



# International Covenant on Civil and Political Rights

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## Human Rights Committee 137th session

### Summary record of the 3969th meeting

Held at the Palais Wilson, Geneva, on Wednesday, 8 March 2023, at 10 a.m.

*Chair:* Ms. Abdo Rocholl

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*Sixth periodic report of Sri Lanka*

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*The meeting was called to order 10.05 a.m.*

**Consideration of reports submitted by States parties under article 40 of the Covenant**  
(continued)

*Sixth periodic report of Sri Lanka* ([CCPR/C/LKA/6](#); [CCPR/C/LKA/Q/6](#);  
[CCPR/C/LKA/RQ/6](#))

1. *At the invitation of the Chair, the delegation of Sri Lanka joined the meeting.*
2. **The Chair**, welcoming the delegation of Sri Lanka to the meeting, explained that additional members of the delegation would be participating via video link.
3. **Ms. Arunatilaka** (Sri Lanka), introducing the sixth periodic report of Sri Lanka ([CCPR/C/LKA/6](#)), said that her country had faced unprecedented social, political and economic challenges during the period under review. In 2022, the Government had focused its efforts on restoring law and order and achieving economic and political stability and had taken targeted preventive measures to mitigate the effects of economic hardship on the most vulnerable persons in society. The constitutional rules governing democratic processes had been strictly respected during the period of political transition, and the Parliament and public institutions had remained resilient. In October 2022, the Parliament had adopted the twenty-first amendment to the Constitution, which further consolidated democratic governance, strengthened independent oversight of key institutions and reformed the composition of the Constitutional Council and the independent commissions. The Constitutional Council, which included representatives of civil society, had recently completed its call for applications for membership in the independent commissions.
4. Notable legislative developments included the adoption of the Regulation of Election Expenditure Act, which had come into force in January 2023, vesting the Elections Commission with the power to monitor campaign expenditures with a view to improving the transparency of the electoral process. Amendments to the Prevention of Terrorism Act had been adopted in March 2022 following extensive consultation with all relevant stakeholders, including representatives of civil society. A Cabinet subcommittee on the prevention of terrorism had been appointed in September 2022 and tasked with formulating counter-terrorism laws that balanced national security concerns with international standards and best practices.
5. In December 2022 and January 2023, the President had convened an all-party conference to garner broad political support for the reconciliation process. A Cabinet subcommittee on reconciliation comprising senior ministers representing all the communities of Sri Lanka had been appointed to resolve issues faced by inhabitants of the northern and eastern provinces. Almost all of the private land that had been occupied by military forces in the north and east of the country during the conflict had been returned to its legitimate civilian owners, and an advisory committee had been set up to facilitate discussions and draft a bill on the establishment of a truth-seeking mechanism.
6. Thanks to the economic programmes managed by the Office for National Unity and Reconciliation, over 1 million persons currently benefited from livelihood assistance, and access to basic facilities had been widely restored. The Office on Missing Persons had begun opening preliminary inquiries as a first step towards undertaking in-depth investigations, and the validity of certificates of absence issued in respect of missing persons had been extended to 2023. The National Reparations Policy and Guidelines formulated by the Office for Reparations had been approved by the Cabinet in 2021 and discussed in the Parliament in February 2022. The Office for Reparations had disbursed 405.2 million Sri Lanka rupees across 2,402 cases in 2022.
7. The Office for Overseas Sri Lankan Affairs had been established to promote outreach to Sri Lankans from all communities and of all generations living abroad. The presidential commission of inquiry tasked with appraising the findings of previous commissions and committees on human rights had presented its first interim report in 2021. The report had paved the way for the aforementioned amendments to the Prevention of Terrorism Act and had resulted in the release of a number of detainees. The Commission's second interim report

had been submitted in February 2022, and a summary of its recommendations had been sent to the President in February 2023.

8. **Mr. Yigezu** said that he would welcome an update on the status of the constitutional reform process initiated in 2016. In particular, it would be useful to learn what specific measures the State party had taken to produce a final draft of the new Constitution and a timeline for its adoption. It would also be useful to receive information on the substantive proposals made by the expert committee on constitutional reform appointed by the President in 2020, in particular any proposals concerning compliance with the State party's obligations under the Covenant and the first Optional Protocol to the Covenant. In that regard, he would welcome confirmation that the State party was considering a proposal to enshrine a number of civil and political rights, including the right to life, the right not to be subjected to enforced disappearance and the right to privacy, in the Constitution, as well as including a detailed list of prohibited grounds for discrimination.

9. In the light of reports that the current Constitution allowed the executive branch to infringe on the independence of the judiciary in certain circumstances, he wondered how the State party planned to ensure that all future constitutional amendments guaranteed the independence of the judiciary and other institutions responsible for protecting human rights and upholding the rule of law. Moreover, in view of reports that, under the current provisions regarding the composition of the Constitutional Council, a majority of the members were drawn from the legislature, he would welcome clarification as to whether substantive changes had been made to the rules governing the appointment of the members of the Constitutional Council to ensure its independence from the executive branch, prevent undue political influence from being exerted on the Council and improve the transparency of the appointment process.

10. Given the information provided in paragraph 30 of the sixth periodic report of Sri Lanka with regard to the Supreme Court's position on consensual sex between adults, he would be grateful if the delegation could explain why the State party had no plans to repeal articles 365 and 365A of the Penal Code, which criminalized same-sex sexual relations, and article 399, which was reportedly used as grounds for harassing lesbian, gay, bisexual, transgender and intersex persons. He also wished to know what measures the State party had taken or planned to take, including policy and legislative measures, to address and prevent discrimination and violence targeting lesbian, gay, bisexual, transgender and intersex persons.

11. **Mr. Santos Pais** said that he wished to know whether, in the context of the current process of constitutional reform, the State party planned to establish a constitutional court with jurisdiction over questions related to the constitutionality of draft legislation, which were currently handled by the Supreme Court. If so, he would be interested to learn what safeguards would be established to ensure that such a court was independent of the executive and legislative branches and that its composition was diverse and representative of all Sri Lankan communities.

12. He wished to know what the ongoing legal effects were of the Supreme Court's ruling that the State party's ratification of the Optional Protocol to the Covenant was not legally binding and whether the matters dealt with in *Nallaratnam Singarasa v. Attorney General* remained under consideration by the Court. Given, in any case, the Government's adoption of a policy decision in 2016 to give consideration to communications from that time onward, he would also like to know what steps were being taken to implement the Committee's Views fully and provide effective remedies and full reparation to authors of complaints in which the Committee had found a violation. An indication of which government department was responsible for following up on the Committee's Views would also be helpful.

13. It would be interesting to learn what the main results of the National Action Plan on Gender-based Violence had been thus far and what progress had been made in its implementation. Information on progress in combating gender-based violence under the National Human Rights Action Plan would also be appreciated. Was disaggregated data on sexual and gender-based violence being collected via a centralized mechanism? It would be good to hear whether the State party had achieved its aims of establishing a special unit in the Attorney General's Department to expedite the prosecution of cases involving sexual

violence, introducing legislation to prohibit suspended sentences and enforcing mandatory minimum sentences in respect of grave crimes, including violence against women. He wished to know whether the draft amendments to the Prevention of Domestic Violence Act had been enacted, what further improvements had been made and whether there had been progress towards criminalizing marital rape.

14. He would be grateful for information on measures to address the underreporting of gender-based violence and its underlying causes, such as a fear of reprisals, a lack of trust in the police and the judiciary, and obstacles to victims' effective access to justice, including mandatory participation in mediation before domestic violence cases could be pursued in the courts. It would also be interesting to learn more about the procedures used to investigate and prosecute perpetrators of domestic violence, rape and other forms of sexual violence. He would like to know how many victims of gender-based violence and trafficking in persons had benefited from the six special shelters that had been established, which parts of the country the shelters served and what type of support they provided. Lastly, he would welcome the delegation's comments on reports that many women left Sri Lanka after being promised employment only to end up being trafficked for the purpose of sexual exploitation and other forms of abuse.

15. **Mr. Soh** said that he would welcome information on the written and customary laws that would be prioritized for review under the draft gender equality policy and on a specific timeline for the submission to Parliament of a bill to amend the Muslim Marriage and Divorce Act. He wished to know what measures had been adopted by the Election Commission to address the publication in the media of statements that slandered women and perpetuated harmful gender stereotypes and biases and what progress had been made in developing the draft media policy. What other policy measures were in place to tackle the discriminatory portrayal of women and girls in the media?

16. **Ms. Kran** said that she wished to know whether the State party would review the Public Security Ordinance, under which emergency regulations could override any law except the Constitution. She would also like to know when a law that clearly upheld the principle of proportionality would be passed, how the need to declare a state of emergency was determined and whether that process was aligned with the Covenant. Certain non-derogable rights under the Covenant had been set aside during the state of emergency declared in April and May 2022, and it would be useful to know why the State party had failed to fulfil its obligation to communicate those derogations to the Secretary-General. She was keen to learn what had justified the derogation of the rights to liberty, security, peaceful assembly and freedom of expression and religion during the states of emergency of April 2019 and of April and May 2022; how the rights violations committed during those states of emergency would be investigated; and what assistance was provided to persons pursuing claims arising out of those violations.

17. She would welcome information on when the Prevention of Terrorism Act would be repealed or replaced, perhaps by amending the Penal Code rather than adopting new legislation. She would also appreciate details on the counter-terrorism bill that had reportedly been prepared, including when it would be made public, when consultation with civil society would take place and whether it contained provisions to protect detainees from torture, require law enforcement officials to inform detainees of the reason for their arrest, grant detainees the right to legal counsel and ensure that arrested persons were brought before a judge promptly.

18. As there were numerous examples of violations of the rights of persons detained under the Prevention of Terrorism Act, including death threats made to Mr. Wasantha Mudalige, the extended detention of Mr. Hejaaz Hizbullah without bail and the killing of Mr. Tharaka Perera Wijesekara while in police custody, she wished to know how many cases had been brought under the Act; what the outcomes of those cases had been and how many had ended in convictions; and how many persons had been placed in custody under the Act since November 2019. Information would also be welcome on what steps the State party had taken to ensure fair trials for persons detained under the Act, including Mr. Mudalige and Mr. Hizbullah, and how the process for reviewing convictions under the Act complied with the Covenant.

*The meeting was suspended at 11 a.m. and resumed at 11.20 a.m.*

19. **A representative of Sri Lanka** said that the twenty-first amendment to the Constitution incorporated the substantive features of the nineteenth amendment and positive aspects of the twentieth, such as improvements to the provision for the judicial review of acts and omissions by the President. Under the twenty-first amendment, the composition of the Constitutional Council must reflect the pluralistic nature of Sri Lankan society and included, inter alia, the Prime Minister, the Speaker of Parliament, the leader of the opposition, Members of Parliament from the governing and opposition parties and civil society representatives, who must not be members of any political party and whose nominations must be approved by Parliament.

20. The twenty-first amendment had also reinstated the Public Service Commission and the National Procurement Commission, which had been abolished by the twentieth amendment. Under the new amendment, members of those commissions and several others, including the National Police Commission and the Human Rights Commission of Sri Lanka, could be appointed only by the President on the recommendation of the Constitutional Council and could be removed only in accordance with the Constitution or other written legislation. The commissions' composition must reflect Sri Lankan society, including with regard to gender, and they were accountable to Parliament.

21. The twenty-first amendment also provided that the Constitutional Council must approve all appointments to senior positions within the judiciary and the executive, including the Attorney General, the Chief Justice, the President of the Court of Appeal, the members of the Judicial Service Commission, the Governor of the Central Bank, the Inspector General of Police and the Secretary-General of Parliament. The Constitutional Court must also seek the views of the Chief Justice regarding all appointments to the Supreme Court and the Court of Appeal.

22. The Supreme Court had the jurisdiction to consider constitutional matters. Under the twenty-first amendment, the duration of the window for the public scrutiny of bills had been extended to two weeks. Any member of the public could challenge the constitutionality of a bill. The Supreme Court would then review the bill and set the voting threshold required for its approval. Any amendments made to bills must not deviate from the merits and principles of the bill.

23. In 2022, a private member's bill to amend the Penal Code in order to protect the rights of lesbian, gay, bisexual, transgender, intersex and queer persons had been submitted to Parliament. The Attorney General had reviewed the bill and confirmed its constitutionality. The remaining legislative procedures now needed to be pursued by the private member concerned. Also in 2022, consultations had been held with civil society representatives, the Inspector General of Police and the Ministry of Women, Child Affairs and Social Empowerment. Following those consultations, one of the Deputy Inspectors General of Police had been appointed to address concerns in relation to the rights of those groups of persons and the Deputy Inspector General of Legal Range had been instructed to provide all necessary support. Further consultations had been held to address a number of different concerns. In 2021, a case relating to the protection of the rights of lesbian, gay, bisexual, transgender, intersex and queer persons had been brought before the Court of Appeal. The Inspector General of Police had published a circular addressing the concerns raised, which had been recorded in the Court's records, and the petitioners had dropped the case in January 2023.

24. In the light of *Nallaratnam Singarasa v. Attorney General*, in July 2020 a similar case had been referred to the Supreme Court for examination by a divisional bench of five judges. The hearings had been concluded and the judgment was pending.

25. With regard to the legal provisions on states of emergency, the Constitution stipulated that emergency regulations could overrule all legal provisions except for those of the Constitution, which meant that fundamental rights were protected even in such situations. In accordance with the 1947 Public Security Ordinance, the President could establish emergency regulations where necessary for public security, public order and the maintenance of essential supplies and services. Emergency regulations could be challenged before the Supreme Court, and cases were currently pending. Under the Public Security Ordinance,

statutory ouster clauses could not supersede constitutional rights, and that principle that had been upheld in the courts.

26. Following extensive deliberations in conjunction with civil society, the Prevention of Terrorism Act had been amended in 2022 to introduce a range of safeguards. Upon a person's arrest, a certified copy of the detention order must be sent to the magistrate in whose jurisdiction the detention centre was located. The Human Rights Commission of Sri Lanka must also be notified of the arrest and permitted to visit the individual at the place of detention. The competent magistrate must visit the detained person within 48 hours of receiving the copy of the detention order and must continue to visit the individual at least once a month for the duration of the detention. During such visits, magistrates must make a record of the conditions of the person's detention and any complaints that he or she had. If there were any signs that suggested that detained persons had been subjected to torture, the magistrate could refer the individuals for forensic medical examinations and order their transfer to another detention facility. If the medical examination provided evidence of torture, the magistrate must refer the victims for medical treatment and instruct the Inspector General of Police to investigate the case as a criminal offence. In addition, attorneys-at-law had the right to meet with their clients and pursue proceedings on their behalf, subject to the necessary conditions. Persons detained under the Prevention of Terrorism Act had the right to communicate with their relatives. Other recent amendments included a reduction in the maximum period of pretrial detention from 18 months to 12 months. A new counter-terrorism bill was currently making its way through the legislative process.

27. **Mr. Yigezu** said that, given the multiple rounds of constitutional reform that had already been carried out, he wished to know how the State party planned to establish a sense of constitutional stability with regard to the protection of fundamental rights. He also wondered why the number of non-political members of the Constitutional Council had been reduced under the twenty-first constitutional amendment.

*The meeting rose at 12.05 p.m.*