

REPORT OF THE  
LEADER OF THE  
OPPOSITION'S  
COMMISSION ON THE  
PREVENTION OF  
VIOLENCE AGAINST  
WOMEN AND THE  
GIRL CHILD

December 2014

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We, the members of the Commission worked in our individual capacities and without remuneration.

Herewith we submit the Report.

**Priyaneer Wijesekera**  
**Chairperson**

### **Members:**

Ms Kumudini Samuel .....

Ms Chulani Kodikara .....

Ms Anberiya Haniffa .....

Ms Shreen Saroor .....

Ms Shanthi Sachithanandam .....

Ms Savitri Wijesekera .....

Ms Premila Divakara .....

**December 2014**

## ORAL AND WRITTEN SUBMISSIONS

1. Women's Action Network
2. Suriya Women's Development Centre
3. Equal Ground
4. Women in Need
5. Viluthu
6. International Centre for Ethnic Studies
7. Stand Up Group
8. Muslim Women's Research and Action Forum
9. Muslim Women's Development Trust, Puttalam
10. Women's Support Group
11. Citizen's for a Secure Sri Lanka
12. Mullaitivu Women's Development and Rehabilitation Foundation
13. Members of Women's Rural Development Societies from five villages in Jaffna
14. Jaffna District Women Activists
15. Dr. Anuruddhi S. Edirisinghe, Specialist, Senior Lecturer and Head, Department of Forensic Medicine. Faculty of Medicine, University of Kelaniya.
16. Secretariat for Muslims

## ABBREVIATIONS

AG	- Attorney General
BBS	- Bodu Bala Sena
CAT	- the Convention Against Torture
CBOs	- Community Based Organisation
CENWOR	-Center for Women's Research
CRC	- the Convention on the Rights of the Child
CrPC	- Criminal Procedure Code
CWBD	- Children and Women Bureau Desks
DMO	- District Medical Officers
DV	- Domestic Violence
FIR	- First Information Report
GOSL	- Government of Sri Lanka
HRC	- Human Rights Commission
ICCPR	- International Covenant on Civil and Political Rights
IPC	- Indian Penal Code
IPO	- Interim Protection Order
JMO	- Judicial Medical Officers
LAC	- Legal Aid Commission
LHRD	- Lawyers for Human Rights and Development
MMDA	- Muslim Marriages and Divorce Act

MCDWA- Ministry of Child Development and Women's Affairs

NAPW - National Action Plan on Women

NCPA - National Child Protection Authority

NCW - National Committee for Women

NAPHR - National Action Plan for the Protection and Promotion of Human Rights

PDVA - Prevention of Domestic Violence Act

PO - Protection Order

PRUN - the Deputy Permanent Representative to the United Nations

SLPC - Sri Lanka's Penal Code

SGBV - Sexual and Gender Based Violence

UNCEDAW- United Nations Convention on the Elimination of All Forms of Discrimination Against Women

UNDVAV- United Nations Declaration on Violence Against Women

UNFPA - United Nations Family Planning Association

UNICEF - The United Nations Children's Fund

WIN - Women in Need

WDO - Women Development Officer

## INTRODUCTION AND METHODOLOGY

### **Introduction**

The incidence and manifestation of violence against women in Sri Lanka has changed in form, in degree and in the profile of perpetrators since the adoption of the Women's Charter in 1993, the strengthening of penal provisions in 1995 and the adoption of new legislation in 2005. Increased militarization, protracted armed conflict and the condoning of political violence has also led to a deeply entrenched culture of violence and impunity in the country since the 1980s, with significant impact on violence against women.

We are deeply concerned at the high levels of domestic and intimate partner violence reported by women and are also aware of the serious under reporting of such violence. We note that the nature of this violence is becoming more and more grievous and sexualized. We observe that mediation is often used to deal with domestic and intimate partner violence and we stress the need for more concerted efforts to address prevention while also addressing the issue of impunity, and finding means of holding perpetrators accountable for their violence. We also note that women victim/survivors have inadequate protection from perpetrators and there are insufficient services and support available to them to rebuild their lives.

We note the high incidence of street-based sexual harassment that is a virtually unreported crime, condoned and invisibilised that occurs with rampant impunity. Sexual harassment in the workplace is equally insidious and brings into play unequal patriarchal power relations that are not dealt with in any seriousness either in the public sector or in the private sector.

Women are increasingly objectified and subject to sexual and physical violence by politicians and their acolytes and this appear to be an increasing trend that is the result of high levels of power and impunity enjoyed and exercised by these perpetrators at will.

There also appears to be a significant level of domestic, public and sexual violence in the conflict affected districts of the north and east with attendant levels of fear and insecurity making these crimes difficult to report.

Another matter of concern is the occurrence of the unacceptably violent forms of ragging to which female university students are subject to in a practice that is rife across almost all universities in the country.

Violence against women is not a new phenomenon, nor is its consequences to women's physical, mental and reproductive health. What this report emphasizes however is that acts of violence against women are not isolated events but rather form a pattern of behaviour that violates the human rights of women and limits their participation in society, damages their health and well-being and limits their life chances to live as free autonomous and equal citizens.

By compiling and analysing available data this report captures the different forms of violence suffered by women and emphasises the widespread nature of the problem and how it affects women's lives detrimentally.

This report was commissioned, to analyse the nature of violence against women, in a changing socio-political and economic context, and to seek ways to address both its root causes as well as its consequences on the lives of women. We hope the report will

- increase awareness of the forms of violence against women, prevention efforts and the elimination of all forms of violence against women;
- Provide impetus for research on how women's human rights can be assured and women can be free from violence and discrimination;
- Help build a culture that respects women's right to be free from violence and ensures zero tolerance for violence against women'
- Help monitor (including the fact finding and documentation of violence against women and violations of women's rights) and disseminate the results of monitoring activities to the general public
- Ensure State action for the accountability and handling of cases of violence against women;
- Provide recommendations to the government, legislative and judicial bodies, and civil society organisations to support law and policy making that strengthens the prevention and elimination of all forms of violence against women, and the protection of women's rights.

## **Methodology**

The Commission divided its task into four components based on the terms of reference provided by the leader of the opposition. They were, to examine secondary data wherever available; to receive written and oral submissions from the public at



large; to obtain responses from policy makers, public officials and law enforcement agencies; and to explore experiences in other countries especially in the South Asian region. The report of the Varma Commission of India which examined violence against women after the controversial rape of a young woman in a bus in New Delhi was studied to gain an insight into possible recommendations.. It began its work with a short advertisement placed in the media in all languages calling for submissions from interested and also affected parties (See Annex 2). Apart from the public appeal, each of the members sent out requests through the networks they were connected with. A phone line dedicated to this task was also opened.

In compiling this report, the Commission relied extensively on various research reports on the subject of violence against women in Sri Lanka. Yet accurate, reliable statistics relating to each of the different categories of violence addressed in this report were not easy to come by. Our requests for information from the police, the Attorney General's Department (AG's Department) and the Ministry of Justice only yielded limited information. Ultimately, for the chapters on rape and sexual harassment we relied on the statistics compiled by the police (and available publicly under the category of 'Disposal of Grave Crimes Abstract' on the Sri Lanka Police website). However figures relating to other incidents of violence against women such as domestic violence and sexual harassment were not available (except for sexual harassment complaints received for the year 2011). For domestic violence, the Commission relied on statistics obtained unofficially from the Women and Children's Bureau Desks of police stations for 2009-2010 and officially from the IGP for 2011-2013. In the chapter on multiple and intersecting identities we have used statistics given by two non-government organisations. We were unable to obtain any information from the AG's Department or the Ministry of Justice in relation to pending cases, progress of cases, etc.

We are also very aware that police statistics relating to complaints paint a limited picture about the phenomenon of violence against women in Sri Lanka and that police complaints represent only a fraction of incidents of violence. Independent research reports provide an inkling as to the extent of the issue of violence against women in Sri Lanka. A survey conducted by the Legal Aid Commission (LAC) in 2008 revealed that 70% of women aged 15 to 45 who had ever traveled in a bus in Sri Lanka were sexually harassed.<sup>1</sup> In a study done by CARE International, in the districts of Colombo, Nuwara Eliya, Batticaloa and Hambantota, 24% of the men

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<sup>1</sup> <http://www.stopstreetharassment.org/2011/11/70percent/>

admitted to using physical violence against their wives or partners. The same study also found that, 15% of men surveyed admitted to having committed rape, with the majority of cases involving the rape of a partner. Sixty-five percent of these men said they had committed rape more than once, with 40% committing their first rape before the age of 20<sup>2</sup>. Sri Lanka is also reported to have an extremely high incidence of incest. A report by the Centre for Women's Research (2012) found that a staggering 10,000 girls face sexual abuse by relatives in families, with most rapes committed by fathers, and that only about 1% of these get reported.<sup>3</sup>

The report also relies on a number of independent oral and written submissions made to the Commission by both NGOs and individuals working on the issues of violence against women as well as LGBT. Oral submissions were facilitated at hearings of the Commission which were organized at the Parliament and in the office of the leader of the opposition. A few members were able to visit the field to receive oral submissions which were supported by the organisations they represented. In-field hearings were conducted in the districts of Jaffna, Mullaitivu and Vavuniya. Along with the organisations, many women made submissions in their individual capacity too. However, meeting with the authorities proved to be challenging. Except for a meeting with the Secretary, Ministry of Justice, the Commission failed to with any other public official.

Individual members of the commission brought their own insights and wealth of experience of working on issue of violence against women into the formulation of this report. The Commission met several times over the last two years to discuss findings and conceptualize the chapters. Help was sought from two research assistants for recording all minutes of the meetings and also to do background study for the collection of data. Although their services could not be sustained due to lack of funds, the Commission is grateful to them for kick starting much of the initial work.

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<sup>2</sup> De Mel et al 2013.

<sup>3</sup> Sri Lanka: Battling Incest in Sri Lanka, <http://acr.hrschool.org/mainfile.php/0161/259/>

## CHAPTER 2

# THE SOCIO-POLITICAL, LEGAL AND POLICY CONTEXT TO ADDRESS VIOLENCE AGAINST WOMEN

*“Concerned that discrimination against women continues to exist, recognizing that gender-based violence is a violation of human rights and fundamental freedoms in that it impairs or negates women’s enjoyment of these recognized rights and freedoms” Sri Lanka Women’s Charter, 1993.*

Sri Lanka continues to experience a high incidence of violence against women, whether it is domestic violence, sexual harassment, incest, rape or sexual abuse as evidenced by police statistics, media reports, documentation and research carried out by both government and non-governmental agencies. In this chapter, the commission seeks to a) provide a brief overview of the legal and policy framework that is in place to address violence against women, b) the mechanisms through which these laws are implemented and c) the support services available to victim survivors<sup>4</sup>. We also draw attention to the broader socio-cultural context within which violence against women appears to be increasingly normalized, trivialized or denied in Sri Lanka, undermining and seriously inhibiting both efforts to seek support as well as justice. We begin with presenting a brief account of international norms and standards which Sri Lanka has acceded to and is bound by.

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<sup>4</sup> We employ the term victim survivor throughout this report to convey that the lives of women affected by violence are characterized both by victimization and oppression as well as agency and resistance. We use the term victim also to denote that VAW is a violation of a human right which victimizes the person subject to such violence. It also indicates the need for accountability and justice. This is irrespective of the social understanding of victimhood which often suggests lack of agency.

## The Legal Framework Addressing Violence against Women

**International Standards:** The main international human rights instruments and policy documents that are relevant to the issue of discrimination and violence against women include the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), with special reference to its General Recommendations 19 and 30 and other treaties such as the International Covenant on Civil and Political Rights (ICCPR), the Convention Against Torture (CAT) and the Convention on the Rights of the Child (CRC) all of which have been ratified by the Sri Lankan state. Sri Lanka ratified CEDAW in October 1981 and ratified the Optional Protocol to CEDAW in October 2002.

The term “violence against women” means any act of gender- based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.

*Article 1, Declaration on the Elimination of Violence against Women*

International policy documents adopted by consensus, such as the UN Declaration on Violence against Women, the Vienna Declaration on Human Rights and its Programme of Action, the Beijing Platform for Action of the 1995 World Conference on Women and its review documents, the International Conference on Population and Development and the Millennium Development Goals of 2000 although not legally binding, have acquired increasing importance in setting global norms and standards for Member States. United Nations Security Council Resolution 1325 of 2000 and attendant resolutions have also added to normative standards on violence against women. For these international treaty obligations to be met, local laws must be harmonized with International treaty standards. In the Commission’s view the overall legal framework in Sri Lanka, is more or less in line with these international normative standards. The problem is one of non-implementation on the one hand, and the tendency of the Government of Sri Lanka to increasingly eschew its treaty obligations by alleging that Human Rights are a Western and alien ideology not in keeping with Sri Lankan culture.

Given our understanding that violence against women is exacerbated by the inequality and discrimination suffered by women as a group, laws addressing such violence must be understood within the broader legal and policy framework as well as the social context in Sri Lanka which we briefly summarize here.

**Constitutional Framework:** The 1978 Constitution guarantees equality before the law and equal protection of the law to all citizens. The Constitution also includes a provision to introduce temporary special measures which can be used to achieve

substantive equality<sup>5</sup> [Art 12 (4)]. Yet a number of laws including customary, personal and family laws; women's rights to State grants of public land continue to discriminate against women. In fact, the continuity of these laws is guaranteed by the Constitution itself which prohibits judicial review of past legislations. A further limitation on the effectiveness of constitutional provisions is the fact that remedies for their violation are available only against the State and not against private actors and the private sector. The increasing role of the private sector particularly as an employer makes it imperative that the equality provisions should extend to this area as well.

Constitutional provisions on gender equality have been complemented by a Women's Charter approved by Cabinet in March 1993, as part of implementing its obligations under CEDAW. The Charter which was drafted collaboratively by a committee of government and non-governmental representatives seeks to ensure equality and non-discrimination to women in all spheres of life. The Charter attempts to eliminate trafficking and violence against women and acknowledges the work of women's organisations as well as community-based organisations in helping women who are victim-survivors of violence, and demands that the government supports such organisations in their work.

Seven areas of concern, specific to women in Sri Lanka (civil and political rights, right to education and training, right to economic activity and benefits, right to healthcare and nutrition, rights within the family, right to protection from social discrimination and right to protection from gender based violence) are addressed in the Charter. However, the Charter is only a policy document and its provisions have yet to be translated into law and given legal force.

The objectives of the Family Policy of Sri Lanka (2011) include the elimination of violence against women as well as the neglect and abuse of children. The National Human Resources and Employment Policy (2012) recognizes sexual harassment and talks of the need to promote attitudinal change to prevent sexism and discrimination in workplaces as well as the equitable sharing of care and household chores.

The National Youth Policy - Sri Lanka was unveiled in 2014 with the goal of developing the full potential of young people and to enable their active participation in national development for a just and equitable society. It acknowledges violence against women as posing a serious problem for young women given the high incidents of gender-based violence and sexual harassment as well as teenage pregnancies and sexual abuse amongst girls.

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<sup>5</sup> Substantive equality is a concept that recognizes the need affirmative action policies and practices in order to redress historical, cultural and religious discrimination and marginalization of women. Substantive equality is concerned with the actual outcomes/results of laws, policies and practices rather than formal equality on paper.

**Specific Laws and Policies which Address Violence against Women:** Several laws and policies specifically address the problem of violence against women. These include the Penal Code of 1895 as amended in 1995 and 1998 (345 (sexual harassment), 363 (rape), 364A (incest)) and The Prevention of Domestic Violence Act (PDVA) of 2005. Other laws that are used and can be used to address violence against women include the Prohibition of Ragging and Other Forms of Violence in Educational Institutions Act No. 20 of 1998, Section 2 (2) drafted to prevent and punish sexual harassment that can occur during the course of ragging. Some of these laws and the implications pertaining to their implementation are discussed in the chapters to come.

These laws have been complemented by two national action plans which include specific sections on the theme of violence against women. They are namely the National Action Plan for the Protection and Promotion of Human Rights 2011-2016 (NAPHR) adopted in 2012 and the National Action Plan on Women (2014-2018) adopted in 2014. Furthermore, a very comprehensive Plan of Action Supporting the Prevention of Domestic Violence Act drafted in 2005 was never adopted by Cabinet and has therefore not been implemented.

NAPHR (2011-2016) adopted in 2012 has a section on the rights of women, including violence against women. A key focus area under this theme is reducing violence against women and a number of activities are identified to achieve this goal along with key performance indicators, responsible agencies and time-frames. They include strengthening Police Women and Children's Bureau Desks, preventing sexual harassment in the work place, and implementation of the Plan of Action supporting the PDVA of 2005. Some key recommendations from the NAPHR relevant to this report are reiterated in some of the chapters to come.

The NAPHR offered some hope that violence against women would be addressed as a human rights concern and that some of the contradictions in state policy, discriminatory public statements, political inactivity, and the condoning of violence in the name of cultural and religious values could be negated. However there is no clear leadership or political will to implement the NAPHR since the Ministry of Human Rights was made defunct.

The National Action Plan for Women which is applicable for a five year period from 2014-2018 is organized under ten thematic areas. "Violence Against Women and Human Rights" is one of them. The objectives of the activities under this theme are to 1) Minimize violence against women and violation of their rights; 2) Ensure welfare and protection of women who have been victims of violations of rights and violence; 3) Create a more safe and caring society for women in the country.

The activities under the plan come under three broad areas - policy and legislation; capacity building; provision of resources and services. The plan includes the following salutary provisions: Review de-criminalising abortion in the case of rape, incest and deformities of the foetus; appointing an ombudsman to the National Committee on Women (NCW) to monitor newspaper reports on VAW; amendments to the Criminal Procedure Code to expedite court action on VAW, and provision of laws to file public interest litigation on this issue.

The Plan of Action Supporting the PDVA\_which was finalized in consultation with representatives from line Ministries, the Police Department, multilateral agencies and NGOs, draws on the strategies suggested in a national consultation workshop held in 2004 on gender-based violence organized by the UN Gender Working Group (led by UNFPA) and the Centre for Women's Research (CENWOR), and on the recommendations of relevant publications.<sup>6</sup> It states that strategies and activities contained within the Action Plan are not intended to rival existing initiatives, but to complement and strengthen education and training programs, services, and infrastructure currently provided by various agencies and institutions. Three priority areas – protection, provision and prevention underpin the plan of action.

Firstly, issues around protection orders, law reform, and the refinement of policy and procedures for the care of victim survivors of sexual and domestic violence post-assault are taken to be key methods for promoting the protection of those at risk of domestic violence.

Secondly, provision for domestic violence is supposed to be characterized by a focus on 'tertiary' levels of intervention: providing victim-centered care *after* the assault, and reducing further harm. The provision of shelters, health services, accommodation and counseling are all examples of tertiary intervention. Tertiary interventions are critical for reducing further harm and strengthening care for victims.

In addition to protection and prevention, the Action Plan recognizes that it is essential to look at effective programs and interventions for the prevention of domestic violence. The Plan recognizes a number of ways to prevent domestic violence, including working with young people to break the cycle of violence and working with communities to educate against violence.

### **Gender Machinery**

In theory, it is the national machinery for women, which comprises the Ministry of Women's Affairs (Now combined with the subject of Child Development), the Women's Bureau and the National Committee on Women (NCW) that is responsible

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<sup>6</sup> Wijayatilake & Guneratne 2002; Wijayatilake 2004.

for ensuring the implementation of national policies relating to women. Yet the Ministry's gender equality and women's rights agenda and its policy orientation and public events increasingly reinforce a stereotypical gender imaging of women focusing mainly on women as mothers with a heavy concentration on women's gendered role within the family. As a consequence, the necessary balance which the Constitution and CEDAW seek to achieve between women's right to equal life chances and shared social responsibilities with men in the family is ignored. The shift in focus to women as mothers has also resulted in a lack of capacity within the Ministry to understand and relate to women's rights issues. This has been exacerbated by the appointment of a male Minister of Women's Affairs who has on various occasions expressed a deep lack of understanding and concern for women's rights and gender equality concerns.

While the NCW, in the past, was able to initiate important work on women's rights, it is increasingly becoming less autonomous and politically aligned. It has since 2005 been considered a department of the Ministry of Women's Affairs and has lost its capacity to provide the leadership on integrating a woman's human rights perspective based on the Constitution and CEDAW into the work of the gender agencies and government institutions, on matters impacting on the lives of women. The Woman's Bureau set up in 1978 is the oldest national institution with a mandate to advance the status of women in Sri Lanka. It now focuses mainly on income generation, revolving funds and awareness raising- implementing its work through a network of membership based societies.

The work of the gender agencies has also been undermined by their continued marginalization in policy formulation at the national level. They had almost no role in the drafting of the 10 year National Policy planning document 2005-2010. One of the most critical requirements of the Women's Charter was the converting of the NCW to the status of a Women's Commission with quasi-judicial functions. While succeeding governments have attempted to draft the required legislation in consultation with women's NGOs they have never been able to muster sufficient inter party support or political will to see a progressive Bill of Rights for women thorough Parliament.

### **Institutional mechanisms**

Almost all laws relating to violence against women (except for the PDVA) are criminal in nature and making a complaint requires accessing the criminal justice system. Victim survivors who access this system must necessarily go through a chain of institutions and officers from police officers, judicial medical officers, lawyers and state prosecutors to judges. The system makes no concessions to women survivors of violence with the exception of Women and Children's Bureau Desks discussed below. This means that all the problems of implementation that bedevil the criminal justice system are equally applicable in cases of violence against women. This includes, bureaucratic delays, lack of professionalism in collection of forensic and



other evidence, collusion between perpetrators and law enforcement officers and corruption. Additionally as the chapters that follow will elaborate, many aspects of this system, from filing an initial First Information Report (FIR) to medical examination to the court process and sentencing tend to be biased against women thereby further discouraging women from accessing the system. Given the stigma and shame attached to pursuing justice for many of the violations discussed in this report, the consequences of these failures are deeply gendered. For instance delay in the completing of criminal prosecutions are common across the system of criminal justice, whether they are property disputes or murder cases, the consequences of such delays in the case of rape are qualitatively different. Rape cases that go on for years have serious psycho-social implications for women in their ability to enjoy a wide spectrum of human rights from family life to social interaction.

In an attempt to improve the police response to complaints of violence against women, Women and Children's Bureau Desks have been established in 43 main police stations. They attempt to function as coordinating offices, bringing together the data on incidents of violence against women and children, and feeding this to the central Police Bureau.<sup>7</sup> The desks are staffed by female police personnel, to facilitate the treatment of complaints of violence against women. The Desks however face a number of challenges in executing their duties. These include lack of proper training, marginalization from within, lack of adequate resources to carry out their mandate, and lack of gender sensitivity. Under its mandate given by the PDVA, they have however been filing cases on behalf of victim survivors of domestic violence.

### **Support Services**

The Government of Sri Lanka currently provides a number of support and intervention services for victim survivors of violence. We discuss some of the more important intervention services here.

Hospital Health Desks - The government has established health centres in hospitals named Mithuru Piyasa Centres, which are currently operational in Matara, Nuwara Eliya, Vavuniya, Kalmunai, Anuradhapura, Kandy and Batticaloa District hospitals. These centres provide medical care and counseling/befriending in one site. Staff have been trained in befriending skills, basic concepts of gender, the role of health care providers in addressing violence against women and the health consequences of violence against women. Women can visit the centre on their own volition or they can be referred by any health worker from any health institution or community (UNFPA p. 73). UNFPA which has supported the government to establish these centres, expects that this model will become a part of the country's health-sector policy and will be replicated in other major hospitals. In addition to these centres, Women in Need (WIN), a non-government organisation has been successfully cooperating with government health officials to establish counseling centres in

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<sup>7</sup> <http://gbvaor.net/wp-content/uploads/sites/3/2013/02/Policy-Brief-Forum-against-GBV.pdf>

selected hospitals in different part of the country. WIN runs health desks in the following hospitals: General hospital Colombo, De Soysa maternity hospital, Sri Jayawardenapura hospital, Batticaloa Teaching hospital, Kandy hospital, Badulla Teaching hospital, Anuradhapura Teaching hospital and Puttlam Base hospital.

The Ministry of Child Development and Women's Affairs (MCDWA) recently recruited 212 Counselling Assistants who are based at the district level and carry out their duties at District Secretariats<sup>8</sup>. Counseling for violence against women and child abuse is part of their mandate. The Legal Aid Commission (LAC) which has over 70 branch offices across the country providing legal support to victim survivors of violence, particularly domestic violence and maintenance related matters. The Legal Aid Commission has been filing cases under the PDVA since 2006 and to date has filed more than 600 cases on behalf of victim survivors of domestic violence. The present government also recently established two shelters, one devoted to survivors of trafficking and other for survivors of violence. The MCDWA has just established a hotline to deal with complaints including VAW and also gathers some data.

The national budget of 2014 and 2015 allocated 300 million per year for the protection of women and children. The President delivering the budget speech in 2013, reflecting on the allocation for 2014, while expressing his disappointment that "our value based society nurtured with religion, culture and traditions has to witness child abuse and violence against women", promised to engage field level officers at Divisional Secretariats to facilitate the prevention of such incidents. These allocations are expected to establish safe houses for the benefit of victim survivors, expand and better equip the units set up in police stations to deal with incidents of child abuse and violence against women, expand awareness programs in schools (through parents - teachers associations, *Divi Neguma* community based organisations), establish a network with the involvement of *Samurdhi* societies and community based organisations to address concerns relating to violence against women and engage retired public servants in family counseling. Following these pledges, work is currently under away to build additional shelters, establish separate infrastructure for Children and Women Bureau Desks and set up Women and Children Development Units (WCDUs) with a mandate which includes addressing violence against women. WCDUs will comprise of six officers- namely a Women Development Officer (WDOs), a Relief Sister, a Child Rights Protection Officer, an Early Childhood Development Officer, a Counselling Assistant and a Psycho-Social Officer.

This is a substantial increase in budgetary allocations for intervention and support services for women victim survivors of violence. Questions relating to the quality of these services and the extent to which they respect the autonomy, dignity and protection of women however remain. It must be noted however that service

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<sup>8</sup> Good Practice Group 2013: 12.

provision by non-governmental organisations outnumber the service provision by the government. In addition, the budget allocation in this area appears to be used for service provision and infrastructure and not for tracking and expediting legal and justice processes or dealing with widespread impunity on violence against women.

### **On the issue of impunity and lack of accountability**

Despite the elaborate structures that are being put in place and the fairly adequate legal system to deal with these violations, impunity and lack of accountability are increasing problems. While incidents of violence are mounting, the perpetrators go unpunished in most of the cases or are sentenced to one or two years in jail (after being out on bail for more than 10 years due to the chronic delays in the justice system). Even though the Penal Code was amended in 1995, following pressure from women's groups to provide for mandatory minimum sentence of 10 years in cases such as rape, gross sexual abuse and acts of gross indecency, the courts are now back to giving suspended sentences of 1 or 2 years for such offences. Therefore the overwhelming message to the public is that rape and violence against women can be committed with impunity

During the period 2007 and 2013 complaints were filed in only about 20-25% of reported rape cases. In 2011 there were no more than 3 convictions for rape and incest, and 226 convictions in the case of sexual harassment as compared over 2002 sexual harassment cases recorded by the police. The vast majority of cases are pending investigation, pending in courts or pending at the AG's Department. A report by UNICEF released last year states that child abuse cases take as long as six years, and this delay further re-traumatizes children who have been abused. Sexual abuse takes longer - sometimes up to 15 years.

Independent research relating to arrest and convictions also point to high levels of impunity in the case of rape in Sri Lanka. Recent research has found that only 3.2% of those who admitted to committing rape had been arrested, and only 2.2% had been jailed. In other words, in 96.5% of rape cases, the rapist had experienced no legal consequences. Only 34 % even said that they felt worried or guilty about what they had done. Sri Lanka was among six countries (the other were Papua New Guinea, China, Indonesia, Cambodia and Bangladesh) surveyed in the Asia Pacific region on the meaning and causes of men's violence against women. The figures for non-conviction were the worst in Sri Lanka. The study found that the motivation in the vast majority of cases was a sense of sexual entitlement among the men. A high 20 per cent said they did it because it was "fun" or because they were "bored" Only 18% of those who had perpetrated sexual violence on women were afraid that they would be found out, while 69% state they did not feel any guilt about these acts.<sup>9</sup>

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<sup>9</sup> De Mel et al 2013 and Fulu, E., Warner, X., Miedema, S., Jewkes, R., Roselli, T. and Lang, J. (2013). Why Do Some Men Use Violence Against Women and How Can We Prevent It? Quantitative

## **Rule of law, Attitudes and Perceptions about Violence Against Women**

Protracted armed conflict and an acceptance and normalisation of violence has led to the lack of accountability and impunity for violence, including violence against women, and is now part of a bigger problem of the general collapse of the rule of law in Sri Lanka. The attacks against Muslims and Muslim business places at Beruwela and Aluthgama in June 2014 in full view of the police which, despite clear evidence captured on video, led to no arrests of perpetrators and attests to an entrenched culture of impunity. When it comes to crimes against women this culture of impunity is compounded by a rising conservatism and misogyny against women as well as a tendency to trivialize and deny such violence. We will highlight here a few examples:

In March 2013, the Minister of Women's affairs was reported to have publicly stated that, "Women are incapable of performing duties of the head chair," and that, "Even though we have paid special attention to the protection of women's rights, when a woman is given authority in a department or a ministry, they tend to suppress other women who are under their administration out of jealousy. This situation will lead to inefficiency in that particular organisation. *Hence always, the main chair should be given to a male and the assistant should be a female* [our emphasis]<sup>10</sup>

Specifically on the issue of domestic violence, many people in this country continue to say that domestic violence is only until the rice is cooked, even though we have a Domestic Violence Act that allows a woman to obtain a civil remedy for domestic violence. We are also being told that the Act is leading to increasing number of divorces in Sri Lanka – even though these statements are not supported by any statistical evidence. In fact only a very small number of women file cases under the domestic violence act even after years of suffering abuse.<sup>11</sup>

The Sunday Leader of 13 April 2014 reported that the Minister of Women's Affairs was seeking to bring a proposal to address the large number of rape cases by making it mandatory for the rapist to marry the victim provided her consent is recorded in court. Neither the Ministry nor his ministry has refuted this report.<sup>12</sup>

In August 2014, a woman who responded by slapping a man who allegedly sexually harassed her was met with a barrage of negative commentary in mainstream and social media sites. Most of the media reports faulted the woman's actions of self-defense, while making no comment about the behaviour of the man. It was later

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Findings from the United Nations Multi-country Study on Men and Violence in Asia and the Pacific. Bangkok: UNDP, UNFPA, UN Women and UNV.

<sup>10</sup> The Sri Lanka Mirror, 12<sup>th</sup> March 2013.

<sup>11</sup> Kodikara 2012.

<sup>12</sup> 'New Anti Rape Laws Proposed', Sunday Leader, 11th April 2014.

<http://www.thesundayleader.lk/2014/04/13/new-anti-rape-laws-proposed/>

reported that the woman was arrested for slapping the man.<sup>13</sup> The alleged perpetrator was only taken into custody much later.<sup>14</sup>

### **The Need for Political Will to Address Violence Against Women**

Clearly laws, the mere enactment of policies and action plans are insufficient to address the problem of Violence Against Women. Implementation is critical and this requires concerted action at all levels of government and a commitment from all levels of political leadership. If the Minister of Women's Affairs himself eschews the responsibility to address VAW as he does in the above statement, justice for women victims of violence is likely to remain unattainable in the near future. Furthermore, as the Domestic Violence Action plan spells out education and consciousness-raising at all levels of society should be a critical strategy for reducing violence in society. It is crucial that the Government acts on its own policy commitments as expressed below:

By exposing children and young people to non-violent alternatives, and providing them with conflict resolution and anger management skills alongside a respect for others and tolerance of diversity, it is expected that violent behavior in adults will be prevented. Community education campaigns about domestic violence, gender-based violence and child abuse – for example, pamphlets, resource kits, fact sheets, posters, radio and television programs and commercials - can also be used to raise awareness, with the expectation that this will prevent domestic violence. Male accountability should be an integral component of community education and prevention strategies. It is also critical that community education and prevention strategies target vulnerable and at-risk groups, including IDPs, migrant women and their adolescent daughters, ageing and elderly women, women with disabilities, and women working in the plantation sector.<sup>15</sup>

This alone is however also insufficient. Violence against women is critically linked to the discrimination and unequal status of women in society. It is further exacerbated and perpetuated when the legal system fails to respond effectively to complaints and by the inability of the predominately male decision-makers to understand the victim's need for protection and justice, including the fundamental right of women to live their lives free from violence.

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<sup>13</sup> "Wariapola girl surrenders to police." *Daily Mirror*, August 27, 2014.

<http://www.dailymirror.lk/news/51612-wariapola-girl-surrenders-to-police.html>

<sup>14</sup> "Wariapola youth remanded." *Daily Mirror*, September 1, 2014.

<http://www.dailymirror.lk/news/51788-wariapola-youth-remanded.html>

<sup>15</sup> The Plan of Action Supporting the Prevention of Domestic Violence Act.2005.

## CHAPTER 3

### RAPE AND SEXUAL VIOLENCE

Sri Lanka continues to experience high levels of sexual violence against women as evidenced by police statistics, media reports, documentation and research carried out by both government and non-governmental agencies. The Sri Lanka Police website gives the following information relating to rape and incest. At the time of writing this report, these were the latest compilation of annual figures available:

**Table 1: Rape and Incest Complaints Recorded by the Police**

Year	Total No. of Complaints	Plaints filed	Convictions	Acquittals	Investigations pending	Pending in Magistrate's Courts	Pending in HC/DC	Pending in AGs Dept.	Total Pending
2007 <sup>16</sup>	1397	264	3	2	874	219	34	229	1356
2008 <sup>17</sup>	1582	238	3	3	1057	207	13	253	1530
2009 <sup>18</sup>	1624	280	0	0	1091	264	5	208	1568
2010 <sup>19</sup>	1854	167	3	1	1397	148	9	240	1794
2011 <sup>20</sup>	1870	235	2	2	1344	206	20	249	1819
2012 <sup>21</sup>	2150	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
2013 <sup>22</sup>	2175	234	7	4	1410	209	6	494	2119

N/A= Not available

<sup>16</sup> [http://www.police.lk/images/others/crime\\_trends/2007/grave\\_crime\\_abstract\\_2007.htm](http://www.police.lk/images/others/crime_trends/2007/grave_crime_abstract_2007.htm)

<sup>17</sup> [http://www.police.lk/images/others/crime\\_trends/2008/grave\\_crime\\_abstract\\_2008.html](http://www.police.lk/images/others/crime_trends/2008/grave_crime_abstract_2008.html)

<sup>18</sup> [http://www.police.lk/images/others/crime\\_trends/2009/grave\\_crime\\_abstract\\_year\\_2009.htm](http://www.police.lk/images/others/crime_trends/2009/grave_crime_abstract_year_2009.htm)

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[http://www.police.lk/images/others/crime\\_trends/2010/grave\\_crime\\_abstract\\_for\\_full\\_year%202010.pdf](http://www.police.lk/images/others/crime_trends/2010/grave_crime_abstract_for_full_year%202010.pdf)

<sup>20</sup> [http://www.police.lk/images/others/crime\\_trends/2011/grave-crime-abstract-for-the-year-2011.pdf](http://www.police.lk/images/others/crime_trends/2011/grave-crime-abstract-for-the-year-2011.pdf)

<sup>21</sup> Sunday Times, 18 August 2012. Statistics available on the police website are only for the first quarter of 2012 and have therefore not been included here. See

[http://www.police.lk/images/others/crime\\_trends/2012/grave-crime-abstract-for-01st-quarter-for-the-year-2012.pdf](http://www.police.lk/images/others/crime_trends/2012/grave-crime-abstract-for-01st-quarter-for-the-year-2012.pdf)

<sup>22</sup> [http://www.police.lk/images/others/crime\\_trends/2013/grave\\_crime\\_abstract\\_2013.pdf](http://www.police.lk/images/others/crime_trends/2013/grave_crime_abstract_2013.pdf)

Table 1 above should be read together with Table 2 and 3 below which breaks down the total number of rape to rape and statutory rape.

**Table 2: Grave Crimes Committed Against Women for the Year 2011**

Offence	Case Reported	Pending Cases	Plaint Filed	Cases ended in Courts	Cases pending in Courts
Rape/ Incest	408	349	59	0	59
Unnatural Offences / Grave Sexual Abuse	36	23	13	0	13

Source: Compiled from the website of the Sri Lanka Police. More details available Online at: [http://www.police.lk/images/others/crime\\_trends/2011/grave\\_crimes\\_committed\\_against\\_women\\_for\\_the\\_year\\_2011.pdf](http://www.police.lk/images/others/crime_trends/2011/grave_crimes_committed_against_women_for_the_year_2011.pdf)

A Sunday Times report on rape in 2013 provides the following statistics on rape and statutory rape.

**Table 3: Statistics on Rape and Statutory Rape**

Year	Total cases of Rape/incest	Statutory rape	Rape
2008	1582	1157	
2009	1624	1228	
2010	1854	1446	
2011	1871	1463	408
2012	2150	1808	

Source: Sunday Times, 18 August 2013.

On a close analysis of these statistics, there appears to be a steady increase in the number of reported cases of rape from 2007 – 2013. This is also borne out by a statement made by the Minister of Child Development and Women’s Affairs, Tissa Karaliadde in response to a question in Parliament on 10 May 2014,<sup>23</sup> where he states that 2,150 rape cases were reported in 2012 as against 1,194 cases of rape reported in

<sup>23</sup> Hansard, Vol.224; No.11. 10<sup>th</sup> April 2014.

2008. A pattern that is discernible from these statistics is also that a majority of the reported cases of rape relate to statutory rape where the victim is under the age of 16. According to SSP Ajith Rohana, the Police spokesperson, child rape complaints involve both close relatives of the victims as well as alleged lovers or boyfriends.<sup>24</sup> What is of particular concern to this Commission has been the call to reform the provision on statutory rape on the ground that many of these cases are not rape but consensual sex, a point which we will return to further on in this chapter.

A group of women's organisations<sup>25</sup> working in the Northern and Eastern districts drew the Commission's attention to increasing incidents of rape and sexual violence in the Northern and Eastern Provinces in the post war period. This is a matter which requires further investigation.

### **What happens to complaints?**

As police statistics cited above indicate only few rape complaints lead to a plaint being filed against the perpetrator. In 2011, only 59 plaints were filed by the police of a total of 408 reported cases of rape or incest. Furthermore, every year there are between 0 and 7 convictions. The vast majority of cases are pending investigation or pending in the Magistrate's Court, High Court or AG's department.

Furthermore, neither the police nor the Attorney General's Department is able to furnish any information on the progress of prosecutions regarding rape or incest. This is because the Attorney General's Department and the police have not put in place mechanisms to monitor proceedings and progress of rape cases heard before Magistrate's Courts and indicted before the High Court. We therefore have no sense of the status of cases and why there are so few convictions.

### **The Legal Framework and Problems of Implementation**

Sexual violence against women is governed by the Penal Code of 1895 as amended in 1995, with the Criminal Procedure Code (CPC) and Evidence Act outlining the procedure and court system for prosecutions and punishment. In 1995 Sri Lanka made significant changes to the Penal Code provisions relating to violence against women, introducing new offences, enhancing punishment and also amending the definition of rape. The most significant of these changes are as follows:

**1. Definition of Rape:** Prior to the amendment of the Penal Code the legal definition of the offence of rape emphasised that the act of sexual intercourse should have been

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<sup>24</sup> See more at: <http://www.dailymirror.lk/news/20033-child-rape-on-the-rise-police.html>  
<http://www.madhyamam.com/en/node/2931#sthash.JGHKdFEm.dpuf>

<sup>25</sup> 'A Journey Seeking Justice for Sexual Violence Against Women' issued by the Women's Coalition for disaster Management, Batticaloa; Northern Women Action Advocacy Network, Vavuniya and the Women's Action Network.



against the woman's will and without her consent. To determine whether or not there was consent, courts generally focused on evidence of resistance by the woman, independent corroboration of her evidence, as well as her past sexual history and behaviour. This approach was rooted in a contradictory conceptualisation of women both as the passive property of male family members and as 'naturally' being of 'easy virtue'. In the 1995 amendment, the phrase 'against her will' was deliberately excluded from the definition of rape and an explanation added to Sec.363, which provides that "evidence of resistance such as physical injuries to the body is not essential to prove that sexual intercourse took place without consent".

**2. Recognition of Grave Sexual Abuse:** Until the 1990s, rape laws provided that "penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape". This provision was understood to focus entirely on penile penetration. Other physical and mental injuries were left to be dealt with under other provisions. Thus a man could not be charged with rape if he committed an act of sexual violence, which does not involve penile penetration. However, the 1995 amendment recognised the offence of grave sexual abuse i.e those acts of sexual violence, which do not involve vaginal penetration (see Sec.365-B Penal Code). The punishment for grave sexual abuse is the same as for rape.

**3. Punishment:** The 1995 amendment enhanced the punishment for rape providing for a minimum of 7 years and a maximum of 20 years imprisonment. Provision was therefore made for the imposition of a mandatory minimum sentence for rape preventing the imposition of suspended sentences. Previously, the law merely provided that a judge had the power to give a maximum of 20 years imprisonment. Often men found guilty of rape, received sentences of only about 2 years imprisonment and even this was often suspended. The Amendments also enhanced the punishment for rape in aggravated circumstances such as gang rape, custodial rape, rape of a minor, rape of a pregnant woman and the rape of a woman who is mentally or physically disabled. The same punishment provided for rape was also prescribed for the lesser offence of grave sexual abuse (S.365B) i.e. a minimum 7 years and a maximum 20 years. The enhanced sentencing schedule is given below.

**Table 4: Enhanced Sentencing Schedule for Rape and Sexual Violence**

Section in Act	Offence	Imprisonment Min. Yrs.	Imprisonment Max Yrs	Fine	Compensation to Victim for Injuries
364 (1)	Rape	07	20	Mandatory	Mandatory as determined by Court
364(2)	Rape Aggravated*	10	20	- do -	- do -
364(3)	Statutory Rape which is also incest	15	20	- do -	No
364A	Incest	07	20	- do -	No

\* Aggravated circumstances include gang rape, custodial rape, rape of a minor, rape of a pregnant woman, rape of a woman mentally or physically retarded.

However there is an exception to this policy on sentencing. In the case of statutory rape (of a girl under 16 years) although the act is an offence irrespective of whether the girl consented, discretion is vested in the Court to award a lesser sentence in respect of offenders under 18 years where it can be proved that the act occurred with the consent of the girl. This negates both the principle that consent is irrelevant in cases of statutory rape and the reforms to establish mandatory minimum sentences to avoid the practice of awarding minimal sentencing and resorting to plea bargaining.

**4. Statutory Rape:** The 1995 amendments to the Penal Code raised the age for statutory rape from twelve to sixteen. According to the amendment where a woman under the age of sixteen is raped proof of consent is not necessary, proof of the act of intercourse is sufficient. The exception to this rule is where the woman is the man's wife and she is under the age of sixteen, but above the age of twelve (under Muslim Personal Laws).

**5. Custodial Rape:** Custodial rape is where the rape is perpetrated by police officers in police stations, or by public officials of women in their custody such as in remand homes, jails and hospitals. Sri Lanka's Penal Code (SLPC) recognise the concept of

custodial rape – but only for the purpose of enhanced punishment, and the burden remains on the prosecution to establish the offence and lack of consent.

However corresponding changes in the procedural aspects of the law such as complementary changes in the Evidence Ordinance and the Code of Criminal Procedure were not put in place. The failure to address this very important and critical area of law reform is a manifestation of the tendency in Sri Lanka to introduce ad hoc rather than holistic and comprehensive regulatory controls.<sup>26</sup> Illustrating this lacuna is the understanding of the 1995 definition of rape in the Penal Code. Criminal law perceives rape to occur when there is sexual intercourse with a woman without her consent. An explanation was incorporated making it clear that evidence of physical resistance is not essential to establish absence of consent. However, while the new explanation offers guidance as to what should not be insisted upon for establishing the position of the woman that there was in fact no consent, the other question of whether corroboration is required in all sexual offences has not been dealt with by Statute law.<sup>27</sup> As a consequence many judges, lawyers and medical professionals are inclined to accept that evidence has to be corroborated to prevent the risks of false allegations of rape and forced intercourse. It has been found therefore that legal practitioners ignore the caveat that physical injuries are not necessary to prove nonconsensual intercourse in court procedure and practice.<sup>28</sup>

Sri Lanka's Evidence Ordinance, introduced by the British during the colonial period incorporates the gender bias of the time and is adversarial in nature. The requirement that the prosecution must prove beyond reasonable doubt that sexual intercourse was without consent results in aggressive cross-examination of victims. It also allows for the defence to cross-examine the victim and often introduced the victims past sexual history into evidence with the intent of causing doubt about a woman's credibility. This serves to re-victimize the victim by bringing into play all manner of gender bias and stereotyping and more often than not deters women from seeking legal redress for crimes of sexual violence.

## Implementation Gaps and Problems

**Corroboration:** The removal of the need for corroboration and proof of consent was a welcome departure from the old legal position yet the case law on this question has not been progressive on the issue of resistance. Although rape is rarely a public act, judges have continued to be wary of convicting in the absence of corroboration by an

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<sup>26</sup> Savitri W. E. Goonesekere, Camena Guneratne, *Women, Sexual Violence and the Legal Process in Sri Lanka: A Study on Rape*, Centre for Women's Research, Sri Lanka, 1998.

<sup>27</sup> Dhara Wijayatilake, *Abuse of Women and Children Recent Amendments to the Law in Sri Lanka to meet the situation* - The Bar Association Law Journal Vol.VI Part II, 1996.

<sup>28</sup> Ibid.

independent witness. Thus women victims of sexual violence are often required to meet evidentiary requirements not required of other victims of violence, and there is a prior discriminatory assumption that in cases involving sexual abuse a woman victim's evidence is unreliable.<sup>29</sup>

The Kamal Addaraarachchi case has become the authoritative judgement on this issue. At the High Court, the Defence Counsel submitted that there had been tacit consent since the victim “had not bitten, or scratched or fought back against the accused” and there was no evidence of ‘resistance or violence’, but the Court held that passivity does not amount to consent.<sup>30</sup> The Court observed:

To equate submission with consent is to overlook the essential character of consent as a social act whereby one person confers on another person the right to do something. Women may submit for many reasons inconsistent with consent.<sup>31</sup>

However the Court of Appeal overturned this decision and the Supreme Court upheld the court of Appeal decision. The Supreme Court in its judgment stated:

It is to be noted that corroboration is not a sine qua non for a conviction in a rape case. In the Asian set up refusal to act on the evidence of a victim of sexual assault in the absence of corroboration as a rule is adding insult to injury. If the evidence of the victim does not suffer from basic infirmity and the probability factor does not render it unworthy of credence, as a general rule there is no reason to insist on corroboration.

The view that no conviction without corroboration was possible has not been accepted. The only rule of law is the rule of prudence, namely the advisability of corroboration should be present in the mind of the Judge.

Yet the judgment goes on to provide that:

Generally, a conviction for rape almost entirely depends on the credibility of the woman so far as the essential ingredients are concerned, the other evidence being merely corroborative. There may be many factors in a case tending to show that the testimony of the prosecutrix suffers from infirmities or defects in a manner so as to make it either unsafe or impossible to base a conviction on her evidence.

**Suspended Sentencing:** The Penal Code reforms of 1995 enhanced the sentence for statutory rape from 2 years to 10 years. However in 2008 the Supreme Court (SC ref 30/2008) upheld the judgment of the Anuradhapura High Court in which the presiding judge declined to impose the mandatory minimum sentence for statutory

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<sup>29</sup> CENWOR, 2001: 31; see also CENWOR 1999.

<sup>30</sup> *Kamal Addaraarachchi v The Republic* Case No. 7710/96

<sup>31</sup> Cited in Gomez & Gomez, 1999: 66-67.

rape citing mitigating circumstances. The Supreme Court held that the mandatory sentence imposed under Sec 364 (2) (e) of the Penal Code is in conflict with Article 4 (C) 11 and 12 (1) of the Constitution and that a High Court is not inhibited from imposing a sentence that it deems appropriate in the exercise of its judicial discretion. While admitting that a woman's consent is immaterial for the offence of rape when she is under the age of 16 years, the Supreme Court nevertheless held that "a women's consent is relevant for a Court in the exercise of its discretion in deciding the sentence for such an offence".

This decision has led to a spate of rape and statutory rape judgments imposing low sentences. It has resulted in suspended sentences perpetuating a sense of impunity in cases of sexual violence against girls and women. Lawyers for Human Rights and Development (LHRD) note an alarming change in judicial attitude towards cases of sexual violence of women and children since the 2008 SC Judgment.<sup>32</sup> Instead of exercising their judicial discretion and imposing a reasonable sentence in appropriate cases, High Courts appear to be imposing suspended sentences indiscriminately. Information collected by LHRD on 129 concluded sexual violence cases, from 2009 and 2010 reveal that in 114 of the cases the accused were given suspended sentences for rape including statutory rape with no mitigating circumstances whatsoever. It was also discovered that the accused have been ordered to pay nominal compensation as low as Rs.15,000/- and going up to Rs.200,000/- with the option of paying this compensation in installments. It was also found that fines imposed ranged from a mere Rs. 2,500 to Rs.10,000/-.<sup>33</sup> LHRD subsequently filed a case before the Supreme Court asking for a review of the SC judgment of 2008.<sup>34</sup> The case was withdrawn following a guarantee from the then Chief Justice that sentencing policy would be looked into and guidelines issued to High Court judges. This has yet to be done however and the practice of low and suspended sentencing continues creating an environment, which legitimizes men and boys having sex with girls below the age of 16.

Some legal practitioners are of the opinion that mandatory minimum sentences have failed to bring about the expected result of lessening the high incidence of sexual abuse and rape of women. They find that law enforcement authorities are more reluctant to enforce the law and that judges are prone to acquit accused on insubstantial grounds.

**Statutory Rape:** The 1995 amendments, which raised the age for statutory rape from twelve to sixteen has caused much confusion. The Commission noted a significant number of references to increasing incidents of sexual abuse of young girls below the age of sexual consent by the National Child Protection Authority and the police in

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<sup>32</sup> Lawyers for Human Rights and Development 2012.

<sup>33</sup> *ibid.*

<sup>34</sup> Fundamental Rights Application to the Supreme Court S.C. F.R Application No.297/2011, petitioner Hasanthi Ratnayake, Attorney-at-Law, Co-ordinator, Women's/Children's Desk, LHRD

the past several years. Notwithstanding, that statutory rape is a criminal offense, the Commission notes with concern that there is a feeling amongst law enforcement officers that many of these cases are consensual sex and is therefore not a crime. According to Police spokesperson, SSP Ajith Rohana.

. . . statutory rape is where the perpetrator does not use force. In a majority number of statutory rape cases reported in Sri Lanka, the girl has sex with a person with her consent. But even though she has consented according to our law, it is an offence. So there is a tendency of increasing statutory rape.<sup>35</sup>

It has been found for instance that the Police are reluctant to file for statutory rape, if the parties are co-habiting or are 'married' registering marriage by falsifying birth registers. It is this same mindset that resulted in the Anuradhapura High Court judgment, referred to above, that presumed that the girl had consented to the act of sexual intercourse and the mandatory sentence could be waived due to 'mitigating' circumstances. The concept of statutory rape which is based on the principle that a girl cannot consent till she is 16 is negated by this attitude.

**The judicial Process:** When a woman has been sexually assaulted, raped, harassed or battered, the first step in accessing the formal justice system is the police recording of the woman's statement as a First Information Report (FIR). This forms the basis for the police investigation. Police officials (mostly men) tend to be extremely biased against women. As already discussed above, at best they tend to trivialise matters of violence against women and neglect to follow the due process of law. Furthermore, the language in which the (FIR) is written becomes an issue in cases where the woman does not speak the same language as the police officer. A number of organisations directed our attention to the fact that Police Stations in the North and East, do not have any / sufficient officers who speak Tamil and who are able to document the FIR in Tamil. Often the woman's statement is translated into Sinhala and the FIR written in Sinhala. Ultimately she is required to sign a statement, which she cannot read. This also has an impact on the case, when it comes up many years later as she cannot read and refresh her mind as to what was written in the initial statement. It is also not possible for her to give her own statement in her own language in written form.

Furthermore, all criminal trials in Sri Lanka adopt the adversarial system of court procedure, which is not at all victim-friendly. The experience of going to court is often frightening, humiliating, difficult, traumatic and painful experience for a victim-survivor of violence, especially victim-survivors of sexual violence. Cross-examination is often hostile and humiliating and destroys the self-confidence of the complainant. Courts are often perceived of as wholly alienating and unjust.

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<sup>35</sup> Daily News 12 September 2014. See more at: <http://www.dailynews.lk/?q=features/zero-tolerance-policy#sthash.2OyMLnjC.dpuf>

**Laws delays:** Litigation also takes an inordinate amount of time, most particularly in the case of rape. Just like murder and attempted murder, a rape case must first go through a non-summary inquiry at the Magistrate Court to determine whether there is a prima facie case against the accused and whether the accused should be committed to stand trial in the High Court. The Magistrate can discharge the accused if he considers the evidence is insufficient to proceed to trial. Although the decision to commit to trial ultimately rests with the Attorney General's Department, in most cases the AG's decision is based on the decision of the Magistrate. These inquiries are supposed to be concluded in three months, however this initial non-summary inquiry can take up to three years, while the trial itself will take several more years-up to 15 years in some instances.<sup>36</sup> One of the most important deterrents to women seeking redress from the law, especially in cases of sexual violence is the length of time it takes for a case to be concluded.

There is no justification for continuing with non-summary inquiries. Non-summary inquiries are conducted only in respect of three offences: murder, attempted murder and rape. From 1974 - 1978 under the Administration of Justice Law, those accused were straight away indicted without non-summary inquiries and cases were speedily disposed of. No injustice was caused to the accused. Even where the Magistrate holds that there is no prima facie case against the suspect and discharges the suspect, there is no bar for the Attorney General to indict a suspect.<sup>37</sup>

The non-summary inquiry also puts the complainant at a disadvantage because it relies on the inferior forensic skills of the police who represent her while the accused may engage the services of an experienced defence lawyer. The Attorney General's Department engaged the services of a group of lawyers to help prosecute a backlog of non-summary inquiries. However no systematic data collection is available to determine if the backlog has been cleared. In two highly publicised cases (the 1996 Krishanthi Kumaraswamy rape and murder case, and the 1997 Rita John rape and murder case), there was an attempt to circumvent the law's delays by appointing trials at bar to expedite the process, but these were exceptions to the rule and had to do with the fact that rape was accompanied by murder.

**Medical Examination:** The medical examination is crucial in the case of rape and sexual violence and the medical report forms a vital part of the prosecution's case. However the level of forensic expertise around the country is unequal. Very few hospitals have medical officers designated to examine violations of sexual abuse and a victim may have to wait long hours before she is examined. All medical officers are not skilled to detect signs of rape unless there are signs of violence or the examination is done shortly after the incident. Only Judicial Medical Officers (JMOs) have the necessary skill, training, expertise and qualifications to express a definite opinion as

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<sup>36</sup> Hussain, 2001: 17, Shyamala Gomez and Mario Gomez, *Gender Violence in Sri Lanka From Rights and Shame to Remedies and Change*, Shakti, Colombo 1999.

<sup>37</sup> Ibid.

to whether a person has been subjected to sexual abuse or not. District Medical Officers (DMOs) do not have these qualifications. Currently, there is only one training unit established to train medical students in the forensic examination of SGBV victims. There are many instances where JMOs found evidence of sexual abuse in cases where DMOs reported there was no evidence of sexual abuse. However in Sri Lanka, according to practicing lawyers, there are less than 10 JMOs working in Colombo, Galle, Kandy, Kurunegala, Ratnapura and Jaffna Hospitals. They note that victims have to wait not for hours, but for several days in hospital till they are examined by the JMO. An organisation working in the North reported that there is only one judicial medical officer for the entire Northern Province, resulting in severe delays in relation to processing of complaints of sexual violence.

As in the case of the FIR, the language in which the medical inquiry is conducted becomes an issue if the victim-survivor does not speak the language spoken by the JMO/ medical examiner. Again she has to go through a very intrusive and detailed conversation in a language she doesn't speak (through a translator).

**Marital Rape:** The Penal Code amendments of 1995 do not recognize marital rape as a crime except in the limited circumstances of judicial separation.<sup>38</sup> The law does not recognize unconditional marital rape although this was the intent of the original amendment put before Parliament. This amendment is hardly worth noting since women rarely resort to the remedy of judicial separation. In many situations of domestic violence women complain of being forced into unwanted intercourse by husbands. The difficulty in getting the concept of marital rape recognized without condition reinforces the myth that rape within marriage is impossible and that a woman's body is her husband's property.

In the case of Sri Lanka, this exception places Muslim women at a specific disadvantage. There is no concept of minor wives under the General Law and the Kandyan law, where the minimum age of marriage is now 18 years for both males and females. The exception was formulated in response to pressure from conservative sections of the Muslim community and the recognition that there is no minimum age of marriage for Muslims in Sri Lanka. In the case of Bangladesh and India, 18 years has been set as the minimum age of marriage for all females. The exception in Sri Lanka clearly undermines attempts to regulate child marriage.

The question of whether or not marital rape is recognised as a crime (no matter whether the wife is minor or major) would seem to be a touchstone for conservative forces. Similarly in Sri Lanka, at the time the 1995 amendment was tabled in Parliament, marital rape was included without the caveat of judicial separation, but strong opposition from the Muslim and Christian lobby within Parliament resulted in the dilution of this provision<sup>39</sup> and in the final amended version, Sec.363(e) of the

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<sup>38</sup> Penal Code (Amendment) Act No. 22 of 1995, Section 363 (a)

<sup>39</sup> Women's Rights Watch, 1999



SLPC parallels the Indian Penal Code (IPC) provision. Since there is no provision for judicial separation in Sri Lanka's Muslim Marriages and Divorce Act (MMDA), 1951 this in effect means women married under Muslim laws have lesser protection from marital rape than women of other communities who have a limited safeguard in cases of judicial separation.

### **Trends in the perpetration of sexual violence**

In this Report, the Commission wishes to highlight two particular trends relating to sexual violence i.e. sexual violence committed by men in power such as politicians and sexual violence against minority women in the north and east by the armed forces.

**Sexual violence by politicians:** There were a number of incidents of sexual violence allegedly perpetrated by politicians in office that were reported in the Media in 2010 and 2014. MP Rosy Senanayake highlighting this alarming trend and attendant impunity noted in Parliament that over 15 politicians including members of Pradeshiya Sabhas of Homagama, Aranayake, Tangalle, Kotte, Maharagama, Nuwara Eliya, and Akuressa had been accused of rape but most of them had not been brought to justice.<sup>40</sup> She demanded to know whether the low conviction rate was due to political interference. Minister Karaliadde declining to take responsibility said this was a matter to be dealt with by the Ministry of Law Enforcement.

Among the high profile cases of politicians charged with perpetrating sexual violence against women is the case of the gang rape of a British national and the murder of her boyfriend at a tourist resort in Tangalle, in which the former chairman of the UPFA led Tangalle Pradeshiya Sabha is implicated. In other incidents, a UPFA member of the Karadeniya Pradeshiya Sabha was remanded by the Elpitiya Magistrate for the rape of a woman (16th May 2013- Maubima and Divaina); the Nuwara Eliya Deputy Mayor was accused of a number of child abuse incidents and remanded together with a pimp, while 9 children were sent for medical examination (10<sup>th</sup> September 2013- Lankadeepa); the former Chairman of the Akuressa Pradeshiya Sabha was accused of molesting a 16 year old girl in May 2012 and the case was transferred to the Colombo High Court (16 November 2013 - Lankadeepa); the Chairman, Weligama Pradeshiya Sabha was accused of attempting to rape a Swedish woman at Palana, Welligama (24 March 2014 - Lankadeepa).

In another case - the rape and murder of Jesudasan Lakshini, allegedly by a high ranked member of the EPDP in Kytes, Jaffna (case number B/36/12) - women's groups had to deal with political interference to stop the granting of bail. The alleged

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<sup>40</sup> The Island, 11 April 2014.

perpetrator was reported to be a suspect in at least two other murders and involved in many cases of abduction.

The accused in the rape of a Russian woman in Tangalle were convicted in July 2014 arguably because of intense international scrutiny including by the British Government. The court found that former Tangalle Pradeshiya Sabha Chairman Sampath Chandrapushpa Vidana Pathirana and three others were guilty of the murder of British tourist Khuram Sheik and the rape of his Russian girlfriend Victoria Alexandrovna. They were sentenced to 20 years rigorous imprisonment on each of the two counts. Before delivering judgment, the Colombo High Court Judge addressed the prosecution and the defense stating that she too faced many challenges during this case. She said the trial began on 3<sup>rd</sup> April and took three and half months to conclude. She went on to state that even though this was a special case, unlike other such cases which are heard before a jury or at a trial-at-bar, she was on her own. The trial at the High Court in Colombo represented months of campaigning following the murder of Red Cross worker Khuram Shaikh in December 2011 and the rape of his partner while they were on holiday at the tourist resort of Tangalle. The case was later transferred from the Tangalle Magistrate's Court to Colombo on the request of the Attorney General since the suspects threatened witnesses at the trial.<sup>41</sup>

**Sexual Violence committed by security forces personnel:** Data on violence against women committed by the armed forces and in particular sexual violence in war-affected areas is even more limited.

Police statistics compiled in 2011 document rape/incest, grave sexual abuses and other crimes committed by the Armed Forces, Police and Home Guards. As Table 5 indicates over 445 incidents are reported to be committed by the army alone. However this category only exists for the year 2011 and not for other years.

Many of the cases of sexual violence, particularly instances of violence by armed forces personnel, are anecdotal in nature and are not reported to the police. They are sometimes dealt with through counseling and other accompaniments provided by local women's groups. Women and girls are reluctant to speak of sexual violence or to denounce the perpetrators not only fearing possible repercussions by the forces but also because rape is stigmatised and those who come forward are often ostracized from their families and their communities. Often time victims complain only if they conceive and to seek help to abort the pregnancy. Women's groups find it difficult to assist because abortion is illegal even in the case rape in Sri Lanka. Yet these women seek unhealthy and dangerous ways of aborting the fetus.

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<sup>41</sup> [Sri Lanka court convicts PS chairman of murdering British national](http://www.colombopage.com/archive_14B/Jul18_1405662071CH.php), [http://www.colombopage.com/archive\\_14B/Jul18\\_1405662071CH.php](http://www.colombopage.com/archive_14B/Jul18_1405662071CH.php)

**Table 5: Crimes committed by Officers of the Armed Forces, Police during the year 2011**

Offences	On Duty			Off duty		
	Army	Police	Home Guards	Army	Police	Home Guards
Rape/ Incest	80	4	16	39	1	1
Unnatural Offence / Grave Sexual Abuse	18	1	4	9	0	0
Other <sup>42</sup>	166	63	27	112	7	13
<b>Total</b>	<b>445</b>	<b>105</b>	<b>78</b>	<b>371</b>	<b>14</b>	<b>27</b>

Source: Compiled from the website of the Sri Lanka Police. More details available Online at: [http://www.police.lk/images/others/crime\\_trends/2011/three\\_forces\\_police\\_grave\\_crimes\\_year\\_2011.pdf](http://www.police.lk/images/others/crime_trends/2011/three_forces_police_grave_crimes_year_2011.pdf)

While these statistics appear to relate to incidents of sexual violence across the country the GOSL has also sought to provide figures in relation to the war affected north.

According to information provided by Sri Lanka in the Follow Up to the Concluding Observations of the CEDAW Committee in 2013, during the period of intense fighting in the final phase of the war (Jan 2007 to May 2009) 7 security force personnel were involved in 5 incidents of sexual violence in the North, out of the total 125 persons accused in 119 incidents for the entirety of the north. In the post- conflict period (May 2009- May 2012) 10 security personnel were reported as having been involved in 06 incidents of rape out of a total of 307 persons accused in 256 incidents for the entire Northern Province. The report goes on to state that the:

. . . involvement of those personnel as a percentage of the total population accused stood at 5.6 per cent in the conflict period and 3.3 per cent in the post-conflict period. It is worthwhile to note that only 18 incidents out of a total of 375 reported incidents during the conflict and in the post conflict periods (January 2007-May 2012) can be attributed to the Security Forces. Therefore, the inference that the presence of the

<sup>42</sup> See this link for more details:

[http://www.police.lk/images/others/crime\\_trends/2011/three\\_forces\\_police\\_grave\\_crimes\\_year\\_2011.pdf](http://www.police.lk/images/others/crime_trends/2011/three_forces_police_grave_crimes_year_2011.pdf)

military contributes to insecurity of women and girls in the former conflict affected areas is baseless and disingenuous.

These statistics were reiterated by the Deputy Permanent Representative to the United Nations (PRUN) Major General Shavendra Silva at the open debate on the Report of the Secretary General on Conflict Related Sexual Violence at the United Nations Security Council on 25<sup>th</sup> April 2014 in New York. He noted that in a majority of the cases, the perpetrators had been close relatives or neighbours of the victims.<sup>43</sup>

The report to CEDAW also states that legal action has been taken by the Government in all of the above cases in which the Sri Lankan Security Forces personnel have been involved. According to the GOSL:

The military has taken strict action to either discharge or award other punishments to these personnel. Furthermore, cases have also been filed in civil Courts, some of which are pending in Courts and with the Attorney General's Department. In two such cases, which ended in successful prosecutions, three security forces personnel were handed down terms of prison sentences ranging from 12 years to 14 years by the High Court, and in one of the cases, the conviction and sentence has been affirmed by the Court of Appeal.

This Commission was however unable to obtain information relating to progress of these cases.

Although there are no formal studies that correlate the increase in militarization with an increase in reported incidence of violence against women, anecdotal evidence suggests a correlation between the heavy military presence in conflict-affected regions in the North and East, the high percentage of female-headed-households and allegations of violence against women.<sup>44</sup> Several women's organisations complained that women are afraid to take any action in cases of sexual abuse due to fear of reprisals and as they do not get access to any form of support.<sup>45</sup> Impunity is another factor that prevents women from reporting incidents of violence against them. Impunity is still extremely pervasive in post-war Sri Lanka, and litigation,

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<sup>43</sup> See Information provided by Government of Sri Lanka in follow-up to the concluding observations of the CEDAW Committee, CEDAW/C/LKA/CO/7/Add.1, 24 September 2013 and Open Debate on Report of the Secretary General on Conflict Related Sexual Violence, UN Security Council, 25<sup>th</sup> April 2014, S/PV. 7160,  
[http://www.un.org/en/ga/search/view\\_doc.asp?symbol=S/PV.7160](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/PV.7160)

<sup>44</sup> Women's organisations narrated cases of sexual abuse in the following areas- Kathiraweli, Vepankulam and Pallamottai and Mannar

<sup>45</sup> Interviews with several women's organisations in Jaffna and Batticaloa.

particularly in cases of sexual violence, continue to be drawn out and rarely lead to convictions.

Referring to the ubiquitous presence of military personnel in areas of the North and East, one organisation made the following submission:

There are checkpoints at the entrance to several villages in the Vanni. All new comers are expected to register their names and identity card numbers at the check points. The Commission was informed of at least one incident in which the military took down the number of a woman and kept calling her knowing she was alone in her home.<sup>46</sup> There have been many cases reported in Killinochchi where military personnel have visited temporary shelters of single women in the night knowing they are alone. In one case a physically-challenged single woman was visited by a military officer in Iyyankerni. She warded off his advances by stabbing him in the back and with the help of a few other women identified the attacker. He was immediately transferred but the victim did not want to take legal action since she had been cautioned by the commanding officer. Her house is close to this military camp and she also has three children.

The Military has taken over most civil functions of the State in the North and the East. In many cases in Mannar/Killinochchi and Mullaitivu the Army regularly attends village meetings under the pretext of assessing the needs of the villagers. Villagers are not allowed to discuss matters openly and in many instances military personnel turn up at meetings held by local NGO and International Organisations. This is a huge obstacle for human rights activists to gather information regarding the violations that are taking place at the village level either by State Actors or private parties. (Interview with woman from Kannati, Mannar).

Ex-LTTE cadre and those who were arrested on suspicion find themselves under constant surveillance and threats. The military demands ex-cadre (including female ex-cadre) to report to a military post each month or the military visits their homes. Ex-women cadre reports that in some instances the military take their pictures claiming it is part of the procedure or reporting and get their phone numbers. Some of the women report to facing constant sexual harassment but are too afraid to make official complaints.<sup>47</sup>

Women's groups also complained that women who have filled Habeas Corpus applications with regard to missing and detained family members have been threatened. This was noted particularly in relation to the collective filing of Habeas Corpus by 14 women against Sri Lankan military. 12 such cases are against the 58<sup>th</sup> unit of the Sri Lanka Army.<sup>48</sup>

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<sup>46</sup> Interview with head of women's organisation, Trincomalee

<sup>47</sup> Submission by Women's Action Network Interview with woman from Kannati, Mannar

<sup>48</sup> A complaint received by the Women's Action Network from a family member of a surrendee

In the few instances where a case is filed, there are reports of interminable delays and transfers out of the area as well as harassment and intimidation of survivors and witnesses. It was reported that cases are constantly transferred to Anuradhapura where the language of the court is Sinhala. Women find it difficult to travel to Anuradhapura, do not understand the court proceedings and complain of feeling unsafe in taking their case forward in such an alien setting. Women's groups took up one case of rape of an internally displaced woman by four military men. The rape was committed on 6<sup>th</sup> June 2010 in Killinochchi and following a long drawn out hearing the men were released on bail. On July 16<sup>th</sup> 2011, the case was committed to Jaffna High Court (Case no. 1569/12) by the Killinochchi District Court and the full file on this case was given to the Attorney General's Department. At the hearing in Jaffna almost a year later the victim was cross-examined again by a lawyer appearing for the Military. According to the lawyer appearing for the victim all cross-examination had been completed in Killinochchi and should not have been repeated in Jaffna. The cross examination was in turn adversarial, derogatory and sexist. Thereafter, the victim survivor found it difficult to attend court hearings due to fear of intimidation and reprisals.<sup>49</sup>

In Karainagar Kalapoomi two girl children from the same family, aged 11 and 9 were raped allegedly by a Navy officer. On the 15<sup>th</sup> of July the 11-year-old girl had returned home earlier than usual from school. The mother got suspicious and took her to school and found out that she had not been attending school for a few weeks. When the mother inquired as to why she had not attended school, the girl had stated that she had been taken by a man in uniform. The mother took the girl to hospital and following an examination of the girl, the JMO confirmed that the girl had been raped multiple times. Hospital authorities also informed the Child Probation Officer. Further investigations revealed that the 11-year-old girl's elder sister's daughter had also fallen victim to this man twice. The Case (B/64/2014) was heard first on the 18<sup>th</sup> of July and the first victim aged 11 was produced in court without being supported by a medical report of a JMO. The absence of a JMO report can weaken the prosecution and enable the suspects to be granted bail easily. The case for the second child who was abused was filed later and the case no is B/65/2014<sup>50</sup>. When the cases were heard again on the 25<sup>th</sup> of July, the military personnel in civil cloths threatened and evicted journalists from the courtroom. Cameras and mobiles phones were also confiscated, and photographs that had been taken were deleted. The media personnel were told not to publish news related to the two incidents and the parents of the victims were also, offered money, threatened and put under pressure to drop the case. To date over 11 members of the Sri Lankan Navy have been brought to court for identification but women's groups suspect that

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<sup>49</sup> Submission by Women's Action Network.

<sup>50</sup> Information from a women's network that is providing legal aid for both girls

the Navy is deliberately not bringing the accused so that the case can be dragged indefinitely<sup>51</sup>.

These cases are a matter of grave concern to the commission, particularly seen in the context of Sri Lanka's appalling record of prosecuting military personnel during the 35 years of war. In most prosecutions in relations to sexual offenses committed by members of the armed forces in Sri Lanka, witnesses are harassed and intimidated until they are forced to flee the country and the cases peter out without judgment. For instance the cases of Ida Carmelita, Vijikala and Sivamani, indicate once again that impunity is pervasive particularly if the offenses were committed by the state security forces. There are only a few exceptions including the case of Krishanthi Kumaraswamy.

**Coercive sex in the context of militarization:** There are also allegations of coercion and transactional sex. This remains an ambivalent and grey area, with women having to offer sexual favours to access resources and food entitlements or to receive assistance for building homes, accessing state facilities and jobs. Women's organisations who came before the Commission also reported of cases where soldiers have commenced relationships with women on the promise of marriage but have abandoned the women after sexual relations or when the women became pregnant. In some cases when women have complained, the soldier in question has been immediately transferred out of the area denying the women any ability to follow up with the complaint. In several cases, women have been threatened against advancing cases and in a few cases where the Military head has taken a case against the soldier the process has been through a military court procedure. Women have not been able to access these procedures and evidence gathering is conducted by the military where several women have complained of intimidation.

**Refusal of women to make a complaint relating to rape:** There is no doubt that reported complaints of rape received by the police represent only a fraction of incidents of rape in Sri Lanka. Women across the country do not make an official complaint due to the shame and stigma and /or the fear of reprisal against themselves or their family from the perpetrator. Where the perpetrator is powerful as in the case of a politician or a member of the security forces the likelihood that women will not complain is extremely high. The 'rumours' relating to numerous incidents of rape over a decade in the case of Noori estate highlight how power can work to silence not just women but also men in the community. In this case, a local government politician by the name of Champika Wijesinge, together with a band of thugs is alleged to have extorted money and exploited the labour of the villages in the Noori estate with complete impunity for over 10 years. In addition he and his gang is also alleged to have raped a number of women in the area. Even though villagers tried to complain to the police, these complaints were unheeded. The

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<sup>51</sup> Submission by Women's Action Network.

villagers in fact claim that these crimes were committed with the full knowledge and support of the police and powerful politicians in the area. Some believe that the main accused had links to the Chief Minister of the Sabaragamuwa Province. This story only emerged following the murder of the estate manager in July 2013 when he attempted to challenge this reign of terror. While twenty two people including Champika Wijesinghe have now been charged with murder of the Manager, no rape charges have been brought against any of the accused.

## **Recommendations**

- Rape, sexual abuse and child abuse are heinous crimes. The victims are vulnerable and face social stigma. In instances where the perpetrator is a powerful member of the community such as a politician or security forces officer, the security of the victim can also become an issue. It is important that when such cases are brought to the notice of the legal system, strict and immediate action is taken to conduct the inquiry and collect evidence.
- Judicial Medical Officers working at the District Level must be gender sensitized. They should follow a system where reports are analyzed and forwarded immediately to all relevant parties including those affected by the sexual offence and any concerned family members.
- Trials dealing with sexual offences against women and children should be given priority and expedited.<sup>52</sup> It is insufficient to merely enact procedural laws alone without taking necessary administrative steps. There is a provision enacted under Criminal Procedure Code Amendment Act No. 28 of 1998 – stating that Courts should give priority to trials and appeals in child abuse, which is more often than not followed in the breach. The possibility of appointing special courts with retired judges to try cases of violence against women can be explored. A speedy procedure to clear the backlog in case of sexual violence must be put in place, including cases at the AG's Department awaiting direction.
- The non-summary inquiry procedure should be abolished.
- The judiciary must accept that a rape conviction can be sustained without the uncorroborated evidence of the victim/survivor and this recognition must be incorporated clearly by legislative amendments to the law of evidence.

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<sup>52</sup> A provision to expedite cases relating to damage of public property now exists and can be extended to cover trials dealing with sexual offences.



- There must be provision for trials to be held in camera and a victim's testimony could be video recorded as is currently done in some cases of child abuse.<sup>53</sup> There should also be the possibility for the submission of written testimony in the form of affidavits during various stages of the rape trial from the FIR.
- The FIR must be written in a language which is spoken and understood by the victim/survivor. In the event this cannot be done the victim/survivor should be allowed to attach an account of the incident as an affidavit in her own language.
- The gathering of evidence must be strengthened and expedited so that perpetrators of sexual violence are not released on bail for lack of evidence where such evidence is not rigorously gathered since such a practice leads to a perpetuation of impunity.
- The Courts should strictly adhere to the maximum punishment for sexual offences against women and children as determined by the amendments to the penal code in 1995 and 1999.
- Women and Children Desks must be strengthened with adequate powers, equal stature, and facilities as well as gender-sensitive officers including women officers trained in dealing with sexual offences. Police officers must speak the language of the area in which they are based.
- Where the alleged perpetrators are from the armed forces or the police, they must not be exempted from the penal laws of the country. They must be arrested in accordance with the Penal Code and subject to the criminal justice process. Trials should be conducted in the district of jurisdiction and not transferred out to other districts. The practice of initiating court martial proceedings in cases of sexual violations must be stopped.
- Witness and victim protection laws must be enacted and implemented.
- Establish shelters and safe houses for women and girls affected by violence. The practice of sending girl victims to rehabilitation centres must be terminated immediately.
- Right to information laws must be enacted and implemented.

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<sup>53</sup> The Child Protection Authority has been recording such evidence.

- Emergency contraception should be made available at a victim's first point of medical contact and must be made legally available to victim-survivors following a rape.
- Child victims of rape must not be discriminated by the education system and must be offered all protection and support to continue with her education.
- Women and Children's Bureau Desks in Hospitals should be strengthened with trained police officers and special units with long term mandatory service (4-5 years) considered to be non-transferrable positions.
- The government should undertake a comprehensive review of the current legal and institutional framework relating to rape in custody to ensure a more effective investigation and prosecution of alleged offenders.

## SEXUAL HARASSMENT

Sexual harassment can take many different forms from catcalls on the street, to demands for sexual favours in return for benefits or entitlements at the work place to harassment in public transport. It can therefore take place in the street, in the workplace, in universities and in public transport. It is so pervasive in the context of Sri Lanka that many of us are conditioned from childhood to accept sexual harassment as a way of life and not to question it.<sup>54</sup> Various campaigns, including awareness campaigns have been conducted in different parts of the country over the years to address the issue of sexual harassment in the public space. These include a sticker campaign organized by the Legal Aid Commission of Sri Lanka at the Bastian Bus Stand in Colombo.<sup>55</sup> In November 2013 women's organisations launched a campaign to 'take back the night' and make the streets of Colombo safe for women. However the problem remains largely unresolved and very difficult to litigate.

### Prevalence

In 2011, the Police received approximately 2600 complaints relating to sexual harassment from the around the country and 226 persons were convicted for sexual harassment.<sup>56</sup> Statistics relating to sexual harassment complaints received by the police prior to and after 2011 are however unavailable.

Surveys about the prevalence of sexual harassment give us an idea of the magnitude of the problem in Sri Lanka. Deputy Minister of Transport, Rohana Dissanayake alleged in July 2011 that one in four women are subject to sexual harassment in public transport on a daily basis.<sup>57</sup> A survey conducted by the Legal Aid Commission (LAC) in 2011 revealed that 70% of women between the ages of 15 and 45 years have experienced sexual harassment while using public transport. According to the Chairperson of LAC, women using public transport were reluctant to make a complaint to the bus conductor, bus driver or the police. It was also found that bus drivers and conductors were reluctant to give evidence against the perpetrators in Courts as long drawn out court proceedings would affect their daily income.<sup>58</sup> This

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<sup>54</sup> Violence Against Women by Shyamala Gomez, 18<sup>th</sup> February 2013,

<http://www.fokuskvinner.no/en/News/2013/Violence-against-women-in-Sri-Lanka/>

<sup>55</sup> <http://www.dailymirror.lk/caption-story/23908-campaign-against-sexual-harassment-.html#sthash.CM4SCd7Y.dpuf>

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[http://www.police.lk/images/others/crime\\_trends/2011/offences\\_against\\_persons\\_year\\_2011.pdf](http://www.police.lk/images/others/crime_trends/2011/offences_against_persons_year_2011.pdf)

<sup>57</sup> Women being Harassed, Olindhi Jayasundere, Daily Mirror, 12<sup>th</sup> July 2011.

<http://www.dailymirror.lk/news/12387-women-being-harassed.html>

<sup>58</sup> <http://www.stopstreetharassment.org/2011/11/70percent/>

Commission also received submissions from women's organisations working in the Free Trade Zones in relation to the extent of the problem of sexual harassment faced by women workers on their way to and from work in the Katunayake FTZ areas and the Ja-ela/Ekala industrial estates.

The Commission also found that state universities and training colleges are institutions in which sexual harassment takes place with impunity. Several research studies and presentations<sup>59</sup> have shown that in Sri Lankan universities, sexual harassment also leads to many forms of gender-based violence, including verbal abuse, assault, battery, rape and murder of women students including harassment through social media.

**Reported cases of SGBV and deaths related to ragging from “Sexual and Gender-based Violence with Special Reference to Higher Educational Institutions”<sup>60</sup>**

1975 – Rupa Rathnaseeli of the University of Peradeniya leapt off the second floor of Ramanathan Hall to avoid grave sexual abuse. She was paralyzed and many years later she committed suicide.

1992 – Female student was stabbed to death by her ex-boyfriend at the University of Kelaniya.

1993 – Chaminda Punchihewa died as a result of ragging at the University of Ruhuna.

1997 - A first year female student, of the University of Ruhuna committed suicide after she was subject to severe sexual harassment.

1998 – The death of Varapragash in University of Peradeniya due to injuries sustained in ragging.

2002 – Ovitigala Vithanage Samantha was murdered in Sri Jayawardenepura when he tried to stop ragging.

2002 – Female student was stabbed to death by her ex-boyfriend at the University of Kelaniya.

2011 - A female student became semi-paralyzed in one limb due to physical ragging at the University of Ruhuna.

2011 - Three students from the University of Peradeniya were arrested for sexually assaulting a fresher.

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<sup>59</sup> Perera, Abeynayake & Galabada 2006; Fernando and Karunasekera 2009; Gunawardena, Weerasinghe, Rajapaksa, Wijesekara, and Chathurangana, 2011; Guneratne 2014.

<sup>60</sup> Presentation made by Professor Camena Guneratne (Dean Faculty of Humanities – Open University of Sri Lanka) at the Consultative National *Workshop Preventing Sexual and Gender-based Violence in Sri Lankan Universities*.

2013 - Three second-year female students, of the University of Peradeniya, were charged with ragging a group of female freshers in a toilet. The freshers had been stripped naked, during the ragging, and forced to perform indecent sexual acts. The university suspended them for three weeks. According to the internal report the victim was afraid to lodge a complaint, as the university authorities, did not take female ragging incidents seriously.

2014 – The suicide of a former male student in the premises of the University of Peradeniya who had been forced to leave the University of Peradeniya due to ragging.

Actress Ms. Yashoda Wimaladharmasiri has revealed that she had been subject to severe ragging at the University of Kelaniya.

An incident of street sexual harassment, occurring in August 2014 sparked an intense media debate about appropriate responses to such harassment and the problems of implementing the law in such cases. The incident came to the notice of the public after a video depicting a young girl slapping a boy for allegedly harassing her at the Wariapola bus terminal, went viral on social media. The girl later lodged a complaint at the police headquarters stating that she was reacting to sexual harassment.<sup>61</sup> As the events unfolded it was reported that the boy was admitted to the hospital for a hearing problem in one of his ears following the incident,<sup>62</sup> and the girl was arrested by the Wariapola police and produced before the JMO and Magistrate Court, following a complaint lodged by the youth.<sup>63</sup> She was later released on a surety bail by the Wariapola additional magistrate<sup>64</sup>. However the turn of events and its media coverage focused on the video i.e. the strong reaction of the girl, rather than the action of the boy and the crime of sexual harassment. The girl, who was acting in self-defense and upon provocation, was portrayed as the perpetrator of assault and the boy as the victim. In seeking redress for sexual harassment under the existing laws, the already publicized incident exposed the girl to double harassment through social media with the general public seeming to be of the opinion that though the girl should not have been arrested, she overreacted and should not have created a 'drama'<sup>65</sup>. On social media sites, there also appears to be a trivialization of street harassment—reinforcing the acceptance of sexual harassment as a 'normal' occurrence in Sri Lanka. Much later the youth accused of sexual harassment was also remanded and the girl filed a fundamental rights petition against the police officers

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<sup>61</sup> "Wariapola girl complains to police Hq." *Daily Mirror*, August 27, 2014.

<http://www.dailymirror.lk/news/51600-wariapola-girl-complains-to-police-hq.html>

<sup>62</sup> "Wariapola boy hospitalized." *Daily Mirror*, August 26, 2014.

<http://www.dailymirror.lk/caption-story/51546-wariapola-boy-hospitalised.html>

<sup>63</sup> "Wariapola girl arrested." *Daily Mirror*, August 27, 2014.

<http://www.dailymirror.lk/news/51612-wariapola-girl-surrenders-to-police.html>

<sup>64</sup> "Wariapola girl released on bail." *Daily Mirror*, August 27, 2014.

<http://www.dailymirror.lk/news/51628-wariapola-girl-released-on-bail.html>

<sup>65</sup> "Wariapola incident the vice and the voice." *Daily Mirror*, August 28, 2014.

<http://www.dailymirror.lk/opinion/172-opinion/51648-wariapola-incident-the-vice-and-the-voice.html>

seeking one million rupees as compensation<sup>66</sup>. However the media continues to portray the action of the girl negatively.

### **The Legal and Policy Framework**

Legal provisions applicable to sexual harassment are contained in the Penal Code, the Bribery Act, and Act on the Prohibition of Ragging and other forms of Violence in Educational Institutions. In 1995, amendments to the Penal Code replaced Sec.354 relating to assaulting and outraging the modesty of a woman with the new offence of sexual harassment, defined thus:

Unwelcome sexual advances by words or action used by a person in authority, in a working place or any other place shall constitute the offence of sexual harassment.

Whomsoever by assault or by the use of criminal force sexually harasses another person or by the use of words or actions causes sexual annoyance or harassment commits the offence of sexual harassment.

Under the Bribery Act, in the public sector, a public servant can be charged with sexual harassment if he or she,

... solicits or accepts any gratification as an inducement or a reward for his performing or abstaining from performing any official act or for such expediting, delaying, hindering, preventing, assisting or favouring ...” (Bribery Act of 1956, Section 19) any other person in the transaction of his/her official duties.

‘Gratification’ is thus taken to include sexual gratification, and takes the form of a sexual bribe when demanded in return for recruitment, transfers, promotions and other terms, conditions and benefits of employment. Within educational institutions, sexual harassment can take place when a person,

...whilst committing ragging causes sexual harassment or grievous hurt to any student or a member of the staff, of an educational institution...” Act on the Prohibition of Ragging and other forms of Violence in Educational Institutions Act No. 20 of 1998, Section 2 (2)

It is important to note that the Penal Code refers to both words and deeds. Under the penal Code, the penalty for sexual harassment is imprisonment for five years and/or fine. Additionally, the perpetrator can be ordered to pay compensation to the victim of an amount determined by the court. There have been some cases filed in the period since 1995, the law itself has not been sufficient to address the issue of sexual harassment. Under legislation introduced to address ragging in universities,

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<sup>66</sup> “Wariapola girl seeks compensation from police.” Daily Mirror, September 29, 2014. <http://www.dailymirror.lk/news/53106-wpola-girl-seeks-compensation-from-police.html>

sexual harassment can carry a sentence of up to 10 years as well as compensation at the discretion of the judge. The law covers schools, universities, technical institutes, and pirivenas.

While sexual harassment takes place against the broader social context of unequal power relations between men and women, certain contexts can accentuate this imbalance of power. In the workplace, sexual harassment can be identified as occurring in two forms – as "quid pro quo" and as a "hostile working environment." Quid pro quo involves sexual bargaining or a direct threat by a person in a position of power linking the terms and conditions of employment (hiring, promotion, retention, etc.) and workplace prospects/rewards (training, appraisals, bonuses, etc.) dependent on the employee providing sexual favors. Very often women are in positions of disadvantage. A "hostile working environment" can refer to any unwelcome physical approach, speech, gesture or conduct of a sexually discriminatory nature, from superiors/co-workers/subordinates that could result in an abusive working environment.

It is important to note that the boundaries of a work environment are not determined by location. Instead, 'a workplace' is defined by whether or not the person is involved in an activity related to his/her job at the time of harassment.

For legal remedies to be effective in such cases they need to be coupled with policy initiatives. It should be mandatory that employees put in place gender sensitive complaints mechanisms and guidelines as well as establish a supportive environment designed to both deter the crime and give women the confidence to file complaints and seek redress. This Committee welcomes the Guidelines to address sexual harassment in state sector institutions developed by the Human Rights Commission of Sri Lanka,<sup>67</sup> and the Code of Conduct and Guidelines to Address and Prevent Sexual Harassment in Workplaces formulated by the International Labour Organisation and the Employers' Federation of Ceylon. Both policies requires that institutions to adopt a policy of eradicating sexual harassment in the workplace and to take measures to provide a remedy to victims of sexual harassment, through the setting up of a complaints procedure to determine cases of sexual harassment. These guidelines spell out:

- 1) The manner in which the complaint should be lodged;
- 2) The composition of the committee;
- 3) The functions of the committee;
- 4) The complaint procedure and
- 5) The maintenance of a complaints register

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<sup>67</sup> Policy against sexual harassment in the workplace, Guidelines for state sector institutions, Human Rights commission of Sri Lanka,

Yet to what extent such policies are being instituted and implemented within the state and private sectors are unclear (key institutions like the Sri Lankan Airlines, HSBC, Standards Chartered Bank, Lever Brothers and John Keels have adopted sexual harassment policies). There are also attempts by the National Committee on Women to get complaints mechanisms established.

The Commission also sees the Policy and Programming Guidelines for the Private Sector on Preventing Sexual and Gender-based Violence especially in workplaces as a very positive initiative adopted by key organisations of the private sector, the ILO and the Employers' Federation of Ceylon.

Significantly, in a High Court case decided in 1994, a prosecution under the Bribery Act was upheld on the grounds that the accused had "solicited an unlawful gratification in soliciting sex from a woman employee in return for a transfer" (Republic of Sri Lanka Vs Abdul Rashak Kuthubdeen / B 839/93). In a noteworthy judgment, the judge refused to accept the contention of counsel for the accused that the complainant woman was an untrustworthy witness, remarking that "she was a young married woman...testifying about embarrassing circumstances [...] even in camera [...] and (that she had) embarked on a journey which many other women would dread to undertake". This is a liberal judicial interpretation of the existing law, which is an indication that women can allege sexual harassment under statutes such as the Bribery Act if judicial attitudes are sympathetic. Unfortunately, this judgment remains the sole example of such judicial liberality.

While there seem to be some initiatives aimed at holding work institutions responsible for sexual harassment at the workplace, there seems to be a lacuna in accountability when it comes to sexual harassment in public spaces, in universities and in public transport.



## **Recommendations:**

- Ensure that all employment and educational institutions put in place internal mechanisms and guidelines that prevent sexual harassment and deals with complaints of sexual harassment.
- Ensure that such initiatives are coupled with adequate awareness-raising and a supportive environment so as to encourage women to file complaints and obtain redress.
- Universities should adhere to Circular No. 919 issued by the University Grants Commission that provides guidelines to curb ragging in Universities or Higher Education institutions (HEIS).
- Public and private transport companies should be made liable for the safety, security and free passage of their female passengers.
- Education and awareness-raising programs should be put in place in schools, universities and workplaces to promote a zero tolerance policy on sexual harassment.
- Ensure that the Labor Tribunal facilitates the provision on compensation under the Industrial Disputes Act to employees in the private sector and in statutory bodies in cases of resignation arising from harassment
- Trade unions must support the institution of effective policies at the workplace to deal with sexual harassment.
- Ensure that the Police, workplaces, universities and transport companies maintain records and databases of the instances of sexual harassment.
- Display the rules and penalties against sexual harassment in the workplace, in universities, in prominent locations, public spaces, in public transport and throughout organisations in English, Sinhala and Tamil.

## DOMESTIC AND INTIMATE PARTNER VIOLENCE AGAINST WOMEN

Domestic and intimate partner violence is one of the most pervasive forms of violence against women in Sri Lanka. Women irrespective of their class, caste, religion, ethnicity and geographic location are vulnerable to such violence. As Sumithra Rahubadda, Former Secretary to the Ministry of Child Development and Women's Affairs has herself acknowledged, "national newspapers and anecdotal evidence gathered from hospitals and the police suggest that occurrence of domestic violence in Sri Lanka is very high"<sup>68</sup> By domestic violence we mean violence that occurs between individuals who are related through intimacy, blood or law. Drawing from the analysis of the UN Special Rapporteur on Violence against Women, despite the apparent neutrality of the term, it is nearly always a gender-specific crime, perpetrated primarily by men in intimate relationships with women whether legally married or not. Domestic violence needs to be also viewed in the context of the continuum of violence and power exerted over women in their daily lives.

The focus of this chapter will be on prevalence of domestic violence-particularly between intimate partners, the severity of violence suffered by women victim survivors, the current legal framework to address such violence, the gaps in the law and implementation problems. The chapter also highlights societal attitudes towards such violence as a key obstacle and challenge to addressing such violence from a rights perspective. The response of law enforcement authorities to the problem of domestic violence has been to treat violence within the home as a private act which should not be interfered with. Despite the enactment of the Prevention of Domestic Violence Act in 2005, the perception of such violence as a private matter between husband and wife has predominated.

### **Prevalence and severity of domestic violence:**

Statistics of domestic violence compiled by the Children and Women's Bureau Desks of police stations as well as women's organisations give an indication of the seriousness of the problem in Sri Lanka (See Table No. 7).

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<sup>68</sup> Foreword in Commentary on the Provisions of the Prevention of Domestic Violence Act No. 34 of 2005 compiled by Dhara Wijayatilake, 2012.

**Table 7: Number of Domestic Violence Complaints Recorded**

Year	No. of Complaints of Domestic Violence 2009 received by 35 organisations	Number of DV Cases recorded by Children and Women's Bureau Desks of Police Stations
2009	12,000	94,000

Source: Kodikara with Piyadasa 2012

Yet it can be safely assumed that these cases only represent a fraction of the incidents of domestic violence. Although national-level prevalence statistics are not available,<sup>69</sup> several micro studies have attempted to determine prevalence at the community, district and provincial levels. Accordingly prevalence rates range from 18.3% in a study done among pregnant women in Badulla (Moonesighe et al 2001) to 60% in a study done in a low-income urban settlement (Deraniyagala 1992). In one of the most recent studies conducted by CARE International (2012) in the four districts of Batticaloa, Hambantota, Kandy and Colombo 21% of women reported domestic violence while 24.2% of men admitted to perpetrating such violence. Ten percent of women also said they were forced into sex by an intimate partner, while 14% of men reported forcing their intimate partner into sex.<sup>70</sup>

Although there is a tendency to dismiss and trivialize these complaints, women's organisations that provide support services to victim-survivors report of extreme and severe forms of violence suffered at the hands of intimate partners. According to Women In Need (WIN) Domestic Violence is on the increase and the forms of violence are increasingly brutal, severe and grave. The Organisation states that they are receiving complaints relating to slashing of ears, axing on the head, severing of limbs, acid throwing, burning etc. Following are some of the cases WIN has received:

- A wife burnt by the husband after he threw a lantern at her because she refused to give away her child to his sister who did not have children;
- A husband tried to cut the wife's head and kill her with a sharp knife because

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<sup>69</sup> Although media reports and some studies cite a 2006 survey conducted by the Ministry of Child Development and Empowerment to the effect that 60% of women across Sri Lanka as well as 44% of pregnant women are subject to domestic violence, the source of these statistics is unclear. See for instance Domestic Violence: Facts, Legislation and reality by Sumaiya Rizvi, Daily Mirror, 25 February 2011 and Women Battered despite Domestic Violence law by Feizal Samath, 11 October 2010, which both cite these statistics.

<sup>70</sup> WHO. 2005. WHO Multi -Country Study on Women's Health and Domestic Violence: Summary Report, Initial results on prevalence, health outcomes and women's responses. [http://whqlibdoc.who.int/publications/2005/9241593512\\_eng.pdf](http://whqlibdoc.who.int/publications/2005/9241593512_eng.pdf)

she was not giving him money. She prevented it, but her jaw was cut and two fingers were severed.

- A husband severed one hand of his wife and also cut the other hand to the bone since she vehemently protested against him having a sexual relationship with her own mother. The victim was pregnant at the time.
- A husband completely cut off one leg and the other leg to the bone with a sword as the wife wanted to go to the Middle East for employment to escape from the severe violence at home and because the husband did not pay for the family expenses.
- Husband cut off the hand of his wife's sister as she had accompanied his wife to the Police Station to lodge a complaint against him about him sexually abusing the children.
- Client's husband sold the victim to a brothel daily and collected the money. If she refused to go ahead, she was beaten up mercilessly.

**Legal Framework:** Although persons affected by violence within the home, including women are able to make a complaint under Chapter XVI of the Penal Code titled 'Offences Affecting the Human Body or Offences Affecting Life', the criminal law is rarely invoked in these cases. Violence and aggression within the home including spousal violence tend to be treated by the police as essentially a private matter in which they should not interfere.<sup>71</sup> Historically, the police practice has been to 'warn and discharge' the perpetrators. In this context women's organisations in Sri Lanka advocated for and obtained the Prevention of Domestic Violence Act No. 34 of 2005, in order to provide a civil remedy for persons affected by domestic violence. Ideally however, domestic violence needs both civil and criminal remedies that should work simultaneously.

The PDVA allows '*any person*' who suffers or is likely to suffer domestic violence to seek protection from a Magistrate's Court. Domestic violence as defined by Act comprise 1) acts of *physical violence* recognized under Chapter XVI of the Penal Code, which constitute offences against the human body such as hurt, grievous hurt, wrongful confinement, etc, and 2) *emotional abuse* - defined as a pattern of cruel, inhuman, degrading or humiliating conduct of a serious nature directed towards an aggrieved person (Sec 23[9b] of the PDVA). Once an application is made under the PDVA, the court can first summarily issue an Interim Protection Order (IPO) valid for 14 days. Following an inquiry into the application and on the basis of evidence presented before the court both by the applicant and the respondent the court can

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<sup>71</sup> Wijayatileke and Gunaratne n.d.: 28.

then issue a Protection Order (PO), valid for 12 months. POs can bar the aggressor from committing further acts of violence, entering the victim-survivor's residence, etc. In issuing the PO, the court is required to balance the needs (including that of accommodation) of the victim-survivor and children and any hardship that may be caused to the aggressor. The Act focuses on ensuring the safety of the victim-survivor even while preserving her right to initiate separate civil or criminal action as permissible.

The Act has to be considered a significant achievement to protect women from violence within the home. Two or three policy documents have also attempted to address the issue of domestic violence in Sri Lanka and the effective implementation of the PDVA. i.e The Plan of Action Supporting the Prevention of Domestic Violence Act drafted in 2005 and the National Human Rights Action Plan adopted in 2012 both of which were referred to earlier. However, the first was never adopted by Cabinet and has not been implemented. The latter has been adopted by Cabinet, and yet remains unimplemented. While both these policy documents are almost dead letters, some key provisions from these documents were highlighted in Chapter 2.

**Implementation of the PDVA:** Almost 9 years after the enactment of the PDVA, available evidence suggests that the number of women seeking protection under the PDVA is in fact very small. A quantitative mapping of domestic violence related services (spanning the years 2009-2011) reveals that out of 86 organisations providing domestic violence intervention services, 11 had supported the filing of 304 cases under the PDVA between 2005 and June 2011.<sup>72</sup> Additionally the Children and Women Bureau Desks (CWBDs) of the Police were involved in filing 55 cases in 2009, and 247 cases in 2010 (January to September), 142 cases in 2011, 405 cases in 2012 and 499 cases in 2013 respectively. These cases appear to constitute less than 1% of the number of complaints of domestic violence recorded by these institutions (See statistics below).

**Table 8: Number of Domestic Violence Complaints Recorded by 35 Women's Organisations**

Year	No. of Complaints of Domestic Violence 2009	Number of DV Cases filed between Oct. 2005 - June 2011	Average number of DV cases per year	DV Cases as a % of the total number of complaints
2009	12,000	304	50	0.41%

Source: Kodikara with Piyadasa 2012

<sup>72</sup> Kodikara with Piyadasa 2012.

**Table 9: Family Disputes recorded by the Children and Women Bureau Desks of the Police and PDVA cases filed by the police**

Year	No. of Family Disputes Recorded by the CWBDs	No. of DV Cases Fled by the Police	DV Cases as a % of all Family Disputes Recorded by CWBDs
2009	94,094	55	0.06%
2010 Jan to Sept	77,733	247	0.32%
2011	N/A	142	-
2012	N/A	405	-
2013	N/A	499	-

Source: 1990 & 1991 statistics: Wijayatilake (1995: 299); 2009 & 2010 statistics: Children and Women Bureau Desk, Fort. 2011-2013 from IGP.

**The Backlash against the PDVA:** Despite the reality highlighted above that the PDVA is a remedy of last resort for women victims of violence, the Commission notes with concern that there appears to be a backlash against the PDVA from the highest levels of the Sri Lankan Government. A number of politicians and public officials are on record questioning the PDVA and arguing that it is contributing to an increase in the number of divorces in Sri Lanka, while normalizing, trivialising and legitimizing domestic violence itself. An old proverb, 'f.or rKavqj n; bfoklx ú;rhs'', (Gedara Sandu Batha Idenakal Vitharai), which constructs domestic violence as a momentary disruption in an otherwise calm and peaceful household is often invoked to this end.<sup>73</sup> This is an extremely worrying development.

**The Problems of Implementation:** With reference to the few cases that do go to court, the PDVA is dogged by what might be termed the 'implementation problem' i.e. the persistent resistance among law enforcement authorities to put the provisions of the law into practice. Based on submissions by a number of organisations, this Commission identifies the following implementation problems with reference to the

<sup>73</sup> This is of course not the only cultural justification that exists in relation to domestic violence within both Sinhala and Tamil language. Others such as f.or .sks t<shg oukak fyd | keye (*Gedera gini eliyata damanna hoda ne!*) constructs violence as a private matter and the home or the family as a private institution and what happens within should not be disclosed in public or ldka;dja" fnrh;a" jy;;a .ykak iqÿiq hs' (*Kanthavath, berayath, vahalath gahanna sudusui*) which is the Sinhala equivalent of the old English proverb, 'A woman, a dog, and a walnut tree, the more you beat 'em, the better they be, where violence is constructed as patriarchal privilege of the husband and the wife as the 'property' of the man to be treated in any way he desires.

PDVA at the level of the police, the courts and the court mandated counseling practices conducted under the PDVA.

### **Role of Magistrate's Courts**

Once an application for an interim protection under the PDVA order is made, the court must serve notice on the respondent, hold the inquiry within 14 days of the application and issue the Interim Protection Order (IPO) "forthwith" provided the "court is satisfied" on the facts stated in the application and the affidavit. In practice, this does not happen. Courts do not give priority to these cases, do not always hold the inquiry within the stipulated time limit of 14 days and inquiries are not concluded expeditiously. The focus of inquiry by courts is not always on whether a Protection Order is required to restrain the respondent in order to prevent the commission of an act of domestic violence and to ensure the protection of the aggrieved person. There is a tendency to look at contributing factors that provoke violence, whereas such matters should be addressed in the course of counseling. Delay in issuing the Interim Protection Orders can place the victim at further risk.

- The Act allows for an IPO to be issued on the evidence of the applicant alone. Yet some Magistrate Courts insist on proof of violence such as police complaints, medical evidence etc. even to issue an IPO. Some Magistrate Courts are also reluctant to issue an Interim Protection Order ex-parte.
- Notices that are required to be served on the respondent regarding the inquiry etc. are not issued immediately upon the making of an IPO /PO by court. The routine procedure in getting the orders typed and signed causes a lot of delay, which negates the urgency of the need to issue a protection order. There is also no provision for serving summons and orders by registered post, thereby resulting in delays. The courts do not use their discretion in assessing and attending to the urgency of the situation. This is a serious concern. There is thus a necessity to ascertain the practical difficulties that prevent the orders from being served on the day they are issued.
- It is expected that when an act of domestic violence has been committed or is expected to be committed, the court will issue a PO. Yet sometimes the matter is settled either before or after the inquiry without a PO. It may have been the view of court in these cases, that a settlement affords the best chance for parties to continue, but such settlements can put the victim-survivor at risk. They may also

be forced to reconcile with the perpetrator as no remedy is granted by the Courts despite the danger to their lives.

**Case No.91609/DV**

The applicant applied for an Interim Protection Order on 3. 8. 2011 accompanied by five police complaints and a medical report. However no Interim Protection Order was issued although there was sufficient evidence. An Interim Protection Order was given and notice was issued on the respondent only when the case was taken up before an Acting-Magistrate and after hearing the evidence of the applicant. Thereafter the matter was referred to a family counselor who was partial towards the respondent and forced the applicant to settle the case. When she refused in view of the abuse and the violence, the judge blamed the applicant and stated that she was in the wrong. The judgmental attitude of the family counselor resulted in injustice to the victim. Though the applicant prayed for time to consider whether or not to reconcile with the respondent, her request was turned down, thereby forcing the applicant to terminate the case.

- The Courts do not make adequate use of the Prohibitions and Supplementary orders provided for in the Act. A variety of orders could be made, for instance: prohibiting the respondents from entering the residence of the applicant and placing the applicant in a shelter. The Court could, in the same case, order the perpetrator to pay maintenance; order a social worker, family counselor, probation officer etc. to monitor the observance of the Interim Protection Orders and protection orders and submit a quarterly report [see section (2) (b) and section 12 (e)]. But this does not happen. Lawyers for the respondents generally allege that the women concerned want to take possession of the house, and are using the Act to chase the men away. They make out that there is a conflict of laws asserting that the husband cannot be prohibited from entering his own house. The Courts in turn appear to be reluctant to issue supplementary orders, on the basis that some supplementary orders are contrary to the general law.
- There is in fact no formalised structure to monitor the observance of a Protection Order or an Interim Protection. For instance, there is provision in the Indian Act to appoint Protection Officers.
- When Protection Orders are violated, the procedure for reporting of such violations is not stipulated.
- Cases are heard in open court, which can be embarrassing for parties. Parties are reluctant to relate all the details of what happened between the parties. This is especially so when there had been sexual violence. It is recommended to have in camera hearings in these cases based on the wishes of the victim-survivor.



## Role of counselors

- Under Section 5 (2) (a), the court may order a social worker or family counselor to counsel the parties. Yet there are problems related to counseling. Firstly, there are no counselors in some courts, which means the court is unable to exercise its discretion in ordering for counseling of parties. Secondly, even when counseling is available, the counselors are not adequately trained or qualified for the task that they are expected to do. Women's organisation that made submissions to the Commission report that some counselors tend to be judgmental and biased in favour of respondents or that they simply see their role as reconciling the parties at any cost. There is therefore a feeling that counseling has not contributed to enhancing the quality of relief. There appears to be a dire need for the services of trained and experienced counselors. Meanwhile the services of social workers should be considered. A list of such persons should be provided to courts for this purpose.

## Role of the Police

- Section 9 (2) stipulates that notice should be served on the Police. This was apparently for the relevant parties to be mindful of the fact that a Protection Order is in force. However the intended purpose is not achieved. The police do not always prioritize the safety of the complainant.

### Case No 21459/DV

The victim applied for an Interim Protection Order on 16.11. 2012 and it was issued. The respondent did not attend courts when the notice was served on him and even after a warrant was issued. Whilst the Interim Protection Order was pending the respondent came to the applicant's home and assaulted her. The court was informed of this breach of the IPO.

The Police informed the Courts that the respondent did not live in the area, but the applicant informed the court the whereabouts of the respondent and that he continued to live in the same area. But the Court did not issue orders to the police to arrest the respondent or warn the police of the urgency of the matter.

An application was made to imprison the respondent for the breach of the Interim Protection Order and two police complaints were made. The Court rejected the application stating that the children would be in difficulty because they would not receive maintenance. An open warrant was issued but there was no calling date.

- There is no punishment for the breach of the Interim Protection Order although the procedure is laid down in the Act to impose a fine.

- Further, there is inaction by the courts and the police to arrest the perpetrator.
- While Women and Children Desks are filing cases under the PDVA, statistics are not publicly available.
- Furthermore, there is only one State operated shelter and there does not seem to be awareness of shelters or a formalized referral system that courts can follow.

These gaps in implementation leads the Commission to believe that the Courts give into their own biases when it comes to implementing the PDVA thereby ignoring both the letter and spirit of the law. This in turn has serious implications for ensuring the safety of victims as envisaged by the Act. The immediate need to issue Interim Protection Order is not accepted in all cases. Delays in granting IPO and POs can have serious consequences for victim-survivors.

**Breaking the Silence:** A positive development around intimate partner violence is that more and more women are breaking the silence surrounding domestic violence, particularly at the Women and Children’s Desks of police stations dotted around the country. Whether women are obtaining the desired response from these desks however remains a question.

**Table 10: Family Disputes recorded by the Children and Women Bureau Desks of the Police**

Year	No. of Family Disputes Recorded by the CWBDs
1990	13,368
1991	19,656
2009	94,094
2010 Jan to Sept	77,733

Source: 1990 & 1991 statistics: Wijayatilake (1995: 299); 2009 & 2010 statistics: Children and Women Bureau Desk, Fort.

Based on these statistics it could be argued that many women victim-survivors are in fact seeking a ‘police’ response backed by state power, as opposed to a community response for domestic violence. This could be due to easy access to police stations as opposed to women’s organisations that deal with domestic violence. This trend of increasing complaints maybe due to increasing awareness, availability of services as well as the increasing empowerment and agency of women.

## Recommendations

- Create more awareness about the PDVA and sensitize those responsible for its implementation. Judges in particular continue to be unaware/ not familiar with the law. The Judicial Training Institute must continue to hold training programmes on this issue, on a sustained basis. Trainings cannot be ad hoc and must be formalized as part of the syllabus.
- Provide infrastructure for victim-survivors of domestic violence e.g. Permanent shelters, temporary safe houses, counseling facilities, legal advice, training for economic empowerment.
- Improve the referral system to make use of state and non-state actors that provide the necessary services (The Ministry of Women's Affairs and Child Development should approve a directory of accepted organisations).
- Look into the possibility of ways and means of protecting victims after the issuance of Protection Orders.
- Counselors should be trained both in counseling as well as gender equity/equality so that they are aware of their own as well as systemic biases.

The National Human Rights Action Plan makes the following recommendations relating to domestic violence which we reiterate here:

- Improve domestic violence risk assessment and case management processes aimed at early intervention as well as effective investigation and prosecution;
- Collaborative case management linked to one stop crisis centre to be mainstreamed/ replication;
- Divisional Secretariats through WDOs to connect DV affected families with livelihood focused CBOs and other organisations;
- MCDWA to set up a Protection Order Monitoring Unit - (this could be linked to the NCW complaints centre if the capacity exists). This unit could be charged with the important responsibility of identifying and addressing gaps in the Act's judicial sensitisation and work with the Ministry of Justice / judges institute to incorporate PDVA into training curricula; streamlining on going police training and sensitization programmes to make them more

targeted /effective; linking with the Ministry of Social Services on enhancing the capacity of social workers, counselors, etc.

- Develop consistent reporting tools to gather standardized data on domestic violence cases from police, hospitals, counseling centres, etc. (This should include statistics of PDVA cases filed in Magistrate's Courts as well as interim protection orders issued and protection orders issued).

## VIOLENCE AGAINST WOMEN ON THE BASIS OF MULTIPLE / INTERSECTING IDENTITIES

Violence against women is often shaped by the various dimensions and intersections of their identities, such as ethnicity, religion, class, caste, language and sexual orientation. The Commission reiterates that women are not a homogenous group. Certain categories of women can be targets of violence due to a particular aspect of their identity, and their ability to seek assistance, support as well as justice in the face of violence is often more compromised. The law itself may further marginalize and undermine the ability of such women to pursue justice for violence perpetrated against them. In this chapter we deal only with Muslim women and lesbian, bisexual and transgender (LBT) <sup>74</sup> women who experience violence because of their identities. However this category can include other groups of women such as domestic workers, free trade zone workers or sex workers who are vulnerable to specific categories of violence because of their identity.

The types of violence that we highlight in this chapter cuts across the categories of violence discussed in the previous chapters and includes domestic violence, rape, sexual harassment in the work place and in the public sphere. We do not therefore repeat the applicable laws here. Rather we hope to highlight the contradictions in the legal framework as well as the very specific discrimination and obstacles to accessing the legal system and other remedies faced by these women.

### Violence Directed against Muslim Women

In the last few years the Muslim community was subject to a targeted hate campaign waged by extreme Buddhist groups in Sri Lanka. This campaign included violent attacks on mosques and Muslim businesses, the disturbances of prayers, protests against Islamic education and cattle slaughter as well as attacks against Muslim women for wearing the hijab, abaya and niqabs<sup>75</sup>. The Bodu Bala Sena (BBS) has been at the forefront of this campaign. On June 15 2014, at a meeting held in Badulla, General Secretary of BBS called for a ban of the Niqab, saying that several local banks had contacted him and complained that conducting business with veiled clients is problematic and is of great inconvenience to them. He also accuses Islamic fundamentalists of attempting to turn Sri Lanka into an Arabian country, ominously

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<sup>74</sup> Women's Support Group (2014): *'Not Gonna Take It Lying Down' Experiences of Violence and Discrimination as told by LBT persons in Sri Lanka*, Women and Media Collective, Colombo, Sri Lanka

<sup>75</sup> Hijab (head cover), abaya (full body cover where the face is visible), niqab (full body cover where the face is also veiled)

adding that if the fundamentalists continue to follow these practices, the moderate Muslims will suffer punishment as well. Building on the General Secretary's argument, BBS Spokesman Dilantha Withanage, claims that their opposition to the Niqab is not an attack on the Muslim community but goes beyond difficulties faced by local banks. "When these veiled individuals walk on the road, people do not know who they are, and that affects their personal security". According to him, the Niqab is not a custom that all Muslims follow, and therefore it is unnecessary, and should be banned as it has been in France and other countries. Once it is banned, Sri Lankans can walk on the road sans fear of the veiled individuals who cannot be identified. This campaign, has been taken up by school principals and some members of the general public who are harassing Muslim women and issuing prohibitions which impinge on Muslim women's fundamental right to dress according to their wishes. In the permissive atmosphere created by this rhetoric, various people are also using violence to enforce this norm. The Commission at this point in time is not entering the debate on whether the niqab should be banned in public institutions such as universities and banks. This is a question which must be resolved through a broad and inclusive discussion and debate at the National level that attempts to balance principles of secularism with the need for recognition of minority identities. Nevertheless, the Commission is concerned about the context in which this debate has emerged and the racism, prejudice and the lack of tolerance of diversity that underlines this campaign for a ban. The Commission categorically condemns all forms of violence and harassment directed at Muslim women because of their dress.

Listed below are instances of harassment of Muslim women (either for wearing the hijab, Abaya or niqab<sup>76</sup>) received by the Commission from the Secretariat for Muslims. These cases fall into two broad categories. Individual harassment of Muslim women because of their dress, and those where violence is being used to enforce the norm of the Abaya.

### **Harassment of Muslim Women: January - December 2013**

- February 21, Kalmunai, Ampara District: In Carmal Fathima School in Kalmunai, a group of teachers ask a newly appointed Muslim teacher to remove her hijab.
- February 26, Horagoda-Akuressa, Matara district: A drunken Sinhalese youth and two friends threaten and damage a small shop run by widowed Muslim women four days after starting it. An elderly gentleman who came to negotiate was slapped by the youth.
- February 27, Matara, Matara District: While on the way to an institution for a computer course, 3 Muslim school girls are physically attacked by Sinhalese youths, who threaten them to stop wearing their hijab and abayas.

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<sup>76</sup> Hijab- Head cover, Abaya- long dress with long sleeves, worn with the hijab, Nikab- face cover

- March 8 & 9, Kandy, Kandy district: A nurse attached to the Kandy Teaching Hospital insists that the Muslim woman accompanying a patient to a ward, to remove her Abaya and hijab.
- March 15, Colombo, Colombo district: 4 Muslim students are forced to remove their Hijab at the Pettah Railway Station by two Sinhalese extremists.
- March 23, Hendala, Colombo District: At Hendala Junction, a Buddhist group harasses some pedestrian Muslim women wearing abaya.
- March 27, Peradeniya, Kandy district: A Muslim woman was forced to remove her abaya at ward No. 3 in the Peradeniya teaching hospital.
- March 5, Panadura, Kalutara district: A Panadura–Eluvila Baudhaloka principal orders Muslim students to worship teachers and not to wear their headcover.
- June 1, Palagala, Anuradhapura District: Palagala Divisional Secretary K.P.S. Kaluwaratchi orders the Muslim women employees of the DS office not to come to work wearing the abaya.
- July 2013, Nilaveli, Trincomalee District: Tamil parents and children of Nilaveli Tamil Vidyalayam protest against Muslim children wearing hijab. The school administration forbade the Muslim children wearing the hijab from entering the School premises.
- Higher Education Ministry has said that there is no rule or regulations that prevent female Muslim students from covering their faces.
- February 26, Horagoda-Akuressa, Matara district: A drunken Sinhalese youth and two friends threaten and damage a small shop run by widowed Muslim women four days after starting it. An elderly gentleman who came to negotiate was slapped by the youth.

#### **Physical Attacks against Women in Hijab, Abaya or Niqab**

- February 27, Matara, Matara District: While on the way to an institution for a computer course, 3 Muslim school girls are attacked by Sinhalese youths, who threaten them to stop wearing their hijab and abayas.
- March 15, Colombo, Colombo district: 4 Muslim students are forced to remove their Hijab at the Pettah Railway Station by two Sinhalese extremists.
- March 18, Mannampitiya, Polonnaruwa District: A Muslim female employee attached to the Mannampitiya post office is assaulted, with attempts made to

remove her fardha. She was warned by a group of youth a few days before the attack not to wear her fardha.

- March 23, Hendala, Colombo District: At Hendala Junction, a Buddhist group harasses some pedestrian Muslim women wearing abaya.

Most Muslim women are however reluctant to make a police complaint due to a plethora of reasons: fear of retaliation by the perpetrators, lack of support from the family and family pressure not to complain as police stations are considered not proper places for women, and lastly lack of confidence in the police, and the feeling that that police are on the side of Sinhala Buddhists.

### **Violence and Discrimination faced by Lesbians, Bisexual women and Transpersons (LBT)<sup>77</sup> on the basis of their Sexual Orientation, Gender Identity and/or Gender Expression**

The commission received detailed submissions relating to violence perpetrated against LBT both within the family and in the public sphere as result of their sexual identity.<sup>78</sup> As highlighted in these submissions it is important to first note that this violence is facilitated by laws which discriminate against LBT people. These are:

1. Section 365A of the Penal Code Amendment Act No 22 of 1995 prohibits “any act of gross indecency” in public or in private. The law is used to criminalize adult consensual same-sex relations.
2. Section 399 of the Penal Code penalizes “cheating by personation” and is used to criminalize transgender men and women, masculine-appearing lesbians, and individuals who cross-dress. There have been several cases of “impersonation” and “misrepresentation” being brought to court, where women were discovered to be “disguised” as men and “true sexual identity” exposed to the public. Similarly, trans women have also been arrested for “misleading the public<sup>79</sup>.”
3. The Vagrancy Ordinance of 1842 that prohibits loitering in public is used to detain transgender women and men because they look different.

These laws go against the constitutional guarantee of equality and non discrimination. Furthermore, as pointed in CEDAW committee’s concluding observations on Sri Lanka’s 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> combined report the criminalization of same sex relationships results in women being completely excluded from legal

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<sup>77</sup> The acronym ‘LBT’ is used as an abbreviation for Lesbians, Bisexual Women and Transgendered persons. The term Transgender in this case includes transwomen (male-to-female transgender persons) and transmen (female-to-male transgender persons).

<sup>78</sup> Submissions by Women’s Support Group and Equal Ground.

<sup>79</sup> Submission by Women’s Support Group.



protection. In a context where LBT people are already stigmatized and public officials routinely express hostility towards gays and lesbians, the presence of these laws paves the way for police and anti-gay groups and individuals to brand all LBT people as perverts and criminals. Or simply harass, intimidate and violate. The police have the discretion to interpret the *mala fide* of the “idle person” to that of a vagrant and thereby enforce the law. This often leads to a wrongful application and misuse of the Vagrancy Ordinance, which results in wrongful detention of non-heteronormative women, transgender men and people from the nachchi<sup>80</sup> community because they look different. The Vagrancy Ordinance is especially used to target transgender people of lower socio-economic status who are the most vulnerable to police abuses.<sup>81</sup> Their manner of dress (different from their biological sex) is often the basis for the assumption that they are sex workers – the Vagrancy Ordinance justifies the harassment, arrest and prosecution of sex workers.<sup>82</sup>

The law requires the police to present the alleged offender (taken into custody without a warrant) before a magistrate within 24 hours. In January 2013, the Code of Criminal Procedure was amended to extend this period to 48 hours. However, if the offender is apprehended on a Friday, he or she could remain in detention for over 48 hours, because magistrates do not work over the weekend. Reports of victimization and abuse have emerged in some cases when arrests were made at night and the alleged offenders were detained in police stations overnight.<sup>83</sup>

In addition to the violence of the law, these groups shared extensive documentation of violent physical attacks on them for being lesbian or gender non-conforming (women with boyish appearance or behaviour, and transgender men). Perpetrators included immediate family members who used physical and emotional violence as punishment to force gender conformity. Violence included beating, verbal humiliation, threats of family abandonment, family neglect, prolonged silent treatment, being denied human contact, and forced ending of same-sex relationships. **Domestic Violence:** Violence from family members occurred when LBT people revealed their sexual orientation or gender identity, were discovered in same-sex relationships, and/or did not conform to gender norms of the family or community. LBT persons also reported being taken forcibly, often by their parents, to religious institutions, hospitals, and mental health services to be “cured.”

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<sup>80</sup> The Sinhala term nachchi, is a category that is used by the nachchi community who view themselves as male bodied persons who “embraced female subjectivity but with no interest in abandoning key facets of their “maleness,” and are also unwavering in their ardent sexual desire for men” (Miller & Nichols, 2012: 555).

<sup>81</sup> Nichols A. (2010) Dance Ponnaya Dance Feminist Criminology April 2010, Volume 5, No.2 Available online: <http://fcx.sagepub.com/content/5/2/195>

<sup>82</sup> Ibid.

<sup>83</sup> Op. cit. (2010)

Lesbians reported physical, emotional and sexual violence by same-sex partners, which in some instances was chronic and long-term. Although Section 23 of the Prevention of Domestic Violence Act allows for cohabiting partners to seek redress, the risk for penalties under Sections 365A or 399 of the Penal Code deters lesbians, bisexual women, and transgender persons experiencing violence in their relationships from filing complaints or seeking protection orders. Court hearings are open to the public, which further deters LBT persons from reporting violence to police to avoid having the reasons for the violence revealed in open court.

**Violence in the public sphere:** The more visible a person's non-conforming sexual orientation and gender identity, the greater the likelihood they would be hit, sexually groped, verbally assaulted, and become targets of public threats. This included

Chandani is 39-years-old, lives in Colombo, and identifies as a feminine lesbian. Chandani spoke about a specific incident where she and her partner at the time were verbally abused by some neighbours. She said, "I was seeing this girl, and I went to her house, and it was late at night, maybe eleven or twelve [midnight] and I went into her house. As soon as we shut the gate, some guys from the top of the road came and banged on her gate and started shouting *Aappa, Aappa* at us."<sup>1</sup>

Twenty-nine-year old Anu, a Tamil bisexual woman, explained to us that she has experienced threats from "people who say that they will castrate [my] friends. That they would beat us up with hockey sticks, set us on fire, those kinds of things have been told."<sup>1</sup>

Roshmi is a 39-year-old, lesbian-identified woman who currently lives with her partner in a suburb in Colombo. When she and her partner were living in the North Central Province, she said, "Even the neighbours who were friendly towards us had said they would forcibly rape us," once they found out that they were a lesbian couple.<sup>1</sup> Even though this threat was not carried out, Roshmi and her partner lived in constant fear and were eventually forced to move to Colombo for their own safety.

individuals who were affiliated with organisations or groups involved in LGBT<sup>84</sup> activism. A lesbian couple lived in constant fear and was forced to move out of their rented home because neighbours threatened to rape them, when the neighbours realized that the women were a lesbian couple. A radio talk show featured Buddhist, Christian and Muslim leaders who compared homosexuality to rape and murder, accusing homosexuals of spreading sexually transmitted diseases and being paedophiles. The leaders warned parents to protect their children from homosexuals and condemned NGOs working to abolish homophobic and transphobic laws.

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<sup>84</sup> LGBT is an acronym for "Lesbian, Gay, Bisexual and Transgender"

**Workplace Sexual Harassment:** LBT individuals reported sexualized verbal harassment on the basis of their sexual orientation, pressure to perform sexual acts with other women for male employers' "viewing pleasure," approached for sex by senior colleagues, and being "outed" (exposed as LBT without permission) to senior management.

Chamila, a state sector employee spoke of discrimination and sexual harassment at the hands of her supervisors on two separate occasions. In the first instance, one of her supervisors (approximately 59-years-old) asked her to have sex with his wife, who he claimed was also a lesbian. "He called me to be with his wife. I told him that I was not a person who would go behind any old woman and that I was not ready to fulfil each one's wish and that I didn't like it."<sup>1</sup> He had also offered to grant her a job transfer. Chamila was stationed out of Colombo at the time and wanted to be transferred to Colombo. Her supervisor used this to demand sexual favours, in this instance, using his wife to rationalize the sexual harassment. In this case, sexual harassment took the form of being refused a job transfer as well as being overlooked for promotion, because she was unwilling to provide sexual favours to her supervisor.

Christy is 28 years old and identifies as a bisexual with a feminine gender expression. She spoke about how her CEO had sexually harassed her and summoned her to his cubicle after work hours, despite her repeated refusals. This situation was exacerbated after one of her Directors had 'outed' her to the CEO, who then invited her to perform sexual acts with other women for his viewing pleasure. "He came up with this idea that he'll introduce me to another girl and wanted to know whether he could watch while I had sex with her. And it was very sickening....and because of that reason I wanted to leave my job. Because when he got to know that I love women more than men, then he always kept coming up with ideas such as these. And then sometimes, you know, since he has my mobile number, he would text me saying 'How is your girlfriend?' or 'Can you send pictures of her?' and 'How are your private parts?' and things like that....I was so harassed and mentally down . . .

Although the 2013 Code of Conduct and Guidelines on Sexual Harassment at the Workplace<sup>85</sup> defines sexual harassment as harassment that is based on sex and/or sexuality and could include verbal harassment that refers to a person's sexual identity, most sexual harassment policies in both public and private employment settings do not include harassment on the grounds of sexual orientation and gender identity. Exacerbating this lack of redress is the stigma associated with homosexuality, lesbianism and gender non-conformity in Sri Lanka, which prevents LBT individuals from reporting workplace sexual harassment and accessing any formal redress without being subject to further harassment and abuse by employers.

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<sup>85</sup> (2013) Code of Conduct and Guidelines to Prevent and Address Sexual Harassment in Workplaces, International Labour Organisation and Employers' Federation of Ceylon, Colombo, Sri Lanka.

**Harassment by Police under Discriminatory Laws:** The State grants police officers broad authority to interpret and enforce these laws, often leading to discriminatory application and often also wrongful application on the basis of a person's appearance or behavior. Masculine-looking lesbians reported being targeted by police under Section 399 of the Sri Lanka Penal Code for "cheating by personation."

Several misrepresentation cases have been brought to court because women were "discovered to be disguised as men" and their "true" sexual identity was exposed to the public. Male-to-female transgender women and masculine-looking women of lower economic status also reported that police used the Vagrancy Ordinance of 1842 to detain them. Detention and release was often conditional on paying a bribe. Same-sex couples in Sri Lanka spoke of difficulties obtaining pension schemes and bank loans on the basis of shared income with their same-sex partners.

**Fear of Reporting and Seeking Redress:** It is the argument of this chapter, that muslim woman and LGBT are prone to certain kinds of violence not just as women but because of their identities as Muslim or LBT. These identity markers also make it more difficult for them to break the silence surrounding violence and pursue justice. As both WSG and Equal Ground asserts many LBT are afraid of being identified as non-heterosexual and/or transgender, leaving sexual minorities vulnerable to a range of human rights violations, including intimidation, arbitrary arrest and detention, and extortion. Even when LBT persons were victims of violence in public spaces such as on the street, at community gatherings, in public transport, or at the workplace, there was reluctance to report to avoid being ridiculed, shamed, charged with homosexuality or gender impersonation, and/or exposed to other reprisals. LBT people revealed that they "doubted the possibility of getting redress for violence by police."

### **Violence directed against sex workers**

The Commission received a representation by a group working with women sex workers indicating that there were over 40,000 women who are engaged in sex work as a form of livelihood. The Commission was informed that women in the sex industry were subject to various forms of discrimination and abuse at the hands of their clients, the pimps who managed the industry and law enforcement agents of the state. It was also noted that regardless of where the women worked - on the streets, in brothels, lodges, hotels, massage parlours and so on, the most grievous harassment they faced was at the hands of the police. It was also noted that women were the most victimized through the use of the archaic laws such as the Vagrants Ordinance. So for instance, while the Vagrants Ordinance makes it illegal to solicit, procure, aid women were the most likely to be detained while middlemen, brokers, and pimps were arrested rarely.

Pushpa is 35 years old. She works in Polonnaruwa town mainly, but used to also work in Colombo when business was low in Polonnaruwa. She used to work earlier in a hotel, and was 'arrested' by the police. Her boss got her released, but because working in hotels seemed unsafe she became a street sex worker. She worked for a price, and did not consider herself to be cheap. She is dumb but because she was beautiful she was able to charge whatever amount she wanted. One day when she was standing in town she was arrested by the police. She was taken to court. She had to pay a fine and then she was free again. She used to be more careful after that evening.

On 22 October 2012 she was having a cup of tea at a tea shop in town. She was not in town on work, but was there to do some shopping. A policeman walked into the shop, and threw her cup of tea as well as her food. He dragged her out of the shop and pushed her into a jeep. There was a woman police officer inside the jeep. Next day, she was sent to court. In court, the police said various things. Perhaps because she cannot speak, she was not asked any questions. The judge looked at her and said something. She nodded her head. Later, she learnt that she was remanded for six months.

She was sent to Polonnaruwa prison. The jailor used to harass her, but she had no choice but to bear it. She came out in March. The first thing she did was to visit her mother who was quite ill. The mother passed a few days later. After the funeral and 7 days done was completed, pushpa came back to Polonnaruwa. When she was walking along the main road, the same policeman who arrested her in October stopped his jeeped along side her and said "Ah you are free again. Ok so lets go back to prison". When I arrived in the police station, she got the wheeze and started feeling really bad. The police had to take her to hospital. Then she was taken before the courts again and was remanded for two months. Only once was she arrested while on work. At all other times – she was going about her daily life . . .

The Ordinance is used extensively to harass women sex workers and transgender persons. In the same vein although the Brothels Ordinance makes it illegal to manage or run a brothel house, and is silent on the legality of working in a brothel as a sex worker, women are routinely arrested during raids of brothels and massage clinics and charged under the Vagrants Ordinance. The Commission learnt that the criminalization of prostitution and wide discretionary powers enjoyed by the police resulted in significant abuses perpetrated against women sex workers by law enforcement authorities. Sex workers complain of being arrested in public places at any time of day or night whether or not they were engaged in soliciting or in

legitimate everyday activities. The commission was also informed that sex workers were constantly harassed by the police and were coerced into paying them for non-arrest or providing sexual favours to avoid arrest. Criminalisation of sex work also meant that women were reluctant to seek legal remedies for abuse and violence and rarely reported mistreatment by clients or the police.

The brutal public assault of a sex worker, by a policeman, near the Ratnapura bus stand was captured on camera in September 2014 and caused widespread comment on social media and in the mainstream press. The incident captured on camera reflected a reality suffered by sex workers all over the country. The woman attacked by a policeman in broad daylight stated that she was attacked because she rejected providing sexual favours to him. In a fundamental rights petition filed before the Supreme Court, the victim of this unlawful assault, Weerasinghe Arachchilage Kanthilatha of 3rd Mile Post, Kanadole, Ratnapura said she is a sex worker operating in the Ratnapura Town and was approached for free sexual services by a policeman whom she rejected leading to the public assault on 6 September 2014. Petitioning the Supreme Court the victim states her fundamental right to equal protection under the law as well as protection against discrimination, torture, inhuman and degrading treatment and unlawful arrest which are guaranteed by the Constitution of Sri Lanka have been violated. The victim's mother was subsequently remanded under the under the Vagrants Ordinance allegedly for loitering<sup>86</sup>.

## **Recommendations**

- Repeal Section 365a of the Penal Code which criminalizes consensual same-sex sexual activities in public and in private spaces.
- Amend Article 12 (2) of the constitution which deals with non-discrimination to include sexual orientation and gender identity.
- Develop and implement uniform policies for the state sector and corporate sector to enshrine the principles of non-discrimination in the workplace, based on sexual orientation and gender identity.
- Repeal the Vagrant's Ordinance of 1842.
- Repeal discriminatory provisions of the Brothels Ordinance.

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<sup>86</sup> 'Woman beaten at bus stand claims Rs. 50m. compensation', Sunday Times, 5 October 2014.

- Existing training curriculum for law enforcement authorities to include a section on intersecting identities and the manner in which certain groups are directly and indirectly discriminated within the criminal justice system.
- Ensure that all police stations have officers able to work in the language of the region including women officers.
- Ensure that all law enforcement officers dealing with violence against women are sensitized to understand the cultural and social dimensions of the causes and consequences of violence against women, including violence against women from different identity groups, LBT women and sex workers.
- Broaden the definition of sexual harassment to specifically refer to situations of harassment based on sexual orientation and gender identity.

## RECOMMENDATIONS

The issues raised in this report are linked to a multiplicity of other issues from good governance, the rule of law, corruption and bureaucratic inefficiency to the privilege given to the family unit over safety of women. Action therefore is necessary at a number of different levels. In this final chapter, we seek to highlight what are considered priority recommendations to address violence against women in Sri Lanka.

### **Law and policy context**

1. While there are adequate laws to address the problem of violence against women, much can be done at the level of procedure to expedite and streamline case and to ensure justice. There is a need for changes in the Evidence Ordinance and the Code of Criminal Procedure to complement changes made to the penal code in 1995.
2. Current legal position as reflected in the penal code amendments of 1995 in relation to consent and collaboration in respect of sexual offences need to be clarified in Statute Law and clearly understood by lawyers and judges.
3. There has to be an uniform policy on sentencing sexual offences.
4. There should be an uniform minimum age of marriage.
5. Constitutional standards on equality and torture that now permit public officials to be made liable for acts of abuse of power, and sexual harassment should be developed further, using current jurisprudential trends in the Supreme Court of Sri Lanka, so that a link is made between rape and gender discrimination and rape and torture.
6. Marital rape should be recognized as a crime with no limiting circumstances.
7. To be effective legal remedies dealing with sexual harassment, especially sexual harassment in the workplace should be coupled with employers being compulsorily required to put in place internal mechanisms and guidelines that complements and enhances the implementation of the law.

### **Investigation and prosecution**

8. The Attorney General should develop and adopt guidelines for officials handling cases under Prevention of Domestic Violence Act.



9. DNA profiling and toxicological tests could be used more frequently in cases of sexual violence. Such tests have been used in a murder trial currently heard before the High Court.
10. Non-summary inquiry in cases of rape should be abolished.
11. Trials dealing with sexual offences and offences against children should be given priority.
12. In the interest of expediting the hearing and conclusion of cases dealing with violence against women, special courts could be set up with retired judges to try these cases and address the problem of delays in the law.
13. All necessary measures should be taken to protect the victims and witnesses and any security officer found to be responsible for rape, sexual abuse or other torture, or for encouraging or condoning them, should be brought to justice.
14. More trials, dealing with sexual offences should be held in camera and a victim's testimony could be video recorded as is currently done in some cases of child abuse.
15. Cases of incest need to be handled very sensitively from the beginning of the investigation till a case is concluded and the medical exam and court environment should be victim friendly and as private as possible. This should be applicable not only in cases of incest, but in all cases involving sexual abuse of women and specially of children. It is also essential that family counseling and therapy be made compulsory requirements in cases of incest.
16. There should also be the possibility for the submission of written testimony in the form of affidavits.

### **Training, awareness raising and building empathy**

17. The State should ensure that police officers and judges are gender sensitized and will take the crime of domestic violence seriously by implementing the provisions of the Prevention of Domestic Violence Act No. 34 of 2005.
18. The police should be educated with regard to proper procedures to be followed in intervening and handling the complaint.
19. There is a need to develop systematic and comprehensive awareness-raising among women themselves on their rights and the remedies available to them in relation to violence against women.
20. There is a need to train medical officers who are called upon to examine rape victims, since doctors are often not aware that the statements made to them could have very important legal significance, especially if the victim identifies the alleged rapist to the doctor. Medical officers require adequate and relevant

training to perform this task. They should also be trained to identify victims of domestic violence and be trained to deal with the specific needs of such women.

21. A concerted programme should be got underway to ensure that a sufficient cadre of Judicial Medical Officers (JMO) are trained and put in place in all districts.

### **Documentation of violations**

22. The lack of comprehensive data and a system of gathering data on an ongoing and regular basis are some of the major problems that have to be dealt with if the issue of violence against women is to be taken seriously by the state. Mechanisms have to be established in conjunction with the police, the Attorney General's Department, Judicial Medical Officers, Medical Professionals, women's organizations, human rights organizations, the Child Protection Authority and the Human Rights Commission for the effective collection of data.
23. Such data must be publicly available and must be analysed and used for policy and legal reform as well as for the better implementation of the law so that women can be better protected from violence.
24. Legal practitioners, human rights and women's rights activists, policy makers, etc. should have access to a comprehensive set of statistics from the Attorney General's Department so that an analysis can be made of the number of rape indictments that result in convictions, those that don't and the time taken to conclude a case.
25. Attorney General's Department need to inform the public of the total number of pending rape cases and put in place a mechanism to speedily resolve these cases.
26. The Department of Police should separately compile statistics of incidents of violence against women and particularly sexual violence committed by members of the armed forces. (Currently statistics are available for 2011 only).

### **Services for victim survivors of violence**

27. The state should ensure the provision of emergency services which should include crisis intervention centres, safe and secure shelters: immediate medical attention and emergency legal counseling for offences of domestic violence and rape.
28. The government needs to look at the possibility of establishing multi disciplinary crisis centres at all leading base hospitals where specially trained doctors can examine a victim of violence and the police can be called in to record statements with a volunteer counselor present to assist the woman. It is also absolutely

necessary that the State set up shelters that can offer refuge to women seeking to escape violence.

### **Rehabilitation**

29. The state should introduce compulsory long term rehabilitation of victims and abusers.

### **Women and Children Bureau Desks**

30. Officers attached to Women and Children's desks at police stations should be trained in recording and handling complaints of violence against women so that the records can be effectively used in court cases.
31. The desks should be kept open and accessible in a climate of security and safety 24 hours a day.
32. Both male and female officers, serving at all police stations and at all levels of service should be more effectively trained and sensitized to handle complaints of violence by women. This should be a permanent composition of initial training as well as supplementary training and not ad hoc and sporadic in nature.
33. Women and Children's Bureau Desks in conflict areas should have personnel who speak the language of the area, are conversant with the problems of the area and are gender sensitive. These desks should work in collaboration with recognized women's groups and citizen's committees so that women and children feel secure to make use of their facilities.
34. The guideline that female service personnel should be present to carry out body searches of women, particularly at checkpoints, is often flouted. These should be strictly adhered to.

### **Mediation Boards**

35. Samatha Mandalayas (Mediation boards) should constitute of persons who are gender sensitive and conversant with the law. They should also comprise of at least 40% women. Their work should be monitored and evaluated on a regular basis.
36. It must be ensured that the services of the Samatha Mandalayas are not used in the investigation or settlement of criminal offences such as rape or incest and that the Mandalayas are not used to bring pressure on women to marry their rapists

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**THE LEADER OF THE OPPOSITION'S COMMISSION  
ON THE PREVENTION OF VIOLENCE  
AGAINST WOMEN AND THE GIRL CHILD**

Whereas in keeping with the UN Declaration on the Elimination of Violence against Women and the prevention and elimination of all forms of sexual and gender-based violence in the family, within the general community, in conflict situations and specific cultural contexts, and

Whereas it is the duty of the Government to exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, and

To take appropriate and effective action concerning acts of violence against women, and

To provide access to just, effective and specialized remedies, including medical and legal assistance, psychosocial counseling, and self-protection strategies to victims, and

Whereas incidents of violence against women and the girl child has seen an alarming increase in recent times, and

Whereas there is an urgent need to stem this terror, and

Whereas prior to formulating the remedies it is necessary to examine and determine the contexts in which such acts occur and determine the causes and the consequences of such acts, and

Affirming that violence against women constitutes a violation of the human rights and fundamental freedoms of women and that violence against women impairs or nullifies their enjoyment of those rights and freedoms.

Therefore, in order to :

- (1) Seek and receive information on violence against women and the girl child, the contexts in which such violence occurs, the causes and consequences of such incidence of violence;
- (2) Recommend comprehensive, strategic, and multi-sectoral approaches to the prevention and elimination of violence against women, its contexts, its causes and consequences, including engagement with the structural and ideological underpinnings of violence relating to the civil, cultural, economic, political and social spheres;

- (3) Recommend legal, executive and other measures, ways and means at the local and national levels to prevent and eliminate all forms of violence against women and its causes, and to remedy its consequences; and
- (4) Devise to be tabled in the Parliament of Sri Lanka, a framework and methodology by which to regularly and systematically integrate the human rights of women and a gender perspective, specially as per the Sri Lanka Women's Charter (1993), UNDVAV, and UNCEDAW and other pertinent international standards and conventions.

NOW THEREFORE I, Ranil Wickremesinghe, Leader of the Opposition, reposing great trust and confidence in your prudence, ability, independence and fidelity do hereby by these presents appoint you:

1. Ms. Priyane Wijesekera
2. Ms Kumudini Samuel
3. Ms. Shanthi Sachithanandam
4. Ms. Chulani Kodikara
5. Ms. Anberiya Hanifa
6. Ms. Shreen Saroor
7. Ms. Savitri Wijesekera
8. Ms. Premila Divakara

to be my Commissioners, to inquire and report on the following matters;

- (i) the contexts in which such violence occurs
- (ii) the causes of such violence
- (iii) the profiles of the victims
- (iv) categorization of the victims (spouses, children, domestic aides, strangers, etc)
- (v) profiles of the perpetrators
- (vi) categorization of the perpetrators (spouses, relatives, employers, strangers, etc.)
- (vii) preventive measures (individual and institutionalized)
- (viii) the need to set up/strengthen specialized institutions/units to deal with violence and other forms of abuse
- (ix) the need to revisit existing legislation and enact new laws
- (x) protection of victims from harassment official or unofficial and at all levels
- (xi) the need for all enforcement agencies to adopt a victim oriented approach as opposed to an accused oriented approach
- (xii) post traumatic care
- (xiii) any other matters that the Commission may decide on

AND I do hereby appoint Ms. Priyane Wijesekera to be the Chairperson and Ms. Kumudini Samuel to be the Vice Chairperson of the said Commission;

In the discharge of the mandate, the Leader of the Opposition's Commission for the Prevention of Violence against Women will:

- Transmit urgent appeals and communications to the Leader of the Opposition regarding alleged cases of violence against women to be raised in Parliament,
- Collect both statistical and anecdotal data on violence against women,
- Undertake fact-finding visits on violence against women to various provinces in the country,
- Conduct hearings on sexual and gender-based violence from interested parties and their representatives, and
- Submit a comprehensive national report to be tabled in the Parliament of Sri Lanka within six months of the Commission's date of appointment.

AND I do hereby authorize and empower you the said Commissioners, to hold all such inquiries and to make all such investigations into the aforesaid matters as may appear to you to be necessary, and require you to transmit to me within six months from the date hereof, a report thereon under your hand, setting out the findings of inquires and your recommendations relating thereto;

AND I do hereby direct that such part of any inquiry relating to the aforesaid matters as you may in your discretion determine, shall not be held in public;

AND I do hereby request all Public Officers and other persons to whom you may apply for such assistance or information for the purpose of your inquiries or investigations, to tender all such assistance and furnish all such information as may be properly rendered and furnished in that behalf;

GIVEN at Colombo, this 7<sup>th</sup> day of **March 2013**.

**Ranil Wickremesinghe**  
**Member of Parliament**  
**Leader of the Opposition**



**N O T I C E**

**THE LEADER OF THE OPPOSITION'S COMMISSION  
ON THE PREVENTION OF VIOLENCE  
AGAINST WOMEN AND GIRLS**

Recognising that violence against women is a violation of women's human rights, Hon. Ranil Wickremesinghe, Leader of the Opposition has appointed the above Commission to inquire and report on the following matters:

- 1) the contexts in which violence against women and girls occurs;
- 2) prevalence statistics;
- 3) where relevant gaps and failures in law, policy and law enforcement procedures in ensuring justice and suggestion for reform;
- 5) gaps in protection and preventive measures (individual, institutional, community, governmental, etc.);
- 6) protection of victims/survivors from further harassment or penalization (official or unofficial and at all levels);
- 7) attitudes and perceptions that perpetuate the problem of violence against women;
- 8) media attitude towards and coverage of violence against women;
- 9) the availability or non availability of support services for victim-survivors.

"violence against women" means any act of gender based violence that results in or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life (see the UN Declaration on Violence against Women). The Commission will pay attention to the following acts of violence against women:

1. Domestic and intimate partner violence;
2. Rape and Sexual assault;
3. Sexual harassment in the workplace (both organized and unorganized as well as formal and informal sectors) and in the public sphere;
4. Intimidation and violence to curb women's freedom of expression, association and mobility;
5. Violence against women justified in the name of religion and culture;
6. Violence against women arising from a situation of militarization;
7. Trafficking of women;
8. Violence against migrant women;

9. Women in institutionalised settings (such as prisons);
10. Violence against women on the ground of their sexual orientation and gender identity.

Members of the public, organisations and institutions as well victim-survivors are invited to make written representations in respect of these matters. The confidentiality of all submissions will be ensured. The Commission will not however accept anonymous submissions.

Representations should be made on or before 30<sup>th</sup> May, 2013 to :

Secretary,

Office of the Leader of the Opposition,

Parliament,

Sri Jayewardenepura, Kotte

Telephone inquiries may be made at no 0770 554946.

Please write “Women’s Commission” on the top left corner of the envelope.

Or email it to [vaw.com.lk@gmail.com](mailto:vaw.com.lk@gmail.com)

±kùuhs

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அறிவித்தல்

பெண்கள் மற்றும் பெண் பிள்ளைகளுக்கு எதிரான வன்முறைகளை தடுப்பதற்கான  
எதிர்க்கட்சி முதல்வரின் ஆணைக்குழு

பெண்களுக்கு எதிரான வன்முறை, பெண்களின் மனித உரிமை மீறலொன்று என ஏற்றுக்கொண்டு, பின்வரும் விடயங்கள் தொடர்பாக விசாரணை செய்து, அறிக்கை சமர்ப்பிக்குமுகமாக மேற்குறிப்பிட்ட ஆணைக்குழுவினை எதிர்க்கட்சி முதல்வர் மாண்புமிகு ரணில் விக்கிரமசிங்கஹ நியமித்துள்ளார்.

- (i) பெண்கள் மற்றும் பெண் பிள்ளைகளுக்கு எதிரான வன்முறை நிகழும் சந்தர்ப்பங்கள்
- (ii) பரவல் பற்றிய புள்ளி விவரங்கள்
- (iii) பாதிக்கப்பட்டவர்கள்: தப்பிப் பிழைத்தவர்கள் மற்றும் சம்பந்தப்பட்ட குற்றவாளிகள் பற்றிய குறுகிய விபரம்: வகைப்படுத்தல்
- (iv) நீதி நிலைநாட்டப்படுவதை உறுதிப்படுத்துகையில் சட்ட, கொள்கை மற்றும் சட்ட அமுலாக்க நடைமுறைகளில் உள்ள இடைவெளிகளும், தோல்விகளும் மற்றும் சீர்திருத்தத்திற்கான பரிந்துரைகள்
- (v) பாதுகாப்பு மற்றும் தடுப்பு நடவடிக்கைகளிலுள்ள இடைவெளிகள் (தனிநபர், நிறுவனங்கள், சமூகம், அரசாங்கம் முதலியன)
- (vi) பாதிக்கப்பட்டவர்கள்: தப்பிப் பிழைத்தவர்கள் போன்றோரை மேலும் துன்புறுத்துதல் அல்லது தண்டனை போன்றவற்றிலிருந்து பாதுகாத்தல் (அதிகாரபூர்வ அல்லது அதிகாரபூர்வமற்ற மற்றும் அனைத்து மட்டத்திலும்)
- (vii) பெண்களுக்கு எதிரான வன்முறை பிரச்சினை பற்றி நிலைநிறுத்தப்பட்டிருக்கும் மனோநிலை மற்றும் அணுகுமுறை
- (viii) பெண்களுக்கு எதிரான வன்முறை தொடர்பில் ஊடகங்களின் அணுகுமுறை மற்றும் அவற்றை வெளிப்படுத்தும் விதம்
- (ix) பாதிக்கப்பட்டவர்களுக்கு: தப்பிப் பிழைத்தவர்களுக்கு ஆதரவு சேவைகள் கிடைத்தல் அல்லது கிடைக்காதிருத்தல்.

பொது அல்லது தனிப்பட்ட வாழ்க்கையில் பலாத்காரம் அல்லது சுதந்திரத்தை நியாயமற்றவிதத்தில் இல்லாதொழித்தல், அச்சுறுத்துதல் போன்ற செயற்பாடுகள் உட்பட பெண்களுக்கு உடல், பாலியல் அல்லது உளவியல் ரீதியான பாதிப்பை அல்லது துன்பத்தை விளைவிக்கும் அல்லது அவை ஏற்படுவதற்கான வாய்ப்பை விளைவிக்கக்கூடிய பாலின அடிப்படையில் அமைந்த ஏதேனும் வன்முறைச் செயல் “பெண்களுக்கு எதிரான வன்முறை” எனக்கருதப்படும் (ஐ.நா. வின் பெண்களுக்கு எதிரான வன்முறை பற்றிய பிரகடனத்தை பார்க்கவும்.) குழுவானது பெண்களுக்கு எதிரான வன்முறைச் செயற்பாடுகள் தொடர்பாக பின்வருவன மீது கவனம் செலுத்தும்.

1. குடும்ப மற்றும் நெருங்கிய துணை வன்முறை
2. பாலியல் பலாத்காரம் மற்றும் பாலியல் ரீதியான தாக்குதல்

3. வேலைத்தளத்தில் (ஒழுங்குபடுத்தப்பட்ட மற்றும் ஒழுங்குபடுத்தப்படாத இரு பிரிவிகளிலும் அதேபோல், முறைசார் மற்றும் முறைசாரா துறைகளிலும்) மற்றும் பொதுவிடத்தில் ஏற்படுகின்ற பாலியல் வன்முறை
4. பெண்களின் கருத்துத்தெரிவிக்கும் சுதந்திரம், தொடர்புகொள்ளல் மற்றும் இயக்கம் போன்றவற்றைக் குறைப்பதற்கான அச்சுறுத்தல் மற்றும் வன்முறை
5. மதம் மற்றும் பண்பாடு என்ற பெயரில் நியாயப்படுத்தப்படுகின்ற பெண்களுக்கு எதிரான வன்முறை
6. இராணுவமயமாக்கல் சூழ்நிலையொன்றின் காரணமாக ஏற்படும் பெண்களுக்கு எதிரான வன்முறை
7. பெண்களை கடத்தும் வியாபாரம்
8. புலம்பெயர்ந்த பெண்களுக்கு எதிரான வன்முறை
9. நிறுவனமயமாக்கப்பட்ட சூழ்நிலைகளில் உள்ள பெண்கள் (சிறைச்சாலை போன்றன)
10. தங்களின் பாலியல் மற்றும் பாலின அடையாள அடிப்படையில் பெண்களுக்கு எதிரான வன்முறை.

பொதுமக்கள், அமைப்புக்கள் மற்றும் நிறுவனங்கள் அதேபோல் பாதிக்கப்பட்டவர்கள். தப்பிப் பிழைத்தவர்கள் இவ் விடயம் தொடர்பான விவரங்களை எழுத்து மூலமாகச் சமர்ப்பிப்பதற்கு அழைப்பு விடுக்கப்படுகிறது. சமர்ப்பிக்கப்படுகின்ற சகல விடயங்களுக்குமான இரகசியத்தன்மை உறுதிப்படுத்தப் படுகின்றது. ஆணைக்குழுவானது அநாமதேய சமர்ப்பித்தல்களை ஏற்றுக்கொள்ளாது.

எழுத்து மூலமான சமர்ப்பித்தல்கள் 2013 மே மாதம் 30 ஆம் திகதி அல்லது அதற்கு முன்னர் கீழ்வரும் முகவரிக்கு அனுப்பப்படல் வேண்டும்.

செயலாளர்,  
எதிர்க்கட்சி முதல்வரின் அலுவலகம்,  
பாராளுமன்றம்,  
ஸ்ரீஜயவர்தனபுர கோட்டே.

தங்களது கடித உரையின் இடதுபக்க மேல் மூலையில் “பெண்களின் ஆணைக்குழு” என தயவுசெய்து குறிப்பிடுக.

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