a prerequisite for a valid marriage, it had to be said that the woman's consent was in fact a requirement but was largely breached. It was hoped that a firm proposal would be made by the Reform Committee to ensure compliance with the right to consent. Concerning the husband's right to practise polygamy, she said that a proposal was before the Reform Committee that would enable the wife to divorce the husband by unilateral decision if he entered into a second marriage. Customary law had

been left in place by the colonial rulers as far as possible. Muslims had recourse to the Quazi courts in Muslim marriage and divorce matters; otherwise access to normal courts was available. Women seemed to be more concerned with the improvement of economic conditions and skills rather than with the reform of personal laws.

Socialization to traditional gender roles (articles 5, 10 and 11)

386. The second periodic report ascribed the continued subordination and marginalization of women in many spheres of life, e.g. public life, as being primarily self-imposed owing to their own internalized concept of women's appropriate role and responsibility in society.

387. The Committee asked a series of questions on that topic: What had been the results of the Women's Bureau's survey on the changing attitudes and perspectives of women? Had men been studied too? Did the Government see progress on the basis of that study in bringing about more equal roles and tasks in all areas of life? What measures were there to ensure that women completed that education, for example, had consideration been given to raising the age for marriage? What has been the role of education in perpetuating as well as eliminating gender stereotypes? What kind of curriculum and programme changes has the Government initiated since the Life Skills Project? Did young men and women study mathematics and science the same number of hours in secondary school? Were development efforts being undertaken, in either the public or the private sector, to provide for more vocational alternatives for women? What special measures has the Government introduced to motivate employers to place women in positions of skill or responsibility in both the private and public sectors? And, since the Government recognized that family duties constrained women's work in public life, what did the Government plan to do to alleviate those constraints (e.g., child care and flexible working time)?

388. The representative said that a survey planned by the Women's Bureau on changing the attitudes of women had not been completed. As to the average age of marriage of women, she said that it was 26 years, in particular because more and more women were pursuing education and careers. Women were very conscious of getting an education. The need to incorporate a more realistic marriage age into the statute had been identified. The revision of school textbooks and teaching materials to eliminate gender stereotypes had begun. Elementary school students, irrespective of gender, were exposed to the same skills. No difference in the number of study hours for mathematics and science existed for males and females. A gradual diversification process in vocational skills was being introduced. The State had not been able to provide facilities for child care, flexible work hours, etc.

Violence against women (articles 2, 5, 11, 12 and 16)

389. The Committee asked if women under personal laws suffer a greater incidence of domestic violence and sexual abuse, including rape, within the family, and if there was a higher incidence of violence against women in areas or communities where personal laws are in operation.

390. The representative replied that the fact that a woman was governed by Muslim law, Thesawalamai or Kandyan law certainly had had no effect on the use of violence.

Women in the economy (articles 6, 11 and 12)

391. The Committee noted that the economy of Sri Lanka was in critical shape, and women, in an effort to keep their families above survival thresholds, had had to take jobs in vulnerable and unprotected spheres of work. There was a need to seek remedies to the situation by both short-term and long-term measures. Questions were asked about different areas of work where women appeared to be especially vulnerable.

392. The representative, addressing these questions, stated that the majority of women workers were employed on a year-round basis on tea plantations. She said that surveys indicated plantations' compliance with equal wage laws, and that maternity allowances applied. Medical facilities were provided. Programmes directed towards female plantation workers covered adult education, health, nutrition, sanitation, family planning, etc. Infant mortality and maternal mortality rates had dropped considerably, literacy rates had increased and the quality of life had improved.

393. Regarding women in free trade zones (especially the garment industry), the Committee asked if wages and health regulations were protected by a trade union agreement and if women were allowed to associate, join trade unions, improve their working conditions and protect themselves from sexual harassment and violence.

394. The representative answered that women in free trade zones was an issue that had been identified as an area worthy of close scrutiny. It was believed that there was room for improvement in working and living conditions.

395. The Committee asked a number of questions on domestic workers employed overseas and in Sri Lanka.

396. The representative answered that the number of women domestic workers in the Middle and Far East was estimated at 250,000. A disproportionate number of Sri Lankan embassies were located in the countries of those regions. Certain mandatory conditions, such as minimum wage and return air fare, were set for employers to safeguard the interests of the women workers. An estimated 65,000 women reportedly had returned to Sri Lanka during the Gulf war. Over 30,000 of those had gone back abroad. Returnees obtained a compensation. If and when known, instances of rape, death, etc., of domestic workers overseas led to appropriate governmental action. Domestic workers in Sri Lanka were not governed by labour laws, and there were no attempts to standardize wages or working hours. There was no system of redress, except for leaving the employment.

397. Regarding prostitution, the Committee asked if there were statistics available, such as on the number of women affected, and especially young girls, and also on the number of raids carried out and of the men and women arrested. It also asked what the development had been on the proposed legal changes affecting prostitution; if there were statistics on the incidence of AIDS; and what was being done to counteract that.

398. It was asked if the Women's Bureau intended to undertake studies on the effect on women of structural adjustment policies; sex tourism; export of female labour to home-based or entertainment-related overseas work; and free trade zones.

399. In answer to questions on prostitution, the representative said that she did not have statistics at her disposal. She said that adequate legal provisions existed, but that the focus must be on effective implementation. There were 39 cases of AIDS in men, and 10 in women. Information campaigns on AIDS were being carried out. A study on structural adjustment policies had been carried out by the Centre for Women's Research, a non-governmental organization. The suggestion of a study on sex tourism would be considered, and a study on women in free trade zones would be undertaken.

400. Members of the Committee thanked the representative for her answers. A number of additional questions were asked.

401. Referring to the armed conflict, members asked what the main incidences of violence against women were as a result of the conflict, and what kind of efforts the Government was making to solve the problem. Clarification was also sought on family and domestic violence. One member wondered whether it were possible to obtain an injunction against a husband in connection with violence. Further clarification and more details were sought on the issue of women in free trade zones, and in particular concerning the existence of trade unions, the right to organize, protection of young and vulnerable women, etc. One member inquired about rural women and changes occurring in their roles of production, and whether and how the Government assisted them. Reference was made to a report on missing persons, disaggregated by sex, that had been presented to the Government. The expert wondered whether any action had been taken on the basis of the report. Several members referred to the use, or non-use, of temporary special measures under article 4 of the Convention, and to affirmative action. Experts stressed the usefulness of such measures in overcoming de facto discrimination and obtaining a step-by-step improvement of women's situation. They wondered why the Government did not use such measures. Concerning personal law, it was asked whether women, especially young women, accepted the application of personal law, or whether they opted for national law instead. It was also asked what happened to women after divorce, what the precise provisions were under the Ordinary Code and whether proposals for reform of divorce law existed. It was asked whether the new measures on prostitution had removed the stigma attached to it, and what had been done in terms of rehabilitation. It was asked whether it was true that physical opposition had to be shown to bring a charge of rape. Concerning the dowry practice, one expert wondered how it was compatible with the fact that the Government had ratified the Convention, and whether the Government considered eliminating the practice. It was asked whether the Government was doing anything to stop migration.

402. In referring to the third periodic report, members looked forward to details on the activities of the new National Commission on Women, in particular with regard to measures under article 4 of the Convention. Since there seemed to be a strong legal foundation, members hoped for details concerning areas where there was no clear, apparent discrimination, and in particular with regard to the following four areas: (a) assistance to displaced persons and the fact that women's situation in such circumstances

might be harder still; (b) a detailed review of complaints and redress before the Supreme Court and CEDMFR might be useful; (c) information on the availability of support for family responsibilities since the lack of such support systems often led to further disadvantages for women; and (d) the question might be addressed whether the Government, given the economic situation, had more worries for women than for men. By addressing those issues, the underlying conditions rather than apparent discrimination could be exposed.

403. In replying to additional questions, the representative stated that women in the armed conflict did not get special treatment. Concerning women working in the free trade zones, that was recognized to be a problem. The laws were there, but they were not always allowed to be implemented. The matter was being looked into. No change in the role of rural women could be observed. Women in rural areas would benefit greatly from poverty-elimination programmes under the family unit approach. They were also opting for newer and easier vocations. No negative economic effect was visible. Temporary special measures and affirmative action programmes would cause antagonistic reactions against women when they caused women to be placed in unfairly advantageous positions. The representative stated that there was so much natural progress anyway. She said that women could not opt out of their own personal law. She also said that since there was no serious agitation for reform from within, she inferred that women under Muslim law must be better off. Women argued that under that law they have a right to be treated justly. They did not feel that they were discriminated against. On the divorce question, she said that the statute provided for the payment of alimony, awarded by the judge, for the wife and children. Grounds for divorce are fault-based (desertion, adultery and impotence). A reform currently envisaged by the Government would establish the unified concept of the irretrievable breakdown. On the issue of rape, she explained that physical resistance would prove that there was no consent, but was in itself not necessary for bringing charges. The stigma on prostitution remained. The idea of using the Convention for steps against dowry was an interesting thought, the representative said. But law alone could not eliminate traditions. She agreed that there was definitely a need to amend the statute concerning the marriage age. Denying migration, she said, would be very unpopular, because it was based on economic needs. But the Government should instead look after these women before, during and after migration.

404. In closing, the Committee expressed its understanding for the difficulties faced by the Government of Sri Lanka. The efforts made to deal with the situation were appreciated. The Committee stated that some temporary special measures might be advisable and that it was up to the Government to decide which ones would be most useful examples since there were legal measures, measures in education and consciousness-raising measures. The representative was advised to look into the possibility of improving the situation and to speed up improvements. The next report should provide information. The aim of whatever measures the Government decided to take should be to bring the de jure and the de facto situation in the country into line with the provisions of the Convention. A balance must be found between what existed and the Convention. Progress should be achieved as quickly as possible without causing a backlash to the advancement of women.