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POLICY BRIEF

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BRIEF COMMENTARY ON THE PRESSING NEED FOR A LAW AND A NATIONAL POLICY TO RECOGNIZE AND SAFEGUARD THE RIGHTS OF ADIVASI COMMUNITIES IN SRI LANKA

Brief commentary on the pressing need for a law and a national policy to recognize and safeguard the rights of Adivasi communities in Sri Lanka

Executive Summary

The fundamental rights enshrined in Chapter III of the Constitution of the Democratic Republic of Sri Lanka¹ safeguard, inter alia, freedom of thought, conscience and religion; freedom from torture; right to equality; Freedom from arbitrary arrest, detention and punishment; and prohibition of retrospective penal legislation; Freedom of speech, assembly, association, occupation, movement.

However, the question is whether "Adivasi Communities" living across the country, including but not limited to Uva, North Central, Eastern, Sabaragamuwa, and Northern provinces, entitled to have a conducive socio-economic and political landscape to enjoy those fundamental rights remain valid. While there are interminable issues and challenges related to the rights of people in general, citizens belong to the connotation of "Adivasi Communities", and those who are willing to identify themselves as "Adivasi" face even more challenges and are vulnerable more than other communities in establishing themselves as citizens with equal rights. This is an alarming situation in terms of discrimination inflicted on Adivasi people in Sri Lanka in various forms, whereas Article 12 (2) of the Constitution which states, *"No citizen shall be discriminated against on the grounds of race, religion, language, caste, sex, political opinion, place of birth or any one of such grounds."* Discrimination and exclusion do not confine to a mere violation of one or more fundamental rights. Still, they lead to a range of rights-based issues in the spheres of their social, economic, cultural, civil and political life of them.

The United Nations have internationally recognized the rights of indigenous people across the globe through the United Nations Declaration on the Rights of Indigenous Peoples (A/RES/61/295)² with a strong urge for member states to provide effective mechanisms for prevention of, and redress for, inter alia, actions which have the aim or effect of depriving them of their ethnic identities, dispossessing them of their lands, territories or resources and any racial or ethnic discrimination against them.

Although Sri Lanka has voted³ in favour of the United Nations Declaration on the Rights of Indigenous Peoples (A/RES/61/295), the absence of a specific policy framework or legally binding instrument that explicitly recognizes the existence, identity and rights of "Adivasi" communities leave these indigenous communities indefinitely vulnerable to suppression and discrimination. Further, neither any of the provisions of the United Nations Declaration on the Rights of Indigenous Peoples nor the provisions of the Indigenous and Tribal Peoples Convention, 1989 (No. 169)⁴ have not been translated to and adopted within the domestic legal or policy framework. Therefore, certain insensitive short-sighted, arbitrary and at times intentional discriminatory actions of both policymakers, officials of law enforcement authorities and administrators have further exacerbated the vulnerabilities to the existence of "Adivasi communities" in Sri Lanka.

This brief note is expected to provide a summary of core issues faced by Adivasi (indigenous) communities in Sri Lanka and present proposed policy interventions in addressing those issues.

¹ <https://www.parliament.lk/files/pdf/constitution.pdf>

² https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf

³ <https://digitallibrary.un.org/record/609197?ln=en>

⁴ https://www.ilo.org/dyn/normlex/en/?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C169

Core Issues faced by Adivasi Communities in Sri Lanka

- Absence of formal constitutional or legislative recognition for persons representing different indigenous (Adivasi) communities in Sri Lanka. Such recognition should entail the assurance of the rights of the indigenous community.
- Absence of specific legislation that explicitly provides provisions for the protection and promotion of economic, social, cultural,⁵ civil and political rights⁶ of indigenous communities.
- Law enforcement without sensitivity towards the unique civil, political, socio-economic and cultural rights of Adivasi communities, mainly including their right to livelihood, creates disproportionate effects on their well-being and survival.
- The Adivasi community has been pushed towards micro finance to explore and venture into alternate livelihoods since their traditional livelihoods have been criminalized, and entry into forests prohibited. The Adivasis who have been evicted from their traditional dwellings have been compelled to seek finance facilities from scrupulous ‘money lending’ type financial service providers, to construct a basic place to stay as a result of forced relocation. They have been lured into the micro finance debt trap. The women have been targeted and have entered into agreements that they have not understood and are unable to read. They have been exploited through excessive interest rates and illegal and unethical recovery methods. The abusive lending and collection practices are far from transparent or follow basic transactional guidelines. Adivasi community members allege that they are trapped in micro-credit and other forms of money-lending activities resulting in broader social issues. Despite its commitment to financial inclusion and poverty alleviation, the practice of microfinance has raised increasing concerns in terms of consumer protection. Misleading contractual information, excessive interest rates, etc.). Group lending technologies, which form the basis of many microfinance programs, have also led to severe abuses as a result of their peer pressure mechanism. Examples include aggressive loan collection techniques (e.g., daily harassment, public humiliation, social exclusion, etc.) as well as individual privacy issues.
- The absence of a robust and updated socio-economic profile of different Adivasi communities in various regions of the country results in the lack of recognition, exclusion and marginalization; thereby, such communities are continued to be subject to discrimination.
- Lack of grievance redress mechanisms and fair hearings when the rights of Adivasi communities are infringed, together with weak community-led institutions to advocate for their rights, inevitably put them at risk of being subject to injustices.
- Administrative decisions, at times potentially derived from political motives, inflict direct or indirect consequences on the entitlement of Adivasi communities to the freedom to enjoy and promote their own culture and to use their language, freedom of occupation and movement. Further, lack of institutional recognition on the part of the state is a severe impediment in

⁵ <https://www.ohchr.org/sites/default/files/cescr.pdf>

⁶ <https://citizenslanka.org/wp-content/uploads/2015/12/International-Covenant-on-Civil-Political-Rights-ICCPR-Act-No-56-of-2007E.pdf>

establishing their citizenship and thus leads to them being excluded when accessing public services.

- Despite not being recognized as part of the fundamental rights in the Constitution in general, the livelihood rights of Adivasi communities are closely connected with natural resources, particularly in their habitats or ancestral territories, which deserves specific attention in ensuring an enabling environment for them to live peacefully. However, a range of causes, including development plans and administrative decisions, including the Department of Wildlife Conservation, Ministry of Environment, Department of Irrigation, Police Department, Mahaweli Development Authority, Ministry of Land, Department of Cultural Affairs, Department of Ayurveda, Department of Archeology, Department of Fisheries not sensitive towards the significance of protecting rights of Adivasi communities have resulted in endless hindrances preventing them from engaging in their customary livelihood means which is a violation of the fundamental right to freedom of occupation while it also is in contravention of the policy positions of the United Nations Declaration on the Rights of Indigenous Peoples and the Indigenous and Tribal Peoples Convention of ILO. For instance, there are frequent incidents of arresting and initiating legal action against members of Adivasi communities for engaging in livelihood activities, including fishing, harvesting bee honey, and Chena cultivation.

Suggestions for policy and practice-related reforms

1. Introduce a draft bill in consultation with the Adivasi community and relevant stakeholders incorporating the unique features and requirements of the Adivasi community with sensitivity to the deep and special relationship between their lands which is basic to their existence and central to all their beliefs, customs, traditions and culture.
2. The rights of indigenous peoples are not limited to general human rights and minority rights. The rights specific to indigenous peoples, as found in the ILO Convention No. 169 and the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) must be formulated as collective rights. Government should take necessary action to ratify the Indigenous and Tribal Peoples Convention, 1989 (ILO Convention 169) while formally acknowledging the commitment of the state to respect the provisions of the United Nations Declaration on the Rights of Indigenous Peoples.
3. A review of existing legislation that prohibits, criminalises and prevents the Adivasi community from engaging in their traditional livelihoods. The government should take necessary action to review some of the existing legislations, including but not limited to the Fauna and Flora Protection Ordinance, Forest Ordinance, Coast Conservation Act and other laws and policies that unreasonably hinder the use of ancestral habitats of Adivasi communities and prevent them from engaging in their livelihood activities.
4. It should be the responsibility of the relevant public authorities to ensure the effective implementation of such laws and proper regulation of human activities instead of imposing ad hoc regulator measures that undermine the fundamental rights of Adivasi communities and put their existence at stake.
5. Government should appoint an "Independent Committee on the Rights of Adivasi Communities in Sri Lanka" with the mandate of conducting a comprehensive census of the socio-economic

profile of the different existing groups of people who themselves are identified as part of the broader definition of "Adivasi Community" in Sri Lanka. Such Committee should preferably consist of representatives of the Human Rights Commission of Sri Lanka, representatives from the district and divisional administrations of respective geographical locations such as Adivasi groups live, representatives from the Department of Wildlife Conservation, Ministry of Environment, Department of Irrigation, Police Department, Mahaweli Development Authority, Ministry of Land, Department of Archeology, Department of Cultural Affairs, Department of Ayurveda, Department of Fisheries, Ministry of Education and any other concern authority. This Committee's report should include a mapping of the prevalence of Adivasi communities across the country and an analysis of the socio-economic and political issues, with evidence-based data and information gathered through consultations faced by those communities.

6. Government should appoint a Parliamentary Sub-Committee under the most appropriate Sectoral Oversight Committee to review the emerging issues and challenges faced by different community groups belonging to the "Adivasi Community in Sri Lanka". This Sub-Committee should refer to the reports presented by the "Independent Committee on the Rights of Adivasi Communities in Sri Lanka"
7. The Ministry of Home Affairs, in close coordination with the "Independent Committee on the Rights of Adivasi Communities in Sri Lanka" and the said Parliamentary Sub-Committee, should, as a short-term solution, design a Code of Conduct for public officials, with particular attention to district and divisional level administrations, sensitizing them about the need for affirmative action to combat against continued discrimination for Adivasi communities and deliver public services respecting the right to equality of them.
8. Provincial governments and Local Government Authorities should take necessary steps to formulate Statutes and By-Laws, respectively, within their corresponding jurisdictions to uphold the rights of Adivasi communities and protect their civil, political, socio-economic and cultural rights.
9. The decision not to include "Adivasi Communities" as an ethnic group in the national census itself is an example of discrimination and exclusion, whereas the identities of indigenous people are globally acknowledged. Article 8(2)(a) of the United Nations Declaration on the Rights of Indigenous Peoples states that *"Any action which has the aim or effect of depriving them of their integrity as distinct peoples, or of their cultural values or ethnic identities."*⁷ Thus, the government should, in all possible means, take appropriate affirmative action to ensure the recognition of Adivasi communities.
10. Census and Statistics Department, in coordination and collaboration with respective district administrations, should take necessary action to gather data on Adivasi communities and instead of the decision to categorise Adivasi communities under the category of "Other", gender-segregated data should be gathered and documented as a unique group.⁸ District secretaries should request

⁷ https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf

⁸ The last census in which population data related "Adivasi Communities" had been gathered only in 1963 and since then, in four rounds of national census (1971, 1981, 2001 and 2011), data of Adivasi (Veddha) community has been included under "Other" category. <http://www.statistics.gov.lk/Population/StaticalInformation/CPH2011/CensusPopulationHousing2012-FinalReport>

the officials in charge of district-level census and statistics to conduct district-level data-gathering processes to understand the spread of Adivasi communities across the country. The attitude of public officials and policymakers that perceive "Adivasi Communities" as insignificant should be changed.

11. The Central Bank of Sri Lanka and other related financial and regulatory authorities should take steps to assess the impact of debt on the Adivasi communities due to microfinance, micro-credit and other forms of unregulated money lending activities. Additionally, authorities should take immediate action to prevent unauthorized persons and institutions from enticing Adivasi communities to become borrowers and subsequently lose their assets by way of selling their movable and immovable property to money lenders in settlement. It is imperative that when pursuing solutions for the Micro Finance issue the perennial issues of the Adivasi community needs to also be addressed since lands, livelihoods, identity and culture are interwoven intricately and remain inseparable. For any meaningful solution to be reached in a sustainable manner, the total violations and infringements have to be considered within their framework with sensitivity to the deep and special relationship between their lands which is basic to their existence and central to all their beliefs, customs, traditions and culture. The rights specific to indigenous peoples, as found in the ILO Convention No. 169 and the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) must be formulated as collective rights.
12. The Ministry of land, in collaboration with district administrations and other concerned authorities, mainly including the Ministry of agriculture and wildlife & forest resources conservation (Department of Wildlife Conservation & Department of Forest Conservation), should review the ancestral heritage of Adivasi communities to land and cease arbitrary administrative decisions that deprive their right to land and access to water. Article 14 of the Indigenous and Tribal Peoples Convention, 1989 (ILO Convention 169) requires *"the government to recognize the ownership and possession of the lands the indigenous people traditionally occupied. Furthermore, adequate procedures are to be established within the national legal system to resolve land claims of them."*
13. Government should cease the 'issues based' approach in addressing emerging concerns of the existence of Adivasi communities and instead should demonstrate a political will to adopt a 'policy based' approach to convince those communities to see themselves as part of citizens of the land with due state's recognition to their unique identity, self-determination, distinctive habitats, ancestral territories, access to natural resources mainly including land and water, language and cultural practices.
14. The state should recognize the role of Adivasi communities as guardians of natural resources as opposed to perpetrators who destroy the same. Further, affirmative action, including awareness building, should be initiated to promote Adivasi communities across the country to be more sensitive towards existing laws and policies that intend to protect the ecosystems within which their habitats and ways of life will also exist. Such intervention should prevent the increasing risk of assimilating them into other communities' standard of living merely because Adivasi community members are fewer.



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