

Statement of the United Nations Special Rapporteur on minority issues, Rita Izsák-Ndiaye, on the conclusion of her official visit to Sri Lanka, 10-20 October 2016

20 October 2016

In my capacity as the United Nations Special Rapporteur on minority issues, I conducted an official visit to the Democratic Socialist Republic of Sri Lanka, from 10 to 20 October 2016, at the invitation of the Government. The objective of my visit was to hold consultations on the human rights situation of persons belonging to national or ethnic, religious and linguistic minorities in Sri Lanka in conformity with my mandate.

I would first like to sincerely thank the Government of Sri Lanka for extending an invitation to me, and in particular, for the excellent cooperation extended by the Ministry of Foreign Affairs for the purpose of my visit. I have been provided extensive access to senior government officials at both national and provincial levels. I met with interlocutors from over 30 government institutions in total, including 9 Ministers and held technical meetings with officials from 12 other ministries. I thank them for their time and for the valuable information that they have provided to me.

I began my visit in Colombo before travelling to meet with minority populations in other parts of the island, including Jaffna, Vavuniya, Trincomalee and Kandy. Throughout my visit, I had the opportunity to interact with hundreds of other stakeholders including representatives of civil society organisations, community members, religious leaders, academics, and others working in the field of minority issues and promotion of equality and non-discrimination. I met the representatives of Sri Lankan Tamils and Up-Country Tamils (also known as Indian or Plantation Tamils), Muslims, Hindus, Christians, including Catholic and other smaller denominations, Telugus, Veddas, Burghers, Malays and Sri Lankan Africans. I also met with Sinhalese and Buddhist leaders and those who identify as majority, to seek their views. I take this occasion to thank sincerely all the civil society actors who travelled from many different locations to share information and views with me.

THE CONTEXT

Like most multi-ethnic and multi-religious polities, Sri Lanka is also characterised by relations of co-existence and inter-dependence as well as tensions and differences between different ethnic and religious groups. Since independence, ethnic and religious identity has come to be of a huge

significance in Sri Lankan society. It has tended to define power and social relations, leading to tensions and social divisions both between the majority and minority communities as well as between minorities. A dominant Sinhala-Buddhist majoritarian leadership and the failure of successive Governments to address the genuine grievances of minorities, in particular the Tamil people, precipitated conflict and eventually a long civil war that seriously damaged the social fabric. Therefore, conscious steps are needed to address the past, and to reconstruct and foster a sense of belonging, national unity and identity.

The National Unity Government established at the beginning of 2015 did enjoy the support of most communities and brought new hopes about reconciliation and progress. In October 2015, with the co-sponsorship of the Government of Sri Lanka, the Human Rights Council adopted resolution 30/1 on promoting reconciliation, accountability and human rights, in which a commitment was made to address the past through the four pillars of non-recurrence, right to truth, right to justice and reparations. A number of crucial institutions, including the Office for National Unity and Reconciliation and the Secretariat for Coordinating Reconciliation Mechanisms have been set up, which will undoubtedly play an important role in moving forward along with other existing independent commissions such as the National Human Rights Commission. It will be essential that every decision-making process and mechanism inspires the confidence of all communities to include their views and aspirations and forge a sense of ownership over these long-awaited processes.

OVERALL CHALLENGES OF MINORITIES

2.1. Inclusive governance and effective participation

The current administration must be commended for taking progressive steps in relation to the inclusion of the voices of the general public, including civil society representatives and ordinary citizens into the ongoing reform processes. Both the Public Representations Committee on Constitutional Reform (PRC) and the Consultation Task Force on Reconciliation Mechanisms (CTF) have reached out to and listened to thousands of people through oral and written submissions. This has given a glimpse of hope to the society as a whole that their views and aspirations will be considered and taken on board. It must also be mentioned that the PRC, the CTF and the National Human Rights Commission has drawn staff from diverse ethnic and religious groups, including women, which should serve as a good practice for other offices.

However, minorities feel excluded from other areas of decision-making and power structures. During my consultations with minority representatives, many challenges and issues were raised but one underlying root cause of all grievances was their inadequate levels of participation and representation in major institutions and decision-making bodies. This is also often signalled by the dominance of Sinhala as the de facto sole language in these institutions and bodies. This gap must be addressed and in order to fulfil promises of good

governance, it is crucial that all institutions are reflective of the society's ethnic and religious diversity. This will increase participation, effectiveness and most importantly, the trust.

Linguistic rights

According to the Constitution, the national languages of Sri Lanka are Sinhala and Tamil, English being the link language. The previous and current administration started taking important steps to promote multilingualism. The official languages law and the National Trilingual Policy (2012-2020) aim at the equal promotion of Sinhala, Tamil and English as national languages. Learning of a second language (Sinhala or Tamil) has been made compulsory in the school up to the ninth grade. Moreover, a state policy in the form of a circular demands state employees to learn a second language (Sinhala or Tamil) which is also linked to their incentives.

However, in reality, several challenges exist with respect to language, particularly in the public domain. Many of the Tamil speaking representatives, including the Muslim population in the Northern and Eastern provinces whom I consulted highlighted the difficulties of not being able to use Tamil when dealing with state institutions including provincial and local authorities, the police and the hospitals. I was told that most state institutions across the country use only Sinhala in oral and written communications. This language gap often puts Tamil speakers at a significant disadvantage with respect to employment, and access to various services.

Similarly, law enforcement officers and members of the military deployed in Tamil-speaking areas often lack Tamil language skills. It does not only pose day-to-day problems and frustrations, such as dealing with traffic violation tickets, for example, but also widens the gap further between majority and minority communities. For instance, despite the establishment of Children and Women's Bureau Desks at local police stations, minority women reported difficulties in access owing to language barriers. Those who have suffered domestic violence for example not only need to do gather courage to go and make a complaint but also face the challenge of explaining it in a language they often cannot express themselves well in, if at all, which reportedly leads to further reluctance in reporting such violations.

Language-related concerns also featured in our discussions about education. There is a serious shortage of quality and professional language teachers in the schools, and reportedly an additional 6,000 language teachers are needed. Some minority communities fear that their children will never master, or indeed will forget, their mother tongue if it is not taught in school. According to the UN Minorities Declaration, States should take appropriate measures so that all minorities have adequate opportunities to learn their mother tongue or to have instruction in their mother tongue. This is particularly important in mixed

regions and the so-called border villages, where the choice of schools is limited and education in mother tongue is often not available. Moreover, small minority communities are afraid that their language will simply go extinct. For example, Malay, Vedda, Telugu, and Sri Lankan African representatives all expressed their desire to have opportunities for their mother tongue to be taught and transmitted to the next generations, fearing that their languages might otherwise completely disappear from the terrain of Sri Lanka.

Freedom of religion or belief and religious identity

In Sri Lanka, the overwhelming majority (70.1%) of the population is Buddhist, according to the 2012 census. Article 9 of the Constitution states that the Republic of Sri Lanka shall give to Buddhism the foremost place and accordingly it shall be the duty of the State to protect and foster the Buddha Sasana, while assuring the rights of all religions.

In many places, there is a peaceful co-existence of different religious groups where the construction of temples, churches or mosques are carried out without hindrance and religious services are enjoyed without discrimination or harassment. I welcome the establishment of the Inter-Religious Council under the President which brings together religious leaders from many different religions, with the mandate to increase the society's understanding of and respect for other religious systems and institutions, serving as a platform of discussions, mediations, general peace-building, planning and advising. I consider this as a good model of inter-religious dialogue and encourage the replication of this model at the provincial level.

However, challenges remain in relation to minority religious groups. I was informed about difficulties in constructing certain new places of worship and accessing cemeteries, especially for members of smaller Christian and Muslim denominations. Moreover, it appears that Article 9 of the Constitution is sometimes used to the detriment of other religions. Construction of Buddhist temples, shrines and statues, at what is described as an alarming pace, in areas that were traditionally non-Buddhist is met with animosity. For several years now, I have been monitoring with concern the reports of attacks by Buddhist extremists in Sri Lanka, especially between 2011 and 2014, most notably involving groups such as the Bodu Bala Sena (Buddhist Power Force), which incite violence and hatred against religious and other minorities while proclaiming the racial superiority of Sinhala Buddhists. Such acts included attacks on places of worship as well as businesses and properties of religious minorities. Particularly, in a society that is already significantly fragmented and is wishing to re-establish long lasting peace and harmony, such aggression and extremism must not be allowed and tolerated. It is of utmost importance that, through effective prosecution of perpetrators, those who incite or perpetrate hatred and violence are not allowed to succeed in deepening divisions between communities. In the course of public consultations on the constitutional reform,

discussions about the possible amendments of Article 9 featured prominently. Whatever changes are made or otherwise, the protection and promotion of minority religious communities must be further safeguarded.

Most significant challenges relevant to the reconciliation process: land, security-related detainees, and demilitarization

In all of my discussions in the northern and eastern parts of the country, where the Tamils and Muslims are concentrated, demilitarization, release of prisoners and issues of land return frequently and prominently featured.

The continued presence of the military in the Northern and Eastern parts of the country is a subject of some controversy. I was informed about several projects by the Army aiming to improve the social and economic situation of the northern communities, which includes construction of houses for those who are still displaced, as well as income-generation activities in civilian service work.

Although the Army is now less visible in public places, people spoke of how the military presence is negatively felt in many spheres of life, often affecting their livelihood. Worrying allegations of intimidation and harassment were also made. With the Army's ethnic make-up being almost entirely Sinhalese, and its disproportionately heavy presence in the Northern province, the military is seen as an occupational force, which is believed to continue stigmatizing the Tamils as militants.

While a proper mapping exercise takes place of all the lands currently occupied by the military, lands currently not in use or whose use cannot be adequately justified for military purposes must be returned without delay to their rightful owners in a condition that is usable. Where private lands have been acquired without due process or compensation, these lands must be returned and/or compensated for. Protracted displacement has also led to many conflicts, including between and within minority groups, also due to tensions between host communities and those displaced. Steps must be taken to address and resolve these conflicts. It is also important to remember that, while the post-conflict issues in the Northern and Eastern parts of the country are often seen as essentially problems between the Tamil and the Sinhalese, the Muslims, who were caught in between the two, and displaced in significant numbers, continue to suffer to this day. I must underscore the importance of recognising them as a separate minority group and give their specific circumstances and grievances full attention.

The continued application of the Prevention of Terrorism Act (PTA), which affects the Tamil population disproportionately, has been under heavy criticism nationally and internationally for allowing for prolonged detention without due process. While the numbers are disputed, there is a significant number of those who remain on remand under the current PTA. As the repeal of the PTA is a

serious and important step to which the Government has committed in the reconciliation process, I underscore the critical importance of any new law replacing this act to meet all the relevant international standards.

THE SITUATION OF PARTICULARLY VULNERABLE MINORITY GROUPS

3.1 Internally displaced persons (IDPs)

Seven years after the end of the war, I am concerned to hear about the large number of communities still living in precarious situations of displacement. Notably, this includes the significant numbers of Muslims who were displaced from the Tamil areas of the North during the conflict, as well as the Tamils displaced during the conflict in the Northern and Eastern provinces and the Up-Country Tamils who were displaced from the plantations at different times due to ethnic strife and violence, most notably in 1983. All these communities told me of the significant difficulties regarding obtaining land titles, exercising voting rights – which is linked to registered permanent addresses, as well as accessing employment and public services. They attributed some of these difficulties to discrimination from the majority community in the area including the state authorities, as well as absence of material or financial assistance, including for housing, from the Government.

Plantation Tamils

'Up-Country Tamils' (also known as 'Indian', 'Plantation' or 'estate' Tamils) are descendants of Indian Tamils brought by the British as indentured labour to work on tea and rubber plantations. They mostly live in the central highlands and number more than one million (comprising 4.2 per cent of the population). Due to hardship and poverty, all their socio-economic and health indicators are much below the national average, including infant mortality rate, literacy or access to water. Moreover, many remained deprived of citizenship, were rendered stateless and therefore excluded from any participation in public or political life until as recently as 2003. They also face problems of discrimination from the rest of the community in areas of employment and access to services, in part due to their perceived low caste status.

I visited a state plantation community and it was saddening to witness their stagnation in cycles of poverty in extremely harsh living conditions, with little access to services including sanitation, health and education. As a consequence, the workers of this plantation are forced to search for daily, ad-hoc work in a close-by village and are exposed to total uncertainty whether they can buy their daily bread for their families. Alcoholism, child labour, violence and sexual abuse are reportedly common and a significant proportion of the school-age children drop out or do not go to school. I learnt about 20 children with different kinds of disabilities who are in need of targeted medical and financial help.

As a positive step, the government has established the Ministry of Hill Country New Villages, Infrastructure and Community Development to transform plantation communities into village communities with dignity and self-respect and introduced a new National Plan of Action on Social Development of the Plantation Community (2016-2020). It will be crucial for this Plan of Action to be implemented properly so it can fulfil its promise to reduce poverty levels of the plantation community, improve living standards on par with other communities and fully ensure the enjoyment of political, social and economic rights. The current progress of reconstruction of houses must be continued to achieve the plan of 50,000 houses being built in the next 5 years and efficient support should be provided in getting title deeds.

3.3 Smaller minority groups (Burghers, Malays, Sri Lankan Africans and Veddas, Telugus)

I held a meeting in Colombo with the representatives of the Burghers, Malays, Telugus, indigenous Veddas, and the Sri Lankan Africans, among others. The Burgher representatives from the Eastern Province informed about their difficulties with respect to livelihood access to services. A Burgher representative from Colombo described their situation as favourable compared to the others, due to their command of English, good level of education and stronger position in the society. Common issues that featured in the testimony of the other communities were: the negligence with which they are left out from consultation and decision-making processes; the stigmatization and labelling despite their own self-identification (Telugus called Gypsies, Sri Lankan Africans called Kaffirs etc); pressure to change their traditional life styles, which is especially devastating for the Veddas; and lack of mother tongue education and lack of opportunities to transmit their languages to the next generations.

3.4 Minority women

Women and girls belonging to minority communities often face unique challenges and multiple or intersecting forms of discrimination emanating from their gender and their status as persons belonging to minorities. This is particularly acute in Sri Lanka, where women's participation in decision-making is strikingly low and gender-based violence occurs frequently. Tamil women in the North and East continue to suffer from the scars of the conflict, either as war widows, families of the disappeared, or as former combatants. The number of female-headed households is high, and it comes with particular vulnerabilities and social stigma which makes basic survival difficult and renders them exposed to further exploitation. There is a dire need for targeted psychosocial assistance for these women, as well as ensuring that their voices are systematically heard and reflected in the transitional justice process. Women who are displaced also face particular challenges.

For Muslim women, there are also pressures from within the community when asserting their rights, particularly with respect to matters concerning marriage and divorce that are governed by the 1951 Muslim Marriage and Divorce Act. The Act also allows children below the age of 16 to be married. I understand that a commission set up seven years ago to look into much needed reforms has still yet to submit its report. It must be ensured that the personal laws of minority communities (such as Kandyan, Tesawalamai or Muslim law) comply with international human rights standards. It is important that the amended Local Government Election Act and its quota of 25% of places to be given to women will consider the inclusion of minority women too.

CONCLUSIONS AND THE WAY FORWARD

As a consequence of the long conflict, there is a trust deficit vis-à-vis the State as well as between the communities in Sri Lanka. This is understandable and it is apparent that people from all communities do recognize the need for everyone to come together and re-generate trust at all levels of society. Sri Lankan identity and the notion of nationhood must be strengthened to foster a stronger sense of belongingness and togetherness of all Sri Lankans. And while the country is undergoing an important reconciliation process with constitutional reform, transitional justice and policy-making, the devastating impact of the war and violence on psychological well-being cannot continue to be ignored. Past acts of repression of culture and expression, ethnic intolerance and discrimination have severely damaged social and cultural norms and feelings of identity, belonging and trust. Therefore, the Government of Sri Lanka, while implementing truth-seeking, reconciliation and accountability measures, should also consider supporting psychosocial programs, counselling and support interventions, and symbolic forms of healing for the population as a whole, especially in conflict-affected areas. It is imperative that war-affected communities, especially women, benefit from specialized psychosocial support without further delay, to help them overcome the trauma which often manifests in complex and intertwined physical, emotional and mental health complications.

Truth-seeking, reconciliation and healing takes time and cannot be done overnight. However, at the same time, in order not to lose the momentum gained by the new administration in 2015, the Government must put in place some urgent, important and concrete measures to clearly demonstrate its political will and commitment to better protect Sri Lanka's minorities. This includes continued return of land to their owners, charging or releasing all security-related detainees, making progress in finding disappeared persons and taking visible steps to gradually transfer military powers to civilian authorities.

I firmly believe that government and provincial offices, law enforcement bodies, the armed forces, the education and health institutions, if truly reflective of the diversity of the Sri Lankan people with the inclusion of members of ethnic,

linguistic and religious minorities, can make significant progress in addressing the overwhelming sense of marginalisation felt by many communities, as well as conferring trust and legitimacy in the governance of Sri Lanka.

There are different ways to achieve this and minorities must be meaningfully included into such discussions as well. Some community representatives suggested mandatory quota systems, especially at the federal level, while many would like to see targeted affirmative action in training and recruitment programs, and others would prefer to see separate departments established for and composed of minorities. A model to consider as a first step could be the employment of community liaison officers. Minority representatives could be hired on the local level to the provincial administration, police forces, education and health facilities and the armed forces, among others, to help overcome language barriers and to form a bridge between their respective communities and state institutions. The inclusion of women community liaison officers of Tamil and Muslim background into the police force in the Northern and Eastern provinces for example would bring immediate benefits when handling sensitive cases such as sexual and domestic violence.

Another important concern that featured in all discussions was the Constitutional reform and guarantees for inclusion of minority rights protection provisions. A majority of those consulted expressed fears that keeping the primacy of Buddhism in the Constitution could lead to further suppression of and discrimination against minority religions and communities. Other representatives stated that they do not object the preservation of this clause per se as long as specific non-discrimination guarantees will also be built in to the Constitution to prevent its potential misuse and misinterpretation. Article 16, relevant to personal laws, has been cited as especially problematic and harmful for Muslim women who repeatedly suggested that it should find no place in the new Constitution.

There is also a need to start planning for essential longer-term changes for peaceful co-existence, such as integrating schools and analyzing the school curriculum to make sure children learn about the shared values and commonalities of their society together with history, culture, religion and identity of the others and not only of their own - or the majority - communities. This will help to minimize stereotypes, prejudices and suspicions with which the different communities might currently view each other. Religious classes should cover all religions and could be optional. The separation of schools based on religion and language further reinforces the notion of differences and prevents children from getting to know each other and fostering friendship across different identity lines which I believe would be absolutely essential for a united and strong Sri Lanka. Reforming educational systems can take long but a long-term vision for the future must be put in place now with gradual steps to be taken towards achieving that vision. Such suggestions in my discussions included religious- or ethnic- neutral names for schools, and the use of English

as a language of instruction with optional afternoon classes in Tamil, Sinhala and other desired languages, depending on the pupil composition.

Media must also adapt to the multi-ethnic, multi-religious composition of Sri Lankan society and ensure objective portrayal of the various population groups, via self-representation, wherever possible. Considerations should be given to establishing a good quality public TV and radio channels where the board would be diverse and where all communities could represent themselves and cover issues with a unified voice.

My visit provided not only to me but to the discussion participants a chance to come together, listen to each other and realize that the issues, concerns and aspirations, and so possibly the solutions too, are very often the same. Many expressed the wish to have such dialogues continued. They noted that safe places of discussions, where views and ideas can be freely exchanged are currently lacking and hindering the strengthening of inter-communal relationships.

In line with the proposal of the Public Representations Committee on Constitutional Reform, I recommend the Government to establish an Independent Commission on Minorities under the Constitution with a clear mandate, powers, resources and autonomy with the capacities of:

- reviewing and proposing domestic standards and providing expertise and information to legislation drafting and policy-making processes;
- monitoring laws and policies with respect to minority rights and recommending amendments or implementation measures;
- encouraging and coordinating programming on minority issues and strategies devised to address problems relating to minorities;
- promotion and education activities;
- developing good practice guides, information resources and reports;
- developing campaigns and outreach relating to minority rights;
- forming a bridge between minority communities and public administration; and
- facilitation of arbitration, dialogue, national debate and activities to prevent and find solutions to ethnic or religion-based tensions.

SELECTED RECOMMENDATIONS

Short-term recommendations, to be implemented as soon as possible:

- Begin taking necessary steps towards the establishment of an independent, dedicated minority rights mechanism in charge of coordinating minority issues, with the inclusion of representatives of minority communities.
- Ensure full protection of all minority places of worship as well as heritage.

- Ensure that the imminent constitutional reform includes a strong minority rights regime including a fully empowered Independent Commission.
- Extend full institutional cooperation to, and strengthen the existing independent institutions and ensure sufficient human and financial resources are provided for the full implementation of their mandates, including the National Human Rights Commission, the Office for National Unity and Reconciliation and the Secretariat for Coordinating Reconciliation Mechanisms.
- Repeal and replace the Prevention of Terrorism Act with anti-terrorism legislation in conformity with international standards.
- Review all cases of security-related detainees with a view to their swift release if there are no elements that would merit a prosecution or alternatively charge those against whom there is evidence of involvement in serious crimes.
- Continue the gradual release to the civilian populations of the remaining 6,124 acres (according to the Army figures) of the land currently held by the military in the Northern province.
- Take the necessary measures to implement the recommendations of the Special Rapporteur on the human rights of internally displaced persons following his visit to Sri Lanka in December 2013, without further delay.
- Ensure the smooth and transparent process of establishment of the Office of Missing Persons by January 2017 with adequate budget and inclusive composition.
- Publicly condemn religious intolerance and hold perpetrators of hate crimes and violence accountable.
- Consider establishing a system of community liaison officers, to be placed in every public institution, with the necessary resources required to fulfil their mandate.
- Continue and step up psychosocial assistance programs to victims of the conflict according to their needs.
- Consider a review of all personal laws, especially the 1951 Muslim Marriage and Divorce Act, in line with international human rights standards and in consultation with the Muslim community including Muslim women's groups.

Longer-term objectives with appropriate planning:

- Step up measures and allocate sufficient budget to ensure the implementation of language policy;
- Ensure that any future electoral reform ensures proportional representation for all minority groups on the basis of accurate data collection and disaggregation;
- Consider establishing affirmative action policies for under-represented communities in the government, the judiciary, armed forces and law enforcement, along ethnic, religious, linguistic as well as gender lines.

- Ensure multiple identity choice in the census and include options for smaller minorities to adequately self-identify themselves, collect and analyse data disaggregated by ethnicity, religion or language which will form a basis of appropriate policy-planning through targeted means if necessary.
- Form a vision for the reform of educational institutions to better foster friendship among children from different backgrounds and review the curriculum to ensure learning about each other's culture, traditions, languages, and ethnicity.

While I end this visit today, I look forward to continuing my collaboration with the Government of the Sri Lanka, civil society actors and minority communities, particularly through follow-up to the recommendations I have made above. I stress that the observations that I provided today are only my preliminary findings and will be further informed by additional research and consultation with the Government and other relevant stakeholders. My full report and recommendations will be presented to the United Nations Human Rights Council in March 2017.

I once again take this opportunity to thank the Government, the United Nations Country Team and in particular, the Resident Coordinator and the team of the Senior Human Rights Advisor, and all of those who took time to meet with me and provided information and assistance.

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