

Sri Lanka Shadow Report

To the Committee on the Elimination of All Forms of
Discrimination against Women (CEDAW)

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Submitted by: The Women and Media Collective
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Women and Media Collective
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Preface

The Government of Sri Lanka (GOSL) ratified CEDAW in 1981 and submitted its first periodic report to the CEDAW Committee in 1986 and submitted its 8th periodic report to the CEDAW Committee in April 2015 (CEDAW/C/LKA/8). Women's organisations submitted Shadow Reports to the CEDAW Committee spanning the years 2011 to 2016 and they included the Women and Media Collective, the Centre for Women's Research, Equal Ground, the Women's Action Network and Fokus Women.¹ These reports focused on State compliance with the Convention and the recommendations made by the CEDAW Committee in its Concluding Observations to the Sri Lankan State following the review of its 5th to 7th combined periodic report in 2011 (CEDAW/C/LKA/CO/7). They also focussed on gaps and emerging issues. At the 66th Pre-Sessional Working Group committee (PSWG) meeting of CEDAW, Committee required the Sri Lankan State to respond to a list of issues in relation to its eighth periodic report (CEDAW/C/LKA/Q/8).

This NGO shadow report seeks to respond to some of the concerns and questions raised by the CEDAW Committee in its list of issues (CEDAW/C/LKA/Q/8). It will also make a critical assessment of the post war Constitution making and transitional justice and reconciliation processes currently underway in the country emphasizing the conflict's specific impact on women and post war realities faced by women. This report was prepared by the Women and Media Collective (WMC) a non-governmental, non-profit organization working on women's rights in Sri Lanka through a consultative process with women from civil society organisations working at national and local level on women's rights and human rights concerns. The WMC worked in collaboration with Viluthu Centre for Human Resource, Suriya Women's Development Centre, Women's Action Network, Muslim Women's Research and Action Forum, Muslim Personal Law Reforms Acton Group, Abhimani Women's Collective, Stand Up Movement Lanka, Praja Diriya Padanama, and the Women's Resource Centre, Kurunegala. The contributing authors are experts in their respective fields, and included Kumudini Samuel, Sarala Emmanuel, Thiyagi Piyadasa, Thiloma Munasinghe, Hyshyama Hamin, Ermiza Tegal, Sabra Zahid, Shreen Saroor, Anberiya Haniffa, Dhananjaya Tilakeratne, Subha Wijesiriwardene, Sepali Kottegoda, Shyamala Gomez, Inthumathi Hariharathamotharan, Maithreyi Rajasingham and Chulani Kodikara.

While WMC and the women's groups providing information on the issues reviewed used a consultative and participatory process in responding to the questions and identifying issues in the writing of this report it regrets to note that the government's consultations with women's organizations were limited both in outreach and scope. We accessed the State report on the UN website after its submission. It is our hope that we can work with the different agencies of the State, including its gender machinery to ensure compliance with CEDAW and to eliminates all forms of discrimination against women in Sri Lanka.

¹ See http://tbinternet.ohchr.org/_layouts/treatybodyexternal/SessionDetails1.aspx?SessionID=1071&Lang=en

List of issues in relation to the eighth periodic report of Sri Lanka

1. Legal status of the Convention (CEDAW/C/LKA/Q/8, para.1.)

The 1978 Constitution of Sri Lanka guarantees equality before the law and equal protection of the law to all citizens and includes a provision to introduce temporary special measures to achieve substantive equality [Art 12 (4)]. However a number of laws on the Statute books discriminate against women including customary, personal and family laws; women's rights to State grants of public land under the Land Development Ordinance, the Vagrants Ordinance and the Brothels Ordinance; Sections 365, 365A and 399 of the Penal Code which discriminate against L(G)BT persons. Furthermore the Constitution contains a provision which prohibits judicial review of past laws written and unwritten notwithstanding any inconsistency with fundamental rights guaranteed to all citizens of Sri Lanka (Article 16) and the Constitution does not provide for redress against the violation of fundamental rights by private actors.

Constitutional provisions on gender equality have been complemented by a Women's Charter (1993) which remains a policy document and has not been translated to law². The standard on the fundamental right to equality therefore needs to be developed in specific legislation and attempts to do so through legislating a Women's Rights Act have been abandoned³. The draft Women's Rights Bill also attempted to incorporate the concept of indivisibility of women's rights and proposed setting up an empowered well-resourced independent National Commission on Women that could provide leadership on law and policy reform. This independent Women's Commission has not been established and it does not feature in the recommendations made by the Sub-Committee of the Constitutional Assembly currently drafting the Fundamental Rights Chapter of the proposed new Constitution⁴.

Recommendations to the State

-Review the existing draft bill to establish a National Commission on Women (NCW draft of 2007) in consultation with civil society, women's organizations and the public, and establish a National Commission on Women as one of the independent Commissions within the 19th Amendment through Constitutional reforms. And ensure a gender balance in appointments to all independent commissions under the 19th Amendment.

-Amend provisions in 1978 Constitution to:

Include non-discrimination on the basis of sexual orientation and gender identity and also incorporate a broader definition of the right to equality as in the draft constitution of 2000.

² *Report of the Leader of the Opposition's Commission on the Prevention of Violence against Women and the Girl Child*. Commission on the Prevention of Violence Against Women and Girls, Sri Lanka. (2015). Accessed at <http://www.childwomenmin.gov.lk/English/downloads/reports>

³ Wide ranging consultations were held and draft legislation prepared – refer Women and Media Collective Shadow Report to CEDAW July 2010 available at http://www2.ohchr.org/english/bodies/cedaw/docs/ngo/WMD_SriLanka48.pdf

⁴ See the Sub-Committee's tri-lingual report at <http://english.constitutionalassembly.lk/images/pdf/01-Fundamental-Rights-ste.pdf>

-Recognize liability of non state actors for violations of the equality clause of the constitution. (An Equal Opportunities Act may be required to clarify scope of liability of non state actors especially in the corporate sector and private sector in light of the Sustainable Development Goals).

2. Discriminatory Laws (CEDAW/C/LKA/Q/8, para.4.)

There have been no efforts to reform customary and family law and integrate the constitutional standards of equality (Art 12) and CEDAW commitments, despite the Concluding Comments of the Committee on Sri Lanka's initial and periodic reports.

The Muslim Marriage and Divorce Act of 1951 (MMDA) has a number of discriminatory provisions with regard to marriage, divorce, maintenance, inheritance, property rights and limit access to justice for Muslim women. Discriminatory principles in the Kandyan law on divorce and inheritance continue to be applicable to a minority of Sinhala women, as do limitations on property rights in Tesawalamai law applicable to a minority of Tamil women in Jaffna. The state has not used comparative jurisprudence in Islamic countries or laws in South Asia and, undertaken a review of these laws as repeatedly suggested by the CEDAW Committee in its Concluding Comments. Reform of the personal law continues to be considered a politically sensitive issue. There is a perception that these laws are 'customary' and reform will infringe cultural or religious sensitivities despite the clear information base on influences of colonial law on the customary laws.⁵

The Sri Lankan government has the primary duty to redress these discriminatory provisions and practices against Muslim women and must ensure that the law protects rather than discriminates on the basis of gender or religion. However it has sought to abdicate this responsibility and has put the onus on the Muslim community (through primarily male interlocutors) to decide on the nature and extent of reforms to the MMDA and the Quazi Court System. A Committee appointed by the Minister of Justice, to propose reforms in MMDA in 2009 has not yet submitted their report, 8 years since starting work. Nor has the State moves expeditiously to act on considered recommendations made an independent Committee on Muslim Personal Law Reforms initiated by the Muslim Women's Research and Action Forum (MWRAF) comprising of prominent Quazi judges, lawyers and MWRAF members.

No reforms have been introduced in the MMDA using comparative jurisprudence, as proposed by the Committee in 2002 in the Concluding Comments. In the ongoing Constitutional reform process too recommendations by government sub-committees on repeal of Article 16(1) of the Constitution (which does not allow for judicial review and repeal of discriminatory laws), continues to recommend an exemption for Personal Laws (including MMDA) despite numerous submissions and appeals by Muslim women's groups calling for repeal of Article 16(1). The State continues to place greater weight to the opinions and recommendations of male Muslim MP's and religious leaders, rather than Muslim women's groups and women and girls directly affected by MMDA. Conversely, as reported by the Muslim Women's Research and Action Forum, Muslim men led by the Colombo District Masjids

⁵ refer Women and Media Collective Shadow Report to CEDAW July 2010 available at http://www2.ohchr.org/english/bodies/cedaw/docs/ngo/WMD_SriLanka48.pdf

Federation has initiated a petition among men to collect signatures against amendments to the Muslim Marriage and Divorce Act.

The discrimination against women entrenched in the Land Development Ordinance 1935 (LDO) continues to operate to-date. Despite women's groups consistent advocacy for the reform of these provisions since 2005, and CEDAW Committee recommendations (CEDAW/C/LKA/CO/7, para. 17(b); (CEDAW/C/LKA/Q/8, para.4 (c).) and the inclusion of such reforms in national action plans on women and human rights with expected timelines for its adoption into law, amendments to the discriminatory Schedule III of the LDO have yet to be made.

Recommendations to the State

- Ensure substantive reform to Muslim Personal Law without delay so that no provision or procedure entailed within it violates rights of Muslim women and girls. And that it ensures equality for both husband and wife.
- Repeal Article 16 of the Constitution and replace it with an Article that recognises the supremacy of the Constitution and allows for the review and repeal of all discriminatory legislation including past and present laws, and post enactment in the future, that violate the fundamental right to equality and other fundamental rights.
- Repeal or amend discriminatory customary or personal laws that infringe on human rights of women.

3. Women's Engagement in the Constitutional Reform Process (CEDAW/C/LKA/Q/8, para.5.)

Constitutional Reform was a key mandate of the current government and the Cabinet of Ministers appointed 20 persons, of whom only 3 were women, to the Public Representations Committee on Constitutional Reform (PRCCR) to begin a consultative process. Committee members were nominated by political parties and some were appointed to represent civil society. The PRCCR sought written and oral submissions on Constitutional Reform and began work in January 2016. The Women and Media Collective initiated a process of consultations with women's groups, civil society organisations, and experts in constitution making to facilitate interventions to the PRCCR and women from all districts of the country made representations before it. Their submissions dealt inter alia with The Supremacy of the Constitution, the Bill of Rights, an inclusive equality and non-discrimination clause, electoral reforms and women's representation, affirmative action, independence of the Judiciary and other legal institutions; independent commissions, including a women's commission, judicial review of legislation and devolution of power.

The PRCCR report acknowledged the "large number of women's organisations made submissions from each district" (p.115)⁶ and recorded that Women's representations covered all areas of the Constitution. They noted "the importance of ensuring the supremacy of a rights based Constitution which would allow for both the protection of women's rights as well as provide a basis for legal action in

⁶ Report on Public Representations on Constitutional Reform, Public Representations Committee on Constitutional Reform, May 2016. Available at <https://www.colombotelegraph.com/wpcontent/uploads/2016/05/PRC-Report-English-Final.pdf>

the event of any discrimination” (p.115). The PRCCR proposed that the Bill of Rights should enshrine a special section on the Fundamental Rights of Women (pp.115, 116).

Once Public Representations Committee on Constitutional Reform completed its sittings and submitted its report, Parliament was converted into a Constitutional Assembly (CA) to study the recommendations and deliberate on a new constitution. The CA appointed six sub-committees to work on Fundamental Rights, Judiciary, Law and Order, Centre Periphery Relations, Public Finance and the Nature of the State. A steering committee on constitutional reform headed by the Prime Minister was also appointed to oversee the drafting process. All these Committees were made up of representatives of all political parties in Parliament. However while the Deputy Chair of the Constitutional Assembly is a woman, the Steering Committee has only one woman among 21 members. None of the Sub Committees, comprised of 11 members each were headed by women and some Sub Committees has no women’s representation.

Unfortunately this process of deliberation is not as open as the PRCCR deliberations and women’s groups were only able to get an appointment with the Fundamental Rights Sub Committee. However despite wide ranging submissions from women and the recommendations of the PRCCR, and the Fundamental Rights Sub Committee, the draft Bill of Rights proposed by the Sub-Committee does not include a section on women while it does include sections on the rights of children, the disabled, senior citizens, etc. and it also fails to include an Independent Commission on women.⁷

The Equality Clause of the Constitution: From the point of view of equality in outcomes, present formulations of equality need to be expanded to explicitly acknowledge not only formal but also substantive equality for women (as well as other groups). While "equal protection" focuses on processes or formal equality the "equal benefits" draws attention to outcomes, more in line with substantive equality. This is crucial not only in terms of advancing affirmative action but also rethinking equality in a more comprehensive way, especially given conservative jurisprudence in Sri Lanka on equality. This however does not preclude a proviso that allows for special measures for disadvantaged groups, which would not constitute discrimination as such.

The nondiscrimination clause should specify both sex and gender among its protected characteristics. The clause on nondiscrimination should also explicitly recognize equal opportunity as a corresponding legal obligation and not be relegated as it has been to any non-binding sections of a new Constitution. Equal opportunity language should be included in relevant articles of the Fundamental Rights chapter to enshrine Sri Lanka’s obligations on economic, social, civil and political rights of women. Grouping women, children, persons with disabilities, and other minority groups together should be avoided as each group has distinctive needs.

⁷ Report of the Sub Committee on Fundamental Rights. Available at <http://english.constitutionalassembly.lk/images/pdf/01-Fundamental-Rights-ste.pdf>

Recommendations to the State

-Strengthen and expand the Equality and Non-Discrimination Clauses of the proposed Constitution as suggested above.

-Include a section on Women in the Fundamental Rights Chapter as recommended in the report of the Public Representations Committee on Constitutional Rights (pp.115, 116).

4. Stereotypes and harmful practices (CEDAW/C/LKA/Q/8, para.11.)

Gender-stereotyping still negatively affects women and women's lives in Sri Lanka. The abysmally low numbers of women in politics and the reluctance of male led political parties political leadership to introduce affirmative measures both within their political parties as well as at the level of Parliament and Provincial Councils attest to this fact. This position is justified '...on various questionable grounds including marinating that very few women are interested in politics and that women's political representation is antithetical to Sri Lankan culture and that this demand is fuelled mainly by middle class 'NGO women' who are trying to force women into politics.

Where gender stereotyping and gender roles are really visible and deeply problematic is within Sri Lanka's education system and curricula. 'Rather than challenging gender norms and stereotypes, education has played a significant role in perpetuating them'⁸. Schools are also places for reinforcing harmful gender stereotypes and gender roles even when they follow the co-education model; 'Whether it is the way teachers only call upon female students to sweep classrooms or ask only the male students to move desks, gender roles and responsibilities are assigned in the day to day life of the school through teacher-student and student-student interactions.'⁹ The essay continues, 'Interviews with civics teachers, analysis of the civics curriculum, discussion with students and classroom observations show that there exist two key challenges to promoting gender equality in Sri Lanka through education. These include strong gender biases and ideologies held by teachers and a curriculum particularly social studies and civics curricula and a school system that emphasizes the protection of culture and tradition at all cost. These factors work in tandem to maintain the status quo when it comes to challenging traditional gender norms.' These examples indicate clearly that gender role stereotyping is not on the decline and needs to be dealt with seriously.

5. Impact of Conflict on Women

(CEDAW/C/LKA/Q/8, para.6.)

The vulnerable groups named in the State report - female headed households, single women, internally displaced women, war widows and former female combatants continue to suffer discrimination, sexual and gender-based violence, harassment and abuse, from within their own community and from the authorities, including at the hands of the military.

⁸ <https://www.opendemocracy.net/5050/thursica-kovinthan/teaching-gender-inequality-textbooks-and-traditions-in-sri-lanka>

⁹ <https://www.opendemocracy.net/5050/thursica-kovinthan/teaching-gender-inequality-textbooks-and-traditions-in-sri-lanka>

(a) These vulnerable groups of women do not feel safe in making complaints to authorities on any discrimination, abuse or violence against them. In most instances, it has been those law enforcers or decision makers that have been perpetrators. Statistics indicate very low numbers in prosecution in comparison to the incidents reported to civil society members. The lack of access to law regulators, particularly the absence of Tamil women police officers exacerbates this problem as language barriers adds to their challenges. In addition, there is no transparent and accountable monitoring mechanism in place to measure whether recommendations/instructions are sufficient, their implementation and effectiveness to ensure the protection of women.

(b) The State has made some arrangements for WHH (women heads of households) like for example the FHH (Female headed household) Centre in Kilinochchi. However, the Centre was declared open in 2015 November by the Ministry of Women Affairs on a day of hartal (public protest for the disappeared) and a representative of the Ministry (Women Affairs) informed in March 2016 in a public meeting to have no proper staff to manage it. Thus far it is not clear as to the role of this Centre and there is lack of transparency and clear plan for other measures taken or to be taken by the State which appear to be ad hoc. Present statistics of the state indicate that one in every four households is FHH. However, there is no clear inclusive definition for WHH/FHH to include women whose husbands or main male members have or are died/missing/disappeared/enforced disappeared/ disabled/ separated/ divorced/ asylum seekers/migrated/abandoned. Lack of definition and un-categorised data leaves it to doubt as to who is included in the present data and if policies are formulated it is doubtful that they will be reflective of the concerns of specific groups of WHH/FHH and whether categories of FHH/WHH will be marginalised.

Recommendations to the State

-Put in place a monitoring mechanism to ensure that the instructions issued by the President in 2016 to the security forces and the Inspector General of Police on the prohibition of SGBV, torture, rape and other human rights violations are adhered to.

-Develop a rights-based (civil, political, socio-economic and cultural rights) and inclusive national policy on women heads of households that recognises their heterogeneous character and the diverse conditions of such households. Ensure fullest participation of women heads of households in policy and plan and build in an accountable monitoring mechanism to oversee implementation.

-Provide for quota or law promoting political representation of WHH/FHH in all levels

(CEDAW/C/LKA/Q/8, para.7.)

The data from the State available on SGBV to the public is not categorised according vulnerable groups of women. Fear and intimidation, lack of Tamil police officers at police desks, militarisation of the North and East and the culture of impunity that exists prevents women from making formal complaints of SGBV. In addition to that out of the total formal complaints made to authorities many continue to pend both at the investigative level and prosecution level with very low numbers of convictions actually being reached. Cases drag on for long periods of time with multiple hearings without recourse to the victims providing greater chances for intimidation and re-victimisation. Furthermore, the normalisation of the use of PTA to investigate offences not related to those stipulated in the Act, such as in the case of Vithya Sivaloganathan is worrying and should be stopped immediately.

The Government of Sri Lanka has presently drafted SGBV policy and National Action Plan to address this concern. However, the drafted plan lacks focus on developing and increasing access to justice of marginalised and vulnerable women. The plan also does not address the issue of backlog of cases still

pending at investigation, lacks plan and vision to include long term medical, psycho-social, recovery, and rehabilitative support for victims and survivors of violence and fails to prioritise or bring special measures of the State for the protection of women, particularly vulnerable women.

Recommendations to the State

-Ensure prompt and impartial investigation, prosecution, and punishment of those who are accused of rape and sexual abuse of women and girls by:

Appointing a special team to expedite cases that are pending in the Attorney General's Department and expedite investigations by prioritizing SGBV cases and appointing a special unit for that purpose;

Increasing women's desks in police stations and ensure that Tamil-speaking women and women translators are available at all police stations in Tamil-speaking areas and are always present when women are being questioned or photographed or house visits are made by the police.

Issuing guidelines to state entities that adopt zero tolerance for sexual exploitation and/or sexual bribery of women by state officers and investigate, prosecute, and punish all cases of sexual bribery or harassment/abuse by government employees; end the process of merely transferring abusive government employees rather than investing and punishing them; and,

Providing short term and long-term medical, psycho-social, recovery, and rehabilitative support for victims and survivors of violence

-Demilitarize the north and east, especially by removing troops and camps, ending the military footprint in governance and economic areas, release military occupied lands and redistribute military controlled common lands and farms in ways that benefit women;

(CEDAW/C/LKA/Q/8, para.8.)

There lies a clear linkage between the human poverty index of the districts and prevalence of marginalised and vulnerable women's groups. Women are vulnerable to sexual bribery and exploitation in the post-war structures, particularly marginalized women such as FHH and female ex-cadres. There here have been a growing number of conflict affected women voluntarily or involuntarily heading families. They have been left to fend for themselves and their children and to assume multiple roles as breadwinners and caregivers. Militarization (particularly in the North and East) and the paralyzed law and order situation has not only impacted women's security in general but also placed obstacles on northern women's access to land, housing, and other resettlement assistances in the post-war context. They need to rely on assistance to resume their livelihoods in subsistence cultivation, animal husbandry, small businesses and cottage industries or the informal workforce. These women do not have access to resources and markets and get entangled in debt traps with the impossibility of ever overcoming them. Poverty and cultural marginalisation prevents these women from accessing basic social and economic services.

Recommendations to the State

-Ensure universal access to social security for all women, especially women heads of households, those with disabilities, ex-combatants, the landless and other vulnerable groups of women and that the proposed reforms of the welfare system are rights-based and expand access to social security in terms of coverage and depth.

-Ensure equal access of all women to housing and land, including by amending the Land Development Ordinance that restricts the right to inheritance of women and girls;

-Recognize the full range of economic, cultural, civil, political and social rights in the new Constitution

-Ensure viable and sustainable livelihood support to women in the North and East in a manner that does not enhance indebtedness and is provided according to broader development approach that is empowering and subject to periodic assessment.

(CEDAW/C/LKA/Q/8, para.9.)

There is continuation of intimidation and surveillance of ex-combatants and women from minority groups. The livelihood projects planned are not gender sensitive and lack the participation of female ex-combatants. There remains a huge vacuum in relation to policy and plan concerning women's security.

Recommendations to the State

- Eliminate all surveillance of rehabilitated ex-female cadres and help them access preferred and sustainable livelihoods.
- Reintegration of female ex-cadre and provide continuous support to them through the government civil structures like women development officers
- There must be a reparation program that are specially designed for female Ex Cadres who were injured in the war. Such reparation programmes should provide a proper shelters equipped with medical care for the disabled female ex- cadres who are living alone, are dependents and required to be constantly under medical care.

6. National Machinery for the Advancement of Women (CEDAW/C/LKA/Q/8, para.10.)

The Gender Machinery of the State continues to be quite marginal in policy formulation at the national level. There is also insufficient policy continuance and coherence in the area of gender and women's rights interventions. For instance the The Plan of Action Supporting the Prevention of Domestic Violence Act of 2005 developed through an extensive and inclusive consultation process was not operationalized. In its place, the Ministry of Women and Child Affairs developed a Policy Framework and National Plan of Action to address Sexual and Gender Based Violence in 2016 parallel to a Task Force authorised by the Prime Minister to develop recommendations from the Leader of the Opposition's Commission on Violence against Women and the Girl Child. The recommendations of these two initiatives were not effectively integrated and the State has moved to develop a National Action Plan on Human Rights with a section on gender. In the meanwhile the Ministry of Sustainable Development and Wild Life has been tasked with operationalizing the 2030 Development Agenda with little input from the Ministry of Women and Child Affairs and insufficient coherence across the SDGs for gender aware policy development.

7. Gender-based violence against women

(CEDAW/C/LKA/Q/8, para.13.)

The Action Plan to combat gender-based violence against women—titled “Policy Framework and National Plan of Action to address Sexual and Gender-based Violence (SGBV) in Sri Lanka 2016-2020”, approved by the Cabinet (June 2016) and launched (November 2016) is silent on violence perpetrated against LBT persons and does not address grave violence perpetrated against commercial sex workers.

It therefore fails to put in place any measures that can protect them from such violence and intersecting forms of discrimination.

Recommendations to the State

- Repeal or amend discriminatory laws that infringe on human rights of women, lesbian, bisexual and transgender (LBT) persons, including Sections 365, 365A and 399 of the Penal Code and the Vagrants Ordinance, irrespective of the Constitution reform process.

(CEDAW/C/LKA/Q/8, para.14.)

No substantive amendments have been proposed as yet to the Assistance to and Protection of Victims of Crime and Witnesses Act No. 04 of 2015, as referred to in the letter from State party to the Committee dated 16 October 2015, and as recommended by the United Nations High Commissioner for Human Rights (A/HRC/30/61, para. 91(3)(k)).

Despite the enactment of the Prevention of Domestic Violence Act of 2005 (PDVA) the first State operated shelter for women affected by domestic violence was only set up in 2012. The present government has established two shelters, one devoted to survivors of trafficking and other for survivors of violence. However there does not seem to be awareness of shelters or a formalized referral system that courts can follow. The Plan of Action Supporting the PDVA_which was finalized in consultation with representatives from line Ministries, the Police Department, multilateral agencies and NGOs, intended to complement and strengthen education and training programs, services, and infrastructure provided by various agencies and institutions, was never operationalized and therefore these aspects critical for prevention of domestic violence remain critically unaddressed or under-addressed.¹⁰

(CEDAW/C/LKA/Q/8, para.15.)

The act of sexual intercourse without the consent of the wife is not criminalized and judicial acknowledgement of separation is still required for prosecution of marital rape under the Penal Code. This amendment, introduced in 1995, 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. Despite the recommendation of the Prime Minister's Task Force on Prevention of Violence against Women and the Girl Child in its Action Plan of January 2016¹¹ that marital rape be recognised as an offence and an undertaking that the recommendations of the Task Force would be incorporated in the 'National Action Plan Policy Framework and National Plan of Action to address Sexual and Gender-based Violence (SGBV) in Sri Lanka 2016-2020', this was not done. And there are no legal or policy related activities proposed to recognize marital rape as an offence.

¹⁰ *Report of the Leader of the Opposition's Commission on the Prevention of Violence against Women and the Girl Child*. Commission on the Prevention of Violence Against Women and Girls, Sri Lanka. (2015). Accessed at <http://www.childwomenmin.gov.lk/English/downloads/reports>

¹¹ *Action Plan based on Recommendations of the Leader of the Opposition's Commission on Violence against Women and the Girl Child*. Task Force on Prevention of Violence against Women and the Girl Child, Sri Lanka. (2016).

(CEDAW/C/LKA/Q/8, para.16.)

The State often fails to take measures to prevent, investigate and punish any violations of the principles enshrined in CEDAW vis-a-vis LBT persons. The continued criminalization of same-sex relations between consenting adults reinforces such discrimination and prevents equal treatment guaranteed by the Constitution of Sri Lanka, despite claims to the contrary by the Sri Lankan State in its 8th Periodic Report to CEDAW. The State report is also silent on the discrimination suffered by LBT persons and on the lack of legal protection available to them, indicating that they are among the most marginalised and invisible groups in society. In addition to facing direct discrimination, lesbian, bisexual and transgender (LBT) persons are rarely recognised in policy formulation or legal reform in many key areas such as employment, housing, health services, representation in decision making processes, and access to justice.

There are currently two action plans on addressing questions of gender based violence.

1) Action plan prepared by the Prime Minister's Task Force on Violence against Women based on the recommendations of the Leader of the Opposition's Commission on Violence against Women and the Girl Child which was handed over to the Prime Minister on 23rd April 2016.

2) Policy framework and National Plan of Action to address Sexual and Gender based violence in Sri Lanka 2016-2020 released on 16 November 2016.

The Action Plan prepared by the PM's Task Force is organised around the following themes:

- Law and Policy Reform to ensure Substantive Equality and Non-Discrimination
- A Gender Sensitive Justice System which Ensures Protection of Rights of Victims and Accountability of Perpetrators
- Strengthened Responses, Sensitization, Awareness and Education on Violence against Women
- Facilities for the Protection and Support of Survivors of Violence against Women
- Initiatives on Rehabilitation of Perpetrators

Recommendations to the State

Synchronize these two action plans and prioritize recommendations in a time bound manner. In our view the PM's Task Force recommendations are more focused and provides a basis for a holistic and coordinated response, avoiding the ad hoc and often duplicated interventions that have failed to impact in the past.

8. Trafficking and exploitation of prostitution (CEDAW/C/LKA/Q/8, para.17.)

Sex workers operating on the street, in massage parlours and spas continue to be targeted for arrest under the Vagrants Ordinance and Brothels Ordinance, and though clients are present, only women are arrested. In addition, sex workers continue to be arrested if they are in possession of condoms. Sex workers including transgender persons are particularly vulnerable to police violence and exploitation and the abuse of the Vagrants Ordinance and Brothels Ordinance. Sri Lankan Anti-Trafficking law conflates trafficking for sex exploitation and sex work, denying sex workers the right to choose this trade, and invoke the protection of the law in cases of violence and exploitation. Anti-trafficking laws are also used to harass sex workers when they travel overseas.

The “Policy Framework and National Plan of Action to address Sexual and Gender-based Violence (SGBV) in Sri Lanka 2016-2020” does not discuss sexual and gender based violence against sex workers but proposes several activities under a focus area to prevent commercial sexual exploitation and trafficking of children (p. 30).

9. Participation in public and political life and in decision-making (CEDAW/C/LKA/Q/8, para.18.)

Women continue to be underrepresented and disadvantaged due to historic discrimination in the area of representative politics in Parliament (>6%), Provincial Councils (<4%) and Local Authorities (<2%). As admitted in the State Party report to CEDAW no temporary measures have been introduced (except at the level of Local Authorities) to redress this underrepresentation (CEDAW/C/LKA/CO/7, para. 24) and no promised ‘interventions into national policy’ have been introduced to accelerate the achievement of substantive equality between women and men in the specific sectors’ related to decision making level is political institutions including political parties. Making its report in 2016 on Constitutional Reform, the Public Representations Committee on Electoral Reforms noted that “There were resounding calls for special measures to ensure greater representation of women in political bodies and all other decision making bodies.” Women’s groups making submissions on Constitutional Reform asked for affirmative action to deal with discrimination broadly but also historic discrimination with regard to women's representation in politics at all levels and also called for electoral reform more broadly. Women felt there must be state responsibility for affirmative action and that such action cannot be considered discretionary. They felt very strongly that there must be state obligation to correct past discrimination and that an entrenched clause must be included in the new constitution. Proposing a Mixed Electoral system of both first past the post (FPP) and proportional representation, the PRCCR recommended that “women should account for at least one third of the total candidates nominated to contest FPP seats from each party under the majoritarian system and under the proportional representation system, there should be a closed zippered list, alternating between male and female candidates.

In the meanwhile a mixed electoral system has now been legislated for by the Local Authorities Election Amendment Act No.22 of 2012 for local council elections and a further amendment, the Local Authorities Election Amendment Act No.1 of 2016 will allow for the appointment of 25% women to Local Authorities in order of priority from a closed list of women. This will increase the number of women in Local Authorities from under 100 to approximately 2200 if elections are held under the new

system. While we welcome this as an affirmative measure women's groups and women within political parties are also asking that their right to contest elections is protected and that women are guaranteed equitable nominations to contest for FPP seats as well.

Recommendations to the State

- Provide for temporary special measures to ensure a minimum of 25% representation of women in all legislative bodies and government agencies with decision making responsibilities.
- Ensure affirmative action which ensures women's participation in decision making bodies in the private sector.
- Affirmative action which ensures women's participation in all measures and mechanisms connected with transitional justice.

10. Migrant Women (CEDAW/C/LKA/Q/8, para.22.)

Bilateral agreements and MoUs

Bilateral agreements and MoUs between Sri Lanka and host countries are important to ensuring protection of rights, work conditions and social security benefits for migrant workers. However present MoUs mention nothing about protections provided to women migrant workers except protections and rights provided for under existing labour laws of the destination countries.

Bilateral agreements have in general dealt with reducing illegal migration (Italy); MOUs have dealt with hiring of labour under employment permit systems (Korea); regulation of employment process (Malaysia); supervision of employment contracts (Jordan). More specific worker centred MOUs have been signed with the UAE dealing with delays in remuneration and options to change places of employment and Bahrain for health and insurance coverage. Mechanisms to guarantee protections, and assistance given to migrant women seeking redress for exploitation, gender-based violence and abuse perpetrated by their employers remains extremely poor and need to be strengthened.

There is no timeline for the adoption into law of the draft Employment Migration Authority Act, which provides, in article 74, a gender-neutral requirement for Sri Lankans migrating for work to inform the Divisional Secretary about any child under 6 years that they will be leaving behind in Sri Lanka, and to register a guardian for such a child. (A/HRC/29/36/Add.1, para. 67).

Family Background Report

While a Cabinet of Ministers Sub-Committee has been appointed to re-assess the discriminatory practice of the "family background report" for women seeking employment as migrant domestic workers, the Ministry of Foreign Employment Promotion and Welfare circular relating to this matter has not been withdrawn.

The continuation of this practice violates the women's right to non-discrimination on the basis of sex, parental status, and age, and to freedom of movement.

The experience of women's groups at community level indicates that there are differences in the implementation of the FBR due to ambiguous instructions. It's has been temporarily suspended in some districts (Hatton, Nuwara Eliya District)¹². In other areas, the FBR has been denied to women with teenage daughters or to women with differently abled children. Women are also at the mercy of the Development Officer for Foreign Employment (DOs-FE) tasked with approving the document who thereby exerts unfettered discretion and authority in determining if women get to migrate or not. The practice of the FBR has also provoked irregular migration increasing the vulnerabilities of women migrant workers. In addition, while the DOs-FE was initially appointed to provide guidance and counselling to migrant workers and their families at a decentralized level, their time is now predominantly consumed with the approval of the FBR for potential women migrant workers leading to reports of increased corruption.¹³

11. Employment (CEDAW/C/LKA/Q/8, para.19.)

There has been little progress made in reducing the concentration of women in low-skilled and low-paid jobs. The Department of Census and Statistics (DCS) indicates that in 2015 women comprised 51.8% of Clerical and Clerical Support Workers and 37.1% of those in Elementary Occupations. The Unemployment rate for women has increased from 6.3 in 2013 to 7.2 in 2015. Women's low labour force participation rates are low, below 36.0 for more than a decade, due to the burden of unpaid care work. In 2015 the DCS shows that 61.4% of 5.2 million women categorised as Economically Inactive are engaged in housework, compared to 5.9% out of 1.7 million men who are Economically Inactive.

No formal provisions have been introduced to provide social protection such as paid maternity leave, pensions or unemployment insurance to women working in the informal sector. A National Action Plan on Female Headed Households prepared by the Ministry of Women and Child Affairs; its implementation is yet to be comprehensive and no assessments have been carried out on its effectiveness at this stage. The government has not indicated that it would sign and ratify the ILO Domestic Workers Convention 189, despite much focus on the thousands of Sri Lankan women migrants who are employed as domestic workers overseas.

Recommendations to the State

- Sign and Ratify ILO Convention 189 on Domestic Workers.
- Include Housework as a category of labour in national statistics

¹² As at July, 2016

¹³ Concluding Observations of the Committee on Migrant Workers, reviewing Sri Lanka 2nd periodic report on 08 September 2016 (CMW/C/LKA/CO/2.para 24.)

12. Rural Women (CEDAW/C/LKA/Q/8, para.21.)

There have been several fora on amending the Land Development Ordinance over the last 15 years; however, amendments are yet to be made. The main rural development programmes as well as the Ministry of Women and Child Affairs have introduced a number of micro-credit and income generation schemes that include female headed households. The impact of these programmes need to be comprehensively assessed, given research findings in Sri Lanka and elsewhere that short term micro-credit schemes are likely to increase rather than alleviate poverty.

Recommendations to the State

- That the State be asked to comprehensively review effectiveness of micro-credit schemes that increase indebtedness of women.

13. Health (CEDAW/C/LKA/Q/8, para.22.)

Ensuring the right to equitable and quality healthcare for all women needs strengthening of the service infrastructure for delivery of Maternal and Child Health/Family planning (MCH/FP) care, in particular, domiciliary care accessed by women, and strategizing to deliver culturally sensitive targeted interventions to reduce the regional and sectoral disparities that mostly affect the vulnerable, marginalised, and internally displaced women living in economically underperforming and post conflict areas, and the estate sector. Reducing risk factors for non-communicable diseases, and breast and cervical cancer among women requires insights on why women are underutilising preventive screening facilities provided at Well Woman clinics (WWCs)¹⁴, and awareness programmes that inform on their health risks and benefits of preventive screening. Consent from an adult (parents /guardians) is not explicitly required to provide reproductive health (RH) information to adolescents, although the content and delivery is required to be 'culturally appropriate'.^{15, 16}

The draft bill on liberalizing the current law on abortion continues to include as exception, the termination of pregnancy for therapeutic reasons; has further recommended the expansion of exception to include rape and congenital abnormalities in the foetus, but not incest. The State continues to address the need for safe and therapeutic abortion services for women by providing an alternative of quality post-abortion care and promoting the greater uptake of modern contraceptive methods among women.

Recommendations to the State

1. Strengthen maternal and child health/family planning service delivery by identifying and addressing inadequacies in service infrastructures
2. Allocate funds for a national level survey on determinants of utilization of Well Woman Clinic services.

¹⁴ Annual Report on Family Health Sri Lanka 2012. Family Health Bureau.

¹⁵ National Strategic Plan on Adolescent Health 2013-2017 Family Health Bureau Ministry of Health

¹⁶ National Youth Policy 2014.