

Schnellrecherche der SFH-Länderanalyse vom 13. Oktober 2017 zu Sri Lanka: Häusliche Gewalt gegen tamilische Frauen im Nordosten des Landes

Fragen an die SFH-Länderanalyse:

- Gewährt der Staat tamilischen Frauen, die im Nordosten des Landes von häuslicher Gewalt betroffen sind, Schutz?

Die Informationen beruhen auf einer zeitlich begrenzten Recherche (Schnellrecherche) in öffentlich zugänglichen Dokumenten, die uns derzeit zur Verfügung stehen.

1 Zugang zu staatlichem Schutz und Strafverfolgung

1.1 Verbreitung

Gewalt gegen Frauen, darunter auch häusliche Gewalt, ist weiterhin ein ernsthaftes und weitverbreitetes Problem in Sri Lanka. Eine Vielzahl von Quellen (CEDAW, CESCR, ECOSOC, *Equal Ground et al.*, *Freedom House*, ICG, USDOS; alle 2017) geben an, dass häusliche und weitere Formen der Gewalt gegen Frauen weiterhin ein ernstes und weit verbreitetes Problem in Sri Lanka ist. Gemäss Bericht des *Staatssekretariats für Migration (SEM)* aus dem Jahr 2014 gehören Vergewaltigungen in der Ehe zum Alltag vieler Ehefrauen in Sri Lanka.

Norden und Osten besonders prekäre Gebiete bezüglich häuslicher Gewalt gegen Frauen. Verschiedene Quellen (CEDAW, ICG, *UN Human Rights Council – Special Rapporteur on minority issues*; alle 2017; WAN, 2016) betonen, dass die vom Konflikt beeinträchtigten Gebiete im Norden und Osten besonders von einem Klima der Straflosigkeit und Unsicherheit für Frauen betroffen seien. Häusliche und sexuelle Gewalt sind laut *International Crisis Group (ICG)* vom Juli 2017 in ganz Sri Lanka ein Problem, aber im Norden und Osten sei die Verbreitung noch grösser. Das aus acht im Norden und Osten auf Gemeindeebene tätigen Organisationen bestehende *Women's Action Network (WAN)* berichtet im August 2016 ebenfalls von weit verbreiteter und zunehmender häuslicher Gewalt im Norden und Osten. Auch im Bericht des *UK Home Office* (März 2017) wird von einer Zunahme von Übergriffen berichtet. Von ICG interviewte im Norden und Osten tätige Aktivisten nehmen an, dass ihnen gemeldete Fälle nur die Spitze des Eisbergs sind. Gründe für die hohe Verbreitung sexueller Gewalt im Norden und Osten seien laut ICG der zurückliegende bewaffnete Konflikt und die andauernde Militarisierung, welche durch eine Kultur der Ausbeutung und Übergriffe, Einschüchterung und Furcht noch verstärkt werden.

1.2 Straflosigkeit

Familienrechtliche Belange werden teilweise durch Customary Law, respektive Personal Law geregelt. Die sri-lankische Rechtsprechung zu Familienrecht, inklusive Heirat, Scheidung, Sorgerecht und Erbschaft unterscheidet sich je nach dem *Custo-*



mary Law oder *Personal Law* der entsprechenden ethnischen oder religiösen Gemeinschaft und führt dadurch zu Diskriminierungen der Frauen in diesen Bereichen (USDOS, 2017). Für tamilische, ursprünglich aus Jaffna stammende, Personen kommt für die meisten mit der Ehe in Zusammenhang stehenden Belange das Zivilgesetz (*General Law*) zur Anwendung, während das traditionelle *Thesawalamai* die Aufteilung der Besitztümer regelt (USDOS, 2017). Ehefrauen werden so bei Erbschaften benachteiligt (*Ananthavinayagan*, 2016). Das für Angehörige der muslimischen Glaubensgemeinschaft relevante muslimische Heirats- und Scheidungsgesetz erlaubt die Heirat von 12-jährigen Mädchen, obwohl das Zivilgesetz das Mindestalter auf 18 Jahre festlegt (USDOS, 2017). Ebenfalls wird nach muslimischen *Personal Law* Vergewaltigung in der Ehe nicht anerkannt (AI, 2017).

Vergewaltigung in der Ehe ist nach Gesetz nicht strafbar. Laut verschiedenen Quellen (CEDAW, *Equal Ground et al.*, *Sunday Observer*, USDOS; alle 2017) ist in Sri Lanka Vergewaltigung in der Ehe nicht strafbar, ausser wenn die Ehepartner «rechtlich getrennt» («*legally separated*») wurden. Bei einer solchen sogenannten «*separation a mensa et thoro*» (Trennung von Tisch und Bett) bleibt das Ehepaar rechtlich verheiratet, wird aber auf richterliche Anordnung getrennt (*UK Home Office*, 2012; *The Island*, 2010). Nach aktuellen Angaben des Artikels des *Sunday Observer* vom August 2017 haben sri-lankische Gesetzgeber beschlossen, dass Vergewaltigung in der Ehe weiterhin nicht kriminalisiert werde. Der Bericht von *Equal Ground et al.* (2017) gibt ebenfalls an, dass im *National Action Plan Policy Framework and National Plan of Action to address Sexual and Gender-based Violence in Sri Lanka 2016-2020* keine Kriminalisierung einer solchen Tat vorgesehen ist. Der Artikel des *Sunday Observer* vom 20. August 2017 hebt hervor, dass Vergewaltigungen in der Ehe von Behörden als häusliche Gewalt behandelt werden, welche zwischen den Ehepartnern mittels Beratungen «gelöst» werden könne. Im sri-lankischen Kontext sei Sex ein Tabuthema und Vergewaltigungen in der Ehe würden im Rechtssystem als private Angelegenheit behandelt.

«Rechtliche Trennung». Zulässige Gründe für eine Scheidung können laut *UK Home Office* (2012) Ehebruch, «böswilliges Verlassen» (*malicious desertion*) sowie unheilbare Impotenz zum Zeitpunkt der Heirat sein. Scheidungsverfahren dauern durchschnittlich drei bis vier Jahre, teilweise aber auch bis zu zwölf Jahre. Eine Scheidung ist zudem nur möglich mit der Zustimmung beider Ehepartner (WAN, 2016). Grausamkeit und Misshandlungen alleine sind dagegen keine gesetzlichen Scheidungsgründe, können aber als Grund für die obengenannte «rechtliche Trennung» («*separation a mensa et thoro*») aufgeführt werden (*UK Home Office*, 2012). Nach zwei Jahren «rechtlicher Trennung» kann die Scheidung eingereicht werden (Ekanayaka, 2016). Nach Einschätzung des Artikels des *Sunday Observer* vom 20. August 2017 sind die obengenannten «gerichtlichen Trennungen» in der sri-lankischen Gesellschaft aber unüblich. Auch das *Staatssekretariat für Migration* (SEM) weist in einem Bericht aus dem Jahr 2014 darauf hin, dass Frauen in Sri Lanka nur sehr selten gerichtliche Verfahren anstrengen, wenn ihre Ehe gescheitert ist. Frauen, die getrennt von ihrem gewalttätigen Ehemann lebten, würden sich meistens bei ihren Eltern verstecken, und sich nur an die Behörden wenden, um eine Scheidung zu erreichen (*Sunday Observer*, 2017).

Inkonsistente Umsetzung von Bestimmungen zu häuslicher Gewalt und Vergewaltigungen, patriarchalische Haltung von Polizeibeamten, ungenügender Opferschutz durch Justiz und Polizei. Das *US Department of State* (USDOS, 2017) stellt fest, dass Vergewaltigung (ausserhalb der Ehe) und häusliche Gewalt zwar gesetzlich verboten seien, die Umsetzung der Bestimmungen jedoch inkonsistent sei. Laut SEM (2014) werden häusliche Gewaltakte nicht als Straftaten angesehen, können aber nach Strafgesetz als Körperverletzung geahndet werden. Im Gesetz zu häuslicher Gewalt sind zwar Schutzanordnungen für die Opfer mit einer Dauer von bis zu einem Jahr vorgesehen (*Equal Ground et al.*, USDOS; alle 2017). Diese werden aber laut verschiedener Quellen (*Equal Ground et al.*, 2017; WAN, 2016) jedoch selten oder nur in ungenügender Weise angewendet. So würde die Polizei es meist vorziehen, Ehepartner miteinander zu «versöhnen» (*Equal Ground et al.*, 2017; *UK Home Office*, März 2017). Im Artikel des *Sunday Observer* (2017) wird ebenfalls erwähnt, dass Polizeikräfte von Vergewaltigung in der Ehe betroffene Frauen anweisen, dass sie gute Ehefrauen sein und zu ihren Ehemännern und Schwiegereltern zurückkehren sollen. Auch Gerichte, Anwälte und Beratungsdienste streben laut eines gemeinsamen Berichts verschiedener sri-lankischer NGOs (*Equal Ground et al.*) vom April 2017 an, die Familie zusammenzuhalten, wodurch betroffene Frauen einem erheblichen Risiko weiterer häuslicher Gewalt ausgesetzt werden. Mehrere Quellen (CEDAW, ICG; alle 2017) weisen darauf hin, dass der Zugang betroffener Frauen zur Justiz auch deshalb eingeschränkt ist, weil sie Vergeltung durch Täter befürchten müssen. Zudem haben die gewaltbetroffenen Frauen kaum Vertrauen in Polizei und Justiz (CEDAW, 2017). Die auf Gewalt gegen Frauen spezialisierte NGO *Women in Need* gab im Juli 2016 während einer *Fact-Finding-Mission* des *UK Home Office* an, dass die Polizei nicht die Unterstützung biete, welche Betroffene benötigen. Verschiedene von *UK Home Office* befragte NGOs geben an, dass der Schutz durch die Polizei ungenügend ist und diese manchmal sogar die Täter unterstützen würde (*UK Home Office*, März 2017). Nach Angaben von WAN (2016) führen die voreingenommene Haltung der Polizeibeamten dazu, dass Anzeigen von betroffenen Frauen nicht ernst genommen oder abgewiesen werden. Von *UK Home Office* (März 2017) befragte, im Norden tätige Gruppierungen gaben an, dass die Polizei gewalttätige Ehemänner und Täter nach einem Übergriff festnehmen und für einige Tage oder Wochen inhaftieren würden. Dann würde der Täter aber entweder mit oder ohne Kautionsbonds oder teilweise aufgrund von Bestechungen freigelassen. WAN (2016) berichtet ebenfalls, dass Polizei von gewalttätigen Ehemännern oft Bestechungsgelder annehme und diese freilasse, ohne die von Gewalt betroffenen Frauen zu informieren. Schliesslich werde die Polizei auch durch Dritte, wie Politiker oder einflussreiche Personen, die den Täter kennen, beeinflusst. Unter diesem Einfluss setze die Polizei die Frauen unter Druck, eine Anzeige fallenzulassen.

Willkürliche Reaktion des Polizei-Notrufs in Notfällen. Nach Angaben von WAN (2016) vorliegenden Berichten, ist an vielen Orten im Norden und Osten die Notfallnummer der Polizei für von Gewalt betroffene tamilische Frauen nicht zuverlässig. Anrufe an die Nummer 119 wurden so teilweise nicht oder nur nach langer Zeit (rund 45 Minuten) beantwortet. Oft seien zudem nur singhalesisch-sprachige Personen erreichbar. Schliesslich würde die Polizei oft die Hilfe verweigern. Nach Angaben von Frauenaktivistinnen in Vavuniya erscheine die Polizei nur in einem von fünf Fällen.

Patriarchale Strukturen und Stigmatisierung der Opfer begünstigen Straflosigkeit und verhindern Anzeigen zu häuslicher Gewalt und Vergewaltigungen. Laut des *UN Committee on the Elimination of Discrimination Against Women* (CEDAW, 2017) herrschen in Sri Lanka patriarchale Strukturen und diskriminierende Stereotypen vor, welche eine Kultur der Straflosigkeit für Gewalt gegen Frauen billigt. Vergewaltigung wird laut Bericht des *Staatssekretariats für Migration* (SEM) aus dem Jahr 2014 als das Recht des Ehemanns angesehen. Diese Übergriffe werden von den Betroffenen kaum gemeldet (SEM, 2014). Auch weitere Quellen (CEDAW, ICG; beide 2017) geben an, dass von Gewalt betroffene Frauen Übergriffe nicht melden und es eine Dunkelziffer gibt. In einem Artikel vom 20. August 2017 in der sri-lankischen Zeitung *Sunday Observer* wird erwähnt, dass Frauen erlittene Gewalt unter anderem nicht melden, weil sie soziale Stigmatisierung, Ablehnung durch Gemeinde und Familie sowie negative Haltung und Schikane durch Polizeikräfte befürchten und Angst haben, ihre Kinder zu verlieren. Betroffene Frauen würden sich aufgrund des gesetzlichen und gesellschaftlichen Klimas dazu entscheiden, die Übergriffe nicht zu melden (*Sunday Observer*, 20. August 2017). Laut Einschätzung der *Legal Aid Commission* von Mullaitivu werden rund 75 Prozent der Fälle häuslicher Gewalt nicht gemeldet, weil kulturelle Faktoren dies verhinderten (UNFPA, 2016). WAN (2016) betont, dass kulturelle Stigmas rund um häusliche Gewalt und sowie die starke Bedeutung der Ehe verhinderten, dass Frauen Übergriffe meldeten. Frauen würden Gewalt tolerieren und gehen nur in extremen Fällen zur Polizei. Von Gewalt betroffene Frauen, die Anzeige erstattet haben, werden von Familie und Verwandten unter Druck gesetzt, diese zurückzuziehen.

Wirtschaftliche Abhängigkeit der Ehefrauen verhindern Anzeigen zu häuslicher Gewalt. Das SEM (2014) erwähnt zudem, dass die starke wirtschaftliche Abhängigkeit der meisten sri-lankischen Frauen von ihrem Ehemann verhindere, dass sie in irgendeiner Weise gegen ihren gewalttätigen Ehemann vorgehen können. Im Norden und Osten ist die wirtschaftliche Situation besonders schwierig. Deshalb sind Frauen in diesem Gebiet besonders verletzlich gegenüber sexueller Ausbeutung durch Familienmitglieder und weiteren Personen (*UN Human Rights Council – Special Rapporteur on Minority Issues*, 2017).

Weiterhin strukturelle Probleme beim Zugang zur Polizei. Der Bericht des SEM (2016) weist zwar darauf hin, dass mittlerweile landesweit rund 36 Büros spezielle Büros für Kinder und Frauen (*Children & Women Bureau - CWBSLP*) eingerichtet wurden, in welchen auch weibliche Polizeibeamte Anzeigen und Beschwerden entgegennehmen. Betroffene Frauen in Jaffna würden aber trotz Präsenz eines solchen Büros zögern, Anzeige zu erstatten (SEM, 2016). USDOS (2017) weist darauf hin, dass Polizeistationen in der Theorie eigentlich eine spezifisch dafür verantwortliche Polizeikraft haben sollten, die Anzeigen zu Gewalt gegen Frauen und Kinder entgegennimmt. Dies ist laut derselben Quelle in der Praxis aber nicht überall in Sri Lanka der Fall. Die NGO *Women in Need* in Jaffna gab im Juli 2016 gegenüber der *Fact-Finding-Mission* des *UK Home Office* an, dass die Situation sich durch die Präsenz von weiblichen Polizeibeamten in Polizeistationen verbessert habe. Allerdings gebe es Polizeistationen mit nur einer weiblichen Beamtin, die zudem noch andere Aufgaben als Fälle häuslicher Gewalt habe. Ausserdem ergreife die Polizei nach Einschätzung der NGO bei Fällen häuslicher Gewalt oft stärker Partei für Männer anstelle der Frauen. Nach im Juli 2016 gemachten Angaben einer *internationalen* NGO gibt es im

Norden weiterhin zu wenig weibliche Polizeikräfte (UK Home Office, März 2017). Auch im Artikel des *Sunday Observer* (2017) und im Bericht vom SEM (2014) wird darauf hingewiesen, dass von häuslicher Gewalt betroffene Frauen in Polizeistationen mehrheitlich männlichen Polizeikräften gegenüberstehen. Deswegen können sie ihre Situation nicht angemessen darlegen und eine Anzeige einreichen (*Sunday Observer*, 2017; WAN, 2016). Der *UN Population Fund* (UNFPA), die NGO *Women in Need*, eine internationale NGO sowie das *Women's Action Network* erwähnen, dass für tamilische Betroffene auch im Norden und Osten auf den mehrheitlich singhalesisch-sprachigen Polizeistationen Sprachbarrieren existieren (UK Home Office, März 2017; UNFPA, WAN; beide 2016). Tamilisch-sprachige weibliche Polizistinnen gibt es laut WAN (2016) zudem nur wenige. Laut SEM (2016) erstatten Betroffene im Norden wegen der Sprachbarriere oft keine Anzeige. Zudem gehen laut *Women in Need* relevante Aussagen bei Übersetzungen verloren (UK Home Office, März 2017). WAN (2016) führt so aus, dass die mehrheitlich männlichen Übersetzer oft selber patriarchalische Einstellungen hätten und dies in ihre Übersetzungen einflüsse, die oft den Täter begünstigten. Nach Angaben des SEM (2014) stehen den mehrheitlich singhalesisch-sprachig besetzten Polizeistationen im Norden zudem nur selten Übersetzungsdienste zur Verfügung.

Problematische Verfahren führen dazu, dass Opfer Klagen oft zurückziehen. In Fällen häuslicher Gewalt müssen Betroffene als Vorbedingung zu einem Gerichtsfall zunächst an einer Mediation teilnehmen. Diese resultiere darin, dass die Frauen ihre Klage aufgrund von Einschüchterungen zurückziehen würden (CEDAW, 2017; WAN, 2016). Gerichtsverfahren berücksichtigen laut ICG nicht geschlechtsspezifische Belange. So stellen die sich wiederholenden Kreuzverhöre und der Zwang, die Vergewaltigung durch den Täter vor männlichen Staatsanwälten zu schildern, für Betroffene laut Artikel des *Sunday Observer* (2017) eine grosse Belastung und psychische Qual dar. Starre Regeln während der Gerichtsverfahren können schliesslich dazu führen, dass zum Nachteil der betroffenen Frauen wesentliche Punkte nicht behandelt werden (WAN, 2016). Schliesslich spielten laut verschiedenen Quellen (UNFPA, WAN; beide 2016) nicht gewährleistete Vertraulichkeit und ungenügender Datenschutz der Behörden und Gerichte eine wesentliche Rolle, dass Opfer Übergriffe nicht melden würden. Laut verschiedenen Quellen (CEDAW, *Equal Ground et al.*, ICG; alle 2017; UK Home Office, März 2017; WAN, 2016) kommt es bei Ermittlungen und Gerichtsverfahren zu Fällen von Gewalt gegen Frauen zudem zu teilweise extremen zeitlichen Verzögerungen. Verfahren werden in Sri Lanka nicht an aufeinanderfolgenden Tagen durchgeführt, wodurch geringfügigste Ursachen wie Krankheit eines Teilnehmenden oder Verkehrsstaus eine Verschiebung einer Anhörung um Monate bedeuten kann. Ein *UN Senior Human Rights Advisor* schildert so einen Fall, der erst nach 14 Jahren zu einer Verurteilung geführt habe. Das Opfer sei dabei jahrelang stark von der katholischen Kirche unterstützt worden, welche diesem spezifischen Fall spezielle Bedeutung zuordnete. Opfer ohne eine solch starke Unterstützung würden auch in Anbetracht der damit einhergehenden Stigmatisierung kaum fähig sein, so lange einen Fall zu führen (UK Home Office, März 2017). Auch das SEM (2016) erwähnt, dass die jahrelangen Verzögerungen dazu führen, dass Betroffene keine Anzeige einreichen. Schliesslich besteht laut WAN (2016) ein hohes Risiko für die Betroffenen, im Zeitraum zwischen Anzeige und Gerichtsverfahren weiterer Gewalt durch den angezeigten Täter ausgesetzt zu werden. Die Verzögerungen, die konfliktgeladene Herangehensweise der Anwälte während der Gerichtsverfahren («*adversarial approach of lawyers*») sowie die

soziale Stigmatisierung führen laut ICG in kombinierter Weise zu einer Re-Traumatisierung vieler Opfer und halten Betroffene davon ab, Täter anzuzeigen (CEDAW, 2017).

Weit verbreitete Straflosigkeit oder zu milde Strafen bei Vergewaltigungen und häuslicher Gewalt gegen Frauen. Opfer von sexuellen und geschlechtsspezifischen Übergriffen erfahren laut Bericht der *International Crisis Group* (ICG) vom Juli 2017 nur selten Gerechtigkeit. So werden nur wenige Fälle strafverfolgt, insbesondere dann, wenn mutmassliche Täter für die Sicherheitskräfte tätig sind. Noch weniger Fälle würden zu einer Verurteilung führen. *Amnesty International* erwähnt in seinem Jahresbericht vom Februar 2017, dass in Sri Lanka Gewalt und Vergewaltigungen gegen Frauen und Mädchen weiterhin straflos bleiben. Dies sei sowohl bei Vergewaltigungen durch Militärpersonal als auch durch Zivilisten sowie bei häuslicher Gewalt und Vergewaltigung in der Ehe der Fall. Ein *UN Senior Human Rights Advisor* gab im Juli 2016 an, dass Straflosigkeit für Vergewaltigungen auch in Fällen, die nichts mit dem Konflikt zu tun haben, weit verbreitet sei (*UK Home Office*, März 2017). Schliesslich sei der Ausgang solcher Verfahren willkürlich und es gebe eine sehr tiefe Verurteilungsrate (CEDAW, 2017). Auch der Bericht von *Equal Ground et al.* (2017) betont, dass Täter in der Regel straflos bleiben. So seien laut Zahlen aus den Jahren 2007 bis 2013 nur in 20 bis 25 Prozent der gemeldeten Fälle von Vergewaltigungen Klage erhoben worden und es habe nur sehr wenige Verurteilungen gegeben. Wenn es zu Verurteilungen komme, seien diese durch ungenügende Strafen oder Strafen auf Bewährung abgeschwächt. So sei beispielsweise in einem Fall argumentiert worden, dass eine Bewährungsstrafe nötig sei, weil der Täter der einzige Brotverdiener der Familie sei. Zudem wird von CEDAW (2017) die fehlende systematische Datenerfassung zu Ermittlungen, Strafverfolgung, und Gerichtsurteilen zu Gewalt gegen Frauen kritisiert. Offizielle und aktuelle Daten zu Fällen, die unter das aus dem Jahr 2005 stammende Gesetz gegen häusliche Gewalt fallen, fehlen laut *Equal Ground et al.* (2017). Verfügbare Zahlen aus dem Jahr 2009 zeigen dass die *Children and Women Bureau Desks* in den Polizeistationen rund 90'000 Fälle von Familiendisputen, allerdings nur rund 55 Fälle, die unter das Gesetz gegen häusliche Gewalt fallen, meldeten.

Begrenzter Zugang zu Safe Houses und Unterstützungsdiensten. Das USDOS (2017) und eine im Juli 2016 interviewte *internationale NGO* (*UK Home Office*, März 2017) halten fest, dass Dienste zur Unterstützung für Betroffene von häuslicher Gewalt oder Vergewaltigung im ganzen Land knapp seien, da diese nur ungenügend finanziert werden. Zudem gibt es im Norden und im Osten eine sprachliche Barriere zwischen Dienstleistern und Betroffenen. Es fehlten genügend tamilisch-sprachige Unterstützungsdienste für die tamilischen Betroffenen (USDOS, 2017). Laut USDOS gibt es in Sri Lanka ein staatliches Frauenhaus (*Shelter*) für Opfer häuslicher Gewalt. In Spitälern würde zudem medizinische Hilfe für Betroffene geboten. Das *Committee on Economic, Social and Cultural Rights* (CESCR) hält im Bericht vom August 2017 fest, dass die Zahl der verfügbaren *Safe Houses* in Sri Lanka ungenügend sei. Laut verschiedenen, von *UK Home Office* (Juni 2017) zitierten Quellen gibt es nur ein einziges *Safe House* in Jaffna für Betroffene aus dem Norden und Osten. Laut der das *Safe House* betreibenden NGO sei ein Aufenthalt bis zu einem Jahr möglich (*UK Home Office*, 2017). Eine während einer *Fact-Finding-Mission* des *UK Home Office* im Juli 2016 befragte *Menschenrechtsorganisation in Jaffna* gab aber an, dass nach dem

dreimonatigen Aufenthalt in den sogenannten *Safe Houses* eine «Versöhnung» mit dem Täter angestrebt werde (UK Home Office, März 2017. Ein Bericht des *UN Population Fund* vom Oktober 2016 identifiziert schliesslich als Ergebnis eines lokalen *Stakeholder-Meeting* in Mullaitivu das Fehlen funktionierender *Safe Houses* für Frauen und Kinder als einen relevanten Faktor für die erhöhte Verletzlichkeit gegenüber häuslicher Gewalt.

Amnesty International, 2017:

«Impunity persisted for violence against women and girls, including rape by military personnel and civilians, and also in situations of domestic violence such as marital rape. Women human rights defenders supporting constitutional reforms advocated repeal of Article 16(1), which upheld laws existing prior to the current Constitution, even when they were inconsistent with the Constitution. This included tenets of Muslim personal law that permitted child marriage and failed to recognize marital rape.»

Quelle: Amnesty International, Amnesty International Report 2016/17 - Sri Lanka, 22. Februar 2017: www.refworld.org/docid/58b033b03.html.

Ananthavinayagan, 2016:

«Roman-Dutch Law now generally applies in Sri Lanka when statutes and indigenous laws do not regulate the issue in question. Roman-Dutch Law represents in Sri Lanka an inherited legal tradition. It has co-existed with several systems of indigenous laws, and the English common law, creating a “distinct legal culture that is described today as a ‘mixed’ civil and common law system.” Thus “Roman-Dutch law is often described in Anglo-American legal terminology as the ‘common law’ of Sri Lanka ... A system of law that applies in Sri Lanka when statutes and indigenous laws do not regulate any matter.” (...) Kandyan Law applies to ethnic Sinhalese whose can trace their lineage back to the Kandyan provinces during the period of the Kandyan monarchy in central Sri Lanka. (...) Kandyan Law that remains applicable to Kandyan Sinhala in present day Sri Lanka relates to marriage, divorce, and interstate succession. Kandyan Sinhala have the option of choosing to marry under the Marriage and Divorce (Kandyan) Act, or the General Marriage Ordinance. (...) **Thesavalamai Law is based on ancient customs of Jaffna Tamils in Sri Lanka. It applies to Tamil inhabitants of the Jaffna Peninsula in Northern Sri Lanka. This customary and personal law also applies to numerous Jaffna Tamils who no longer live in the Jaffna Peninsula. It is a commonly held belief among many in Sri Lanka that Thesavalamai applies only to Jaffna Tamils who reside in the Jaffna peninsula. The Supreme Court of Sri Lanka, however, ruled (...) that Thesavalamai is a personal law that applies to Jaffna Tamils wherever they live in the country, and that it applies also to their movable and immovable property, wherever it is situated in the country. The Supreme Court, overturning decisions of the lower courts, held that Thesavalamai would not apply to Jaffna Tamils only if there is “unequivocal evidence of abandonment of...inhabitanacy in Jaffna.” This Supreme Court ruling suggests that a Jaffna Tamil could live for decades in another part of the country and not lose “Jaffna inhabitanacy” if he or she, for instance, continues to own property in the Jaffna Peninsula, or even visits Jaffna on a somewhat regular basis. The ruling also indicates that each case must depend on its own facts. The only Thesavalamai laws that are now**

applicable to Jaffna Tamils relate to property and interstate succession resulting from marriage. (...) **In family law related issues, the Muslim Special Laws apply to all Muslims in Sri Lanka. When a Muslim marries another Muslim, the bride and the groom do not have the option of getting married under the General Law, unlike in the case of Kandyan Sinhala. Marriage, divorce and other related issues involving Muslims are governed by the Marriage and Divorce (Muslim) Act, no.13 of 1951, and any subsequent amendments. Issues related to interstate succession and donations, involving Muslims, are dealt with under the Muslim Interstate Succession Ordinance No.10 of 1931, and any subsequent amendments. There is awareness now that these personal and customary laws based on ancient customs discriminate against women. As the Supreme Court pointed out in Sivagnanalingam v. Suntheralingam, under Thesavalamai “the surviving spouse is not (automatically) an heir of the deceased’s estate.” The spouse, however, has preferential claim under certain circumstances. Also, under Muslim personal laws, for instance, “Although section 25 (1) (b) of the Muslim Marriage and Divorce Act states that the consent of the bride is essential to a marriage, in reality her presence is not required when the marriage contract is concluded between the father or guardian of the bride, and the groom. The consent of the bride is irrelevant to the conclusion of the marriage contract.”**» Quelle: Ananthavinayagan, Tamil Venthan, UPDATE: Sri Lanka: Legal Research and Legal System, GlobaLex, Oktober 2016: www.nyulawglobal.org/globalex/Sri_Lanka1.html.

CEDAW, 2017:

«Stereotypes and gender-based violence against women

22. The Committee **welcomes the strategies to eliminate stereotypes in the media, as included in the National Human Rights Action Plan (2017-2021) and the National Plan of Action for addressing Sexual and Gender Based Violence (2016-2020); High-level recommendations to criminalize marital rape in all circumstances where consent of a spouse is absent, regardless of the degree of violence it entails; and the proposed amendments to strengthen the Prevention of Domestic Violence Act, including by removing discriminatory provisions from the Evidence Ordinance on the credibility of women’s testimony. However, the Committee remains concerned at the persistence of patriarchal attitudes and discriminatory stereotypes that condone a culture of impunity for acts of sexual and gender based violence. It notes with concern: (a) The high prevalence of gender-based violence against women in the State party and that cases of violence against women are underreported due to a lack of adequate legislation, women’s limited access to justice for reasons including fear of reprisals, limited trust in the police and judiciary, extreme delays in the investigation and adjudication of such cases, arbitrary outcomes, and very low conviction rates; (b) That in cases of domestic violence, victims are required to participate in mediation as a requisite for pursuing a case in court, which results in women withdrawing their complaints due to intimidation; and, (c) The lack of systematic data collection on the investigation, prosecution and sentencing of acts of gender-based violence against women, limited access for women and girls to victim assistance and protection, and the number of shelters in the State party.**

23. Recalling its general recommendations No. 19 (1992) on violence against women and No. 33 (2015) on women's access to justice, the Committee reiterates its previous recommendations (A/57/38, para. 289, CEDAW/C/LKA/CO/7, paras. 23 and 25) and further **recommends that the State party: (a) Criminalize marital rape and expand the definition of torture in the Torture Act to include in it severe forms of sexual violence; (b) Amend the Prevention of Domestic Violence Act to ensure Protection Orders, upon Court issuance, are immediately made available to the parties and effectively enforced, and remove any requirement to participate in mediation prior to pursuing a case in court; (c) Establish a special unit in the Attorney General's Department to expedite the handling of cases of sexual violence and to introduce legislation to prohibit suspended sentences and stipulate mandatory minimum sentences for acts of violence against women; (d) Effectively implement the National Plan of Action for addressing Sexual and Gender Based Violence, and allocate adequate resources to ensure its implementation in a coordinated and effective manner, including by increasing the number of shelters and providing medical treatment, legal support, psychosocial rehabilitation, reintegration programmes and compensation to victims; (e) Intensify public awareness efforts, through strategic media campaigns and educational programmes to address discriminatory stereotypes against women and gender-based violence; and, (f) Ensure systematic collection and analysis of data on all forms of gender-based violence against women, disaggregated by age, ethnic group, region and relationship between the victim and the perpetrator, as previously recommended by the Committee (...).**

Conflict related sexual and gender-based violence against women (...) **The Committee notes with concern: (a) The continuing climate of insecurity, particularly for women in conflict affected zones; (...) (c) That the State party has been unable to provide the Committee with requested data on the number of investigations, prosecutions, convictions and the sentences imposed for acts of sexual and gender-based violence against women perpetrated by the armed forces and the police.**» Quelle: CEDAW - UN Committee on the Elimination of Discrimination Against Women: Concluding observations on the eighth periodic report of Sri Lanka, 3. März 2017, S. 6-7: www.ecoi.net/file_upload/1930_1497430265_cedaw-c-lka-co-8-26056-e-1.doc.

CESCR, 2017:

«The Committee is concerned that the incidence of sexual and gender-based violence, including domestic violence, remains high and is increasing, and that marital rape is not a punishable offence. It is also concerned that support services and redress mechanisms remain suboptimal, as a consequence of an insufficient number of Tamil-speaking female staff in the bureaux for the prevention of abuse of children and women in the north and east, and an insufficient number of safe houses across the country. The Committee is concerned about particularly high risks facing displaced girls and women (...). The Committee recommends that the State party ensure that the national legal framework offers effective protection against sexual and gender - based violence, including through the criminalization of marital rape. It recommends that the State party effectively implement the national plan of action to address sexual and gender-based violence 2016 - 2020 by increasing the number and improving the accessibility of shelters and ensuring that victims

are not denied the right to make complaints in Tamil, for example b.y offering interpretation at police desks, in government departments and at desks in hospitals for victims of gender-based violence. The Committee also recommends that the State party intensify public awareness efforts to address discriminatory stereotypes against women and gender-based violence.» Quelle: UN Committee on Economic, Social and Cultural Rights (CESCR), Concluding observations on the fifth periodic report of Sri Lanka, 4. August 2017, S. 5: www.ecoi.net/file_upload/1930_1505914524_g1723288.pdf.

ECOSOC, 2017:

«Other key challenges include (...) a continuing high level of violence and abuse perpetrated against women and children.» Quelle: UN Economic and Social Council (ECOSOC), Country programme document, Sri Lanka, 10. August 2017, S. 3: www.ref-world.org/docid/5993001e4.html.

Ekanayaka, 2016:

«There are three grounds for divorce under section 19(2) of the Marriage Registration Ordinance, such as adultery, malicious desertion and incurable impotence at the time of marriage. (...) In addition to the above mentioned grounds under the Marriage Registration Ordinance, the Civil Procedure Code authorizes a party to obtain a divorce in two ways. Either spouse may request permission from the court for judicial separation for a period of two years. After completing that period without any association between the parties, they are allowed to get the decree of divorce.» Quelle: Ekanayaka, E.M.Y.G., Rethinking the Grounds for Divorce in General law of Sri Lanka, A Comparative Analysis, in: International Journal of Business, Economics and Law, Vol. 10, Issue 4 (Aug.), 2016, S. 22: http://ijbel.com/wp-content/uploads/2016/09/K10_45.pdf.

Equal Ground et al., 2017:

«Marital rape is not an offence punishable under the law, except under circumstances of judicial separation, even with the 'National Action Plan Policy Framework and National Plan of Action to address Sexual and Gender-based Violence in Sri Lanka 2016-2020'. Gender-based violence is frequently reported, with women heads of households, women ex - combatants, women with disabilities and internally displaced women being at higher risk. The inability to afford a dowry also increases the likelihood of violence. (...) The Prevention of Domestic Violence Act of 2005 provides for protection orders as a civil remedy in cases of domestic violence but is rarely used, with the police more often than not preferring to 'reconcile' husband and wife. There are no official statistics on the number of cases filed under the PDVA but data from 2009 indicates, for example, that whilst the Children and Women Bureau Desks (CWBDs) of the Department of Police recorded 90,000 cases of 'family disputes', they filed only 55 cases under the PDVA that year. Moreover, lawyers, judges and counselors prefer to keep the family together, thereby exposing women to a significant risk of violence within the family. (...)

06. Women's access to justice in cases of sexual and gender-based violence is heavily constrained due to the delays in law and the entrenched impunity enjoyed by perpetrators. According to the Report of the Leader of the Opposition's Commission on the Prevention of Violence against Women and the Girl Child (2014), whilst the number of complaints of rape received by the Police have steadily increased, between 2007 and 2013 complaints were filed in only about 20-25 percent of reported rape cases and there were very few convictions. And even convictions are blunted by inadequate or suspended sentences; for example, in one case the sentence was suspended on the ground that the perpetrator was the sole breadwinner of the household.» Quelle: Equal Ground; Janawabodaya Kendraya; Mannar Women's Development Federation; National Fisheries Solidarity Movement; Suriya Women's Development Centre; Women's Resource Centre; Movement for Land and Agriculture Reforms et al., *The State of Economic, Social and Cultural Rights in Sri Lanka: A Joint Civil Society Shadow Report to the United Nations Committee on Economic Social and Cultural Rights*, April 2017, S. 34-35:
www.ecoi.net/file_upload/1930_1498129564_int-cescr-css-lka-27228-e.pdf.

Freedom House, 2017:

«Rape of women and children and domestic violence remain serious problems. Although women have equal rights under civil and criminal law, matters related to the family – including marriage, divorce, child custody, and inheritance – are adjudicated under the customary law of each ethnic or religious group, and the application of these laws sometimes results in discrimination against women.»
Quelle: Freedom House, *Freedom in the World 2017 - Sri Lanka*, 12. Juni 2017:
www.refworld.org/docid/59479a6aa.html.

ICG, 2017:

«Women's physical insecurity in conflict-affected areas has grown significantly. While domestic abuse and sexual violence or exploitation are problems across Sri Lanka, its higher prevalence in the north and east is a consequence of armed conflict and continued militarisation, exacerbated by the culture of sexual exploitation and harassment, intimidation and fear that now exists there. (...) Gender based and sexual violence is reportedly very high in both provinces, though there is little detailed documentation. Community-based activists in all seven districts where this research was conducted said they had received complaints of sexual violence, including rape. The victims were reluctant to pursue legal cases, however, fearing reprisals and stigma. Activists believe the cases reported to them are only the tip of the iceberg. Women's groups are also working on incidents of domestic sexual abuse and violence, among them a significant number of incest cases. [Fussnote: A number of women interviewed faced severe domestic violence but, seeing no alternative, remained with their husbands. Crisis Group interviews with victims of domestic violence, Jaffna, Mullaitivu and Trincomalee, June-July 2016.] (...) Justice for sexual and gender crimes is rare: few cases are prosecuted, especially if the alleged perpetrator is in the security services, and even fewer end with convictions. Court procedures are long and not gender sensitive; delays, the adversarial approach of lawyers and social stigma all combine to re-traumatise many victims and discourage others from seeking

justice.» Quelle: International Crisis Group (ICG), Sri Lanka's Conflict-Affected Women: Dealing with the Legacy of War, 28. Juli 2017, S. 10-11:

<https://d2071andvip0wj.cloudfront.net/289-sri-lankas-conflict-affected-women-dealing-with-the-legacy-of-war.pdf>.

SEM, 2016:

*«Die Polizei hat über die Insel verteilt insgesamt **36 spezielle Büros für Kinder und Frauen (Children & Women Bureau - CWBSLP) eingerichtet.** 169 In diesen Büros, die sich an einigen Orten nicht direkt im Polizeiposten befinden, werden Anzeigen und Beschwerden durch **speziell geschulte, weibliche Polizeibeamte** entgegengenommen.(...) **Bezüglich Schutzwiligkeit der Behörden gegenüber weiblichen Opfern von Gewalt sagten die in Jaffna an einem Treffen mit der Länderanalyse des SEM anwesenden Frauen, dass nur wenige Fälle der Polizei rapportiert würden und dass es dann oft mehrere Jahre dauere, bis es zu einem Urteil komme. Deswegen und auch weil die Polizeibeamten im Norden noch immer fast ausschliesslich Singhalesen seien, würden viele Opfer keine Anzeige erstatten. Die Tatsache, dass die Polizei in Jaffna ein Children & Women Bureau führe, ändere nichts am Zögern der Opfer, Anzeige zu erstatten.**»* Quelle: Staatssekretariat für Migration (SEM), Fokus Sri Lanka: Lagebild, 5. Juli 2016, Version August 2016, S. 33-34: www.sem.admin.ch/dam/data/sem/internationales/herkunftslander/asien-nah-ost/lka/LKA-lagebild-2016-d.pdf.

SEM, 2014 :

*«Selon la AHRC, **les viols matrimoniaux font partie de la vie quotidienne de beaucoup d'épouses sri lankaises, mais ne sont que très rarement dénoncés. En effet, ils ne sont pas considérés comme des viols, mais comme un droit du mari.** La plupart du temps, les femmes cèdent au fatalisme et estiment que leur futur sera meilleur si elles ne révèlent rien. Selon les résultats d'une étude sur le genre, menée dans les districts de Colombo, Hambantota, Batticaloa et Nuwara Eliya et publiée par CARE International en avril 2013, 58.2% des hommes et 67.4% des femmes interrogés étaient d'accord avec l'affirmation suivante: «je pense qu'une femme ne peut pas refuser d'avoir des rapports sexuels avec son mari». **Le code pénal sri lankais ne considère pas le viol matrimonial comme un délit, sauf si les conjoints avaient été au préalable officiellement séparés par une décision judiciaire (séparation juridique).** Cependant, selon le Women and Media Collective, il est très rare que les femmes entament une procédure judiciaire en cas d'échec de leur mariage. Certains groupes de femmes ont plaidé à maintes reprises pour la révision de ces lois et ont demandé que le viol matrimonial soit au moins aussi pris en considération dans les cas de séparation de facto. En 2002, le CEDAW avait aussi demandé que les dispositions relatives au viol matrimonial soient révisées. Dans son rapport de février 2011, le CEDAW réitère sa préoccupation face au fait que le viol matrimonial est seulement admis si un juge a précédemment reconnu la séparation des conjoints. 100 En novembre 2011, le Comité contre la Torture se déclare au s si préoccupé par cet état de fait. (...) **Un grand nombre de sources concordent sur le fait que la violence domestique est un problème sérieux au Sri Lanka. En effet, selon la AHRC, le type le plus fréquent de violence faite aux femmes au Sri Lanka est la violence domestique, avec comme formes les plus communes : les violences physiques***

et sexuelles, les menaces, les intimidations, les abus émotionnels et sociaux ainsi que les privations économiques. Etant donné que la majorité des femmes sri lankaises dépendent économiquement de leur mari, elles n'ont souvent pas les moyens, seules, de se procurer un logement pour elles et leurs enfants ou d'assurer leurs moyens de subsistance. Elles doivent donc choisir entre un mari violent et la précarité. 102 Selon les résultats d'une étude sur le genre, menée dans les districts de Colombo, Hambantota, Batticaloa et Nuwara Eliya et publiée par CARE International en avril 2013, 40.6% des hommes et 58% des femmes interrogés étaient d'accord avec l'affirmation suivante : «une femme devrait tolérer la violence afin de garder sa famille unie». 103 Afin de pallier à ce fléau, une nouvelle loi sur la violence domestique est entrée en vigueur le 3 octobre 2005 : le «**Prevention of Domestic Violence Act**». **Selon cet Acte, les violences faites aux femmes par des membres de leurs familles sont passibles de poursuites judiciaires. Cependant, ces violences ne sont pas considérées comme des infractions pénales. Elles peuvent toutefois être poursuivies sur la base du code pénal en tant qu'« infraction contre le corps » (offence against the Body).** 105 **Cet Acte prévoit la possibilité pour les victimes de violence domestique ou pour les personnes qui pourraient être victimes de violence domestique de demander une ordonnance de protection (Protection Order). De plus, cet Acte permet aux policiers d'intervenir au nom d'une personne lésée. (...) Le gouvernement a mis en place des bureaux d'accueil réservés aux femmes (women's desk) dans les commissariats de police. Cependant, compte tenu du sous-effectif auquel doivent faire face les commissariats, il y a dans la plupart des cas peu de femmes policières dans ces bureaux. Les postes de police continueraient, en effet, à être majoritairement composés d'hommes. De plus, dans le Nord, ces bureaux seraient souvent gérés par des personnes parlant le cinghalais, alors que la majorité des plaignantes parlent le tamoul. De plus, bien que le tamoul soit reconnu comme une langue officielle, des traducteurs seraient rarement mis à disposition dans les commissariats de police..»** Quelle: Staatssekretariat für Migration (SEM), La condition des femmes au Sri Lanka, 1. Mai 2014, S. 21-23: www.sem.admin.ch/dam/data/sem/internationales/herkunftsland/asien-nahost/lka/LKA-situation-frauen-f.pdf.

Sunday Observer, 2017:

*«The Penal Code of Sri Lanka enacted as Ordinance No. 02 of 1883 contains the country's most significant laws in convictions and punishments. **The punishment for the offence of committing rape is stated in Section 364 of the Code. The punishment, if found guilty after being proven beyond reasonable doubt, shall be rigorous imprisonment of not less than seven years and not more than 20 years and the perpetrator will also be fined. If the perpetrator happens to be a public officer on duty or a member of the management or staff of a remand home or hospital, the punishment cannot be less than 10 years. If the victim of rape is a woman who is pregnant, below 18 years of age, mentally or physically disabled or a victim of gang rape, the punishment is also between 10 years and 20 years together with a fine. In addition, the perpetrators will also have to compensate for the injuries suffered. However, marital rape is not a crime in Sri Lanka unless a judge has ordered a spousal separation, i.e., a judicial separation. Thus, in cases of marital rape, the perpetrator can be brought to trial only if he is judicially separated from his wife. But the main concern is that there is no tradition of legal separation in Sri Lankan society. Women***

*live separately from their abusive husbands, most of the time hiding under the parents' protection, and only seek the aid of law enforcement authorities when they want to obtain a divorce. (...) The Prevention of Domestic Violence Act No. 34 of 2005 (PDVA) does shed some light on providing protection towards women who are abused by their husbands. The PDVA allows victims of domestic violence, which includes victims of rape and sexual assault to request a protective order from a Magistrate's Court that would limit contact between the perpetrator and the victim. But, the fact of the matter is that these cases are not filed as 'marital rape' cases and are dealt with as domestic violence issues that can be settled between the parties with a panacea such as counselling. (...) In the Sri Lankan context, the reality is that sex in itself is a taboo subject and rape within a marriage is regarded as a domestic or private matter in the legal system. The victimized woman takes her cue from the legal and social climate and opts to suffer in silence. A variety of reasons prevent such women from addressing this issue - social stigma, fear, shame, community and family disapproval, fear of losing children, negative attitudes and possible harassment at the hands of the police. The ideal position taken by our judiciary is also that the law does not accord a derogatory status to the wife as her husband's slave and only requires her to comply with her husband's reasonable requests and demands. But, it is sad to see that our men have a tendency to justify whatever action taken by them to be reasonable within the realm of patriarchy. Wives and daughters are not to question any move taken by the husband or the father, which the women should be submissive to. **Even the end of elongated discourses in National Law reform forums have resulted in Sri Lankan law makers deciding that marital rape itself should not be criminalized in Sri Lanka. The reason for this is highly backed up by social and cultural issues mentioned above. A woman who would walk into a police station of a majority of male officers would not be able to properly mention her situation and file an entry. She would be constantly advised on how to be a good wife and to go back home to the husband and her in-laws. The same picture will be painted in the court rooms. The mental agony a rape victim has to go through during recurring cross examination sessions in courts is unexplainable. A woman being forced to give evidence on how she was raped by her husband will be exposed to numerous discomfort, by male attorneys in the court room. Thus, given the status quo, it was in a way, a mindful decision for women not to make marital rape an offence.**» Quelle: Sunday Observer, Madhubhani Imesha, Marital rape laws & Women's Rights: 'She's my wife' is not a defence!, 20. August 2017:*

www.sundayobserver.lk/2017/08/20/women/marital-rape-laws-women%E2%80%99s-rights-%E2%80%98she%E2%80%99s-my-wife%E2%80%99-not-defence.

The Island, 2010:

*«We discovered that **judicial separation (where a couple stay legally married but legally separated)** is available in both countries. **Separation a mensa et thoro is the Latin equivalent of judicial separation and it is used in Sri Lanka during the drafting of the plaint.**» Quelle: The Island, Only 1.5% of marriages in Sri Lanka results in divorce compared to 42% in UK, 31. Juli 2010:*

www.island.lk/index.php?page_cat=article-details&page=article-details&code_title=3358.

UK Home Office, Juni 2017:

«11.4.4 A representative from Women In Need (WIN), Jaffna, informed the UK Home Office's FFM team in July 2016 that: **'Women are more at risk of domestic violence and sexual harassment if they have little or no income. Women in low wage jobs such as insurance or leasing companies are more likely to be harassed at work and are easy to target for sexual violence... More than 300 women per year seek help from the organisation in Jaffna on issues including domestic violence and sexual harassment.'** Adding that: **'WIN has no shelters but there is one shelter in the Jaffna area that WIN has connections with.'**

11.4.5 Women In Need in Colombo informed the FFM team during a meeting on 22 July 2016 that they provided **'Two shelters – one in Matara district on the outskirts of Colombo and one in Colombo.'**

11.4.6 The DFAT report stated: **'Women IDPs [Internal Displaced Persons] who have returned to their place of origin claim that corrupt police officers accept bribes to turn a blind eye to domestic violence. Many IDP returnee women also find that language is a barrier to accessing support as they speak Tamil and cannot communicate effectively with the mainly Sinhala - speaking police. A recent report found that there are few female officers, none of whom speak Tamil and it is difficult to find female translators. Staff answering the police hotline mostly speak Sinhala. There is only one safe house for women in the north and east, located in Jaffna.'**» Quelle: United Kingdom, Home Office (UK Home Office), Country Policy and Information Note - Sri Lanka: Tamil separatism, 8. Juni 2017, v 5.0, S. 31; 57-58: www.refworld.org/docid/5967192c4.html.

UK Home Office, März 2017:

«Meeting with a human rights organisation, Jaffna, 13 July 2016 (...) Do the police support women victims of domestic violence? 3.2.1 **If a woman has problems with her husband there are safe houses available for a 3 month stay. Reconciliation is encouraged after this period.** The organisation supports women in going to the police to make an allegation of assault. 3.2.2 The NGO deal with 5-6 cases a month. It is a free service, women get legal aid, but if a DNA test is required, the person pays half of the cost. **How do the police handle cases of sexual assault?** 3.2.3 **The husband may be arrested and detained for a couple of weeks but would then be released or bailed.** (...)

Meeting with Women In Need (WIN), Jaffna, 13 July 2016 (...) What are the reasons for the change in the nature of violence against women? 4.2.1 **Women are more at risk of domestic violence and sexual harassment if they have little or no income. Women in low wage jobs such as insurance or leasing companies are more likely to be harassed at work and are easy to target for sexual violence. Do women facing domestic violence report their husband's to the police?** 4.2.2 **Women have respect for their husbands and they do not want to bring them to court on domestic violence charges.** WIN do not represent women in court but offers mediation and legal advice before a court hearing. Over the last two years women have grown to have a better understanding of their rights and so WIN has seen more reported cases

of domestic violence in recent times (...) What is your perception of the country now? **Has the North become safer?** (...) (...) there has been an **increase in sexual abuse and rape. It's not always clear who commits these crimes.** 4.2.14 **People don't receive the help they expect from the police. Police sometimes support the perpetrator of violence against women. Police protection for women is inadequate.** 4.2.15 **There has been improvement in police stations with the presence of women police officers (though there may only be one female officer in the station and she has other duties aside from dealing with violence against women) but generally the police are still more supportive to men over women. It is easy to take cases to court but the police prefer to use mediation as a means to resolve domestic violence issues. Language barriers also exist and accounts can get lost in translation (the police speak Sinhala, the women speak Tamil).** (...)

Meeting with Jaffna Social Action Centre (JSAC), 14 July 2016 (...) JSAC is an NGO [non - governmental organisation] in the Northern Province working with the most vulnerable members of society, in particular women and children, female heads of household (FHH), and IDPs [Internally Displaced Persons]. **JSAC support women facing sexual and gender - based violence (SGBV) and run Nambikkai Illam, a safe house opened in 2003, to protect women facing SGBV. Women can stay in the safe house for up to one year and the organisation helps them work out viable solutions for their problems. JSAC works with the courts, police, hospitals and other government departments when supporting women. (...) Women face domestic and social violence – mostly from members of the community. Domestic violence is perpetrated by fathers, uncles, brothers, husbands. Rapes have occurred, and child abuse. Most VAW cases in court relate to domestic or social violence. The legal system does not deal with these cases well due to delays in the judicial process; there are so many cases pending. Although many cases occur, reported cases are low because of these delays.** (...)

Meeting with a women's organisation in Killonochchi, 15 July 2016 (...) We have heard of incidences of sexual and gender - based violence (SGBV). Who is committing this abuse? 9.1.10 **We cannot say who is behind this but it might be the military, family or other members of society. Previously it was obviously by the military but now it might also be from society but no action is taken against them. There has been a recent increase in sexual abuse against women – sexual harassment and rape. People who act with impunity are not punished. But one case recently went to court and the perpetrator was convicted. Do women feel able to report SGBV to the police?**

9.1.11 **No appropriate action is taken by the police. Women inform the police – they tell us, if you have information about drugs or abuse then report it – but they do nothing.** There are lots of youths involved in drugs; they are being given drugs but we do not know by whom. Do the police take bribes from the perpetrators of crimes instead of charging them? **The police will keep the person detained for a couple of days, then they are bribed and the person is released.** (...)

Meeting with Bishop Emanuel, Trincomalee, 16 July 2016 (...) **There is violence against women, but most of the time these issues are not taken to the police because the women do not want to be harassed and because it is not in their culture to talk about such things. There is less domestic violence than other types,**

because the law states anyone can report cases of domestic violence and action has to be taken. **Women who report violence may also face discrimination from their families. For example, a mother who was beaten by her drug addict son said her injuries had been caused by an accident, because her daughter was due to get married and she did not want to bring any shame on her daughter and the family.** (...)

Meeting with an INGO, Colombo, 12 July 2016 (...) For vulnerable groups such as those who **experience gender based violence there are government support based providers although these services remain inadequate and under resourced.** In all police stations there should be a Women and Children's Desk, served by a female police officer to deal with such complaints. **However, there is an issue in the North as there are not enough female police officers, or enough that speak Tamil. This post is considered a low position and requires more recognition.** (...)

Meeting with a UN Senior Human Rights Advisor in Sri Lanka (A UN organisation), 21 July 2016 (...) **Excessive military presence in the North might have an impact on issues of sexual exploitation but there are no figures for such cases. A large military presence and a large number of single female headed households might bring an increased risk of sexual exploitation and abuse. Moreover, it has been reported that unscrupulous individuals have been known to extort money or sexual favours from women who have disappeared family members in exchange for information (normally false) about the whereabouts of their loved ones. But where crimes are committed there is under reporting for lack of trust in the system. Two soldiers have recently been convicted for sexual violence in the north. 22.4.2 Impunity for sexual violence is high even for cases not related to the conflict. A rape case led to a conviction in November 2015 after 14 years of trial. The delays were mostly attributed to the practice of not conducting trials on consecutive days, meaning that every minor event - a recess motion, a sudden sickness of a participant, a traffic jam - which in other jurisdictions would merely cause a few hours or days of delay, here potentially means rescheduling the hearing to a distant date months away. The girl in this particular case was supported by the Catholic Church that took a sustained interest in the case and looked after the victim for a number of years, but most victims that would not count on this kind of support and would not be able to persist in their quest for justice for such an extended period of time, particularly given the stigma associated with rape.»**

Quelle: UK Home Office: Report of a Home Office Fact-Finding Mission; Sri Lanka: treatment of Tamils and people who have a real or perceived association with the former Liberation Tigers of Tamil Eelam (LTTE), März 2017, S. 15, 16, 18, 22, 28-30, 31, 34, 59, 61, 69, 71, 72:

www.ecoi.net/file_upload/1226_1491310687_sri-lanka-ffm-report-11-23-july-2016.pdf.

UK Home Office, 2012:

«20.09 The Centre for Reproductive Rights report, *Women of the World: South Asia, Sri Lanka chapter*, undated, website accessed on 1 June 2011, noted: "The body of law relating to marriage consists of the general law, customary law and personal law. Tam-

ils are governed by the general law in most marriage - related matters, whereas Kandyan Sinhalese can choose to be governed by the general law or their customary laws. Muslims are governed by Muslim personal law... The Marriage Registration Ordinance and the Civil Procedure Code constitute the general law on divorce. The provisions of the ordinance firmly establish divorce as faultbased [sic] and case law has reaffirmed this concept. Grounds for divorce under the ordinance are the following:

- adultery;
- malicious desertion; and
- incurable impotence at the time of marriage.

Cruelty is not a ground for divorce, although it may be a factor in determining malicious desertion. Physical illtreatment [sic] per se is also not a ground for divorce under the general law, but it is a cause for legal separation... The Civil Procedure Code constitutes the general law on judicial separation. The code provides that either party may petition for separation on any ground on which by the law applicable to Sri Lanka such separation may be granted.» Quelle: United Kingdom: Home Office (UK Home Office), Country of Origin Information Report - Sri Lanka, 7. März 2012, S. 137: www.refworld.org/docid/538595594.html.

UNFPA, 2016:

«The following were identified as factors that increased vulnerability of women and children to issues of domestic violence, child abuse, neglect, high school drop outs and human trafficking:

- **Lack of functioning safe houses for women and children**
- Widespread use of alcohol
- Lack of psycho-social counselors
- **Language barriers within the administration and police units**
- Illegal migration of women to the Middle East for work

Many participant voiced the need for strengthened child care facilities, shelters for women, adequate cadre for the MoWCA units , functioning Mithruru Piyasa, Tamil police officers and adolescent mental health services. The Legal Aid Commission in their presentation stated that 75% of GBV cases are not detected as reporting is not done due to cultural issues. It was proposed that there needs to be a mechanism to ensure confidentiality and privacy to the victims, as this is seen as one of the key reasons for lack of reporting.» Quelle: UN Population Fund (UNFPA), Mullaitivu Stakeholder Meeting on Gender-based Violence, 22. Oktober 2016: <http://srilanka.unfpa.org/en/news/mullaitivu-stakeholder-meeting-gender-based-violence>.

UN Human Rights Council – Special Rapporteur on Minority Issues, 2017:

«47. **Women in the North and East continue to suffer from the scars of the conflict, as well as the insecurity that resulted from the subsequent militarization.** In the last stages of the war and its aftermath, human rights abuses against the civilian population by both sides to the conflict were rife, including sexual and gender - based violence. **The climate of impunity and the additional insecurity created by the militarization have meant that women are living with multiple challenges that threaten their freedom, dignity and security on a daily basis.** While the incidence of sexual assaults by military personnel is said to have decreased with the downsizing of the army in the North and East, a climate of fear remains among the Tamil women in an area where the military presence has continued.

48. According to the latest census, approximately one in four households in Sri Lanka are headed by females, and most are found in the North and East. The Special Rapporteur was told that this status is accompanied by particular vulnerabilities and social stigma that make basic survival difficult and exposes the women to further exploitation. **The lack of income-generation and employment opportunities combined with high levels of debt make them vulnerable to sexual exploitation by community leaders, family members as well as the military.** » Quelle: UN Human Rights Council, Report of the Special Rapporteur on minority issues on her mission to Sri Lanka, 31. Januar 2017, S. 30:
www.refworld.org/docid/58adacc94.html.

USDOS, 2017:

«**Rape and Domestic Violence: The law prohibits rape and domestic violence, but enforcement of the law was inconsistent.** The prescribed penalties for rape are seven to 20 years' imprisonment and a fine of at least 200,000 thousand rupees (Rs) (\$1,333); **for domestic violence, a victim can obtain a protection order for one year and request a maintenance allowance. The law only prohibits spousal rape if the spouses are separated legally. Sexual assault, rape, and spousal abuse are pervasive societal problems.** Many women's organizations believed that greater sensitization of police and the judiciary was necessary to make progress in combating rape. The police Bureau for the Prevention of Abuse of Women and Children conducted awareness programs in schools and at the grassroots level to encourage women to file complaints. Police continued to establish women's units in police stations. **Services to assist survivors of rape and domestic violence, such as crisis centers, legal aid, and counseling, were generally scarce nationwide due to a lack of funding. Language barriers between service providers and victims also were reported in the north and east, where Tamil speaking victims lacked access to Tamil speaking service providers. There was one government established shelter for victims of domestic violence. The Ministry of Health, in partnership with nongovernmental organizations (NGOs), maintained hospital based centers to provide medical assistance to those requiring attention for sexual assault related injuries before referral to legal and psychosocial services.**

(...)Women have equal rights under civil and criminal law. **Adjudication of questions related to family law – including marriage, divorce, child custody, and inheritance – varied according to the customary law of each ethnic or religious group, resulting in discrimination. The Muslim Marriage and Divorce Act permits girls**

to marry at age 12, in contrast to the civil law, which sets the minimum marital age at 18 and the minimum age of sexual consent at 16. According to Tamil civil society groups in the Northern Province, marriages are governed by civil law, while the Thesawalamai customary law governs the division of property.

(...) Although police stations are supposed to have an officer dedicated to handling abuse complaints from women and children, this was not consistently implemented throughout the country.» Quelle: United States Department of State, 2016 Country Reports on Human Rights Practices - Sri Lanka, 3 March 2017: www.refworld.org/docid/58ec89c6a.html.

WAN, 2016:

«Domestic violence, especially intimate partner violence, remains a widespread problem in the North and East, and many women’s organizations report that it is increasing. In Kilinochchi, women said they have never seen domestic violence before like they see now and that new cases surface on a daily basis. A counselor in Mannar District reported that there have been nearly 1,600 domestic violence cases from 2003 to the present. She estimated that there have been about 600 over the last three to four years and 160 in the past year. A women’s organization in Jaffna reported more than 500 cases in the past year. Domestic violence cases mostly involve husbands abusing wives. Only one in ten cases is it family members, fathers, neighbors, or boyfriends. Activists in Vavuniya reported that almost 65 percent of women in the district have been abused in one way or another. The head of a women’s organization in Batticaloa said that long delays in the justice process contributed to the increasing violence: it takes a minimum of six years, usually around ten years, for a criminal case involving adults to come to trial; a case involving children takes less time, approximately six to seven years. In Vavuniya activists said that one woman had been trying to get justice for 16 years.

Language constraints

In many districts, there are not enough Tamil-speaking police officers and few, if any, Tamil-speaking female police officers. In locations where there are no Tamil - speaking female officers, Tamil women who report domestic violence have to tell their stories to male officers or translators. Translations themselves most often imbued with patriarchal attitudes and are biased in favor of the perpetrators. If there are no Tamil - speaking officers present, Sinhala officers will write the woman a note telling her to report back at a later date and time. If there are only men in the women’s police desk, or if men are present, women feel uncomfortable making complaints or even going to the police station. 19 There are often no private rooms for women when they report their cases, which also deter women from coming forward. Biased attitudes Police officers often do not take women’s complaints seriously. In one case, a woman made a domestic violence complaint to the police, and the police called her husband, who told the police she had danced at her sister’s engagement party. The police then told the woman that dancing and her henna on her hands were “against the culture” and that she shouldn’t be doing these things. In Vavuniya, women activists reported that one police officer had made a comment that if a girl is raped, she should just marry her rapist. In

Mannar, police officers are trained in gender-sensitivity but then moved to other districts, which means the same problems repeat themselves when their replacements arrive.

Bribery

Sometimes **police ask for bribes from the husband. Otherwise, the police may pressure the woman to withdraw the case as a result of pressure from a third party, such as a politician or someone in power who knows the perpetrator.** In Mullaitivu, **women's organizations reported that police could be manipulated with money or other favors. They might allow the husband to slip away after receiving money or bail but would neglect to inform the woman who had filed the case.** In Kilinochchi, **women's organizations reported that favoritism is everywhere. If someone has influence or a connection to the police, the process will go smoothly. If not, a woman will have to wait in line to file her case.**

Arbitrary response

In Mannar, the **emergency number, 1-1-9, was reported to be unreliable: "Sometimes the police will come. Sometimes they will not come. Sometimes they will be late."** There are **no Tamil officers on the emergency response team at the police station, so calls to 1-1-9 can only be made in Sinhala.** In Kilinochchi, **four women from different service organizations reported that they had never once had success with 1-1-9, either with receiving an answer or getting any assistance.** In Mullaitivu, a **women's organization reported that they rarely received answers after calling 1-1-9, and when they did, the officer would always speak Sinhala, and they would have to hold for a Tamil speaker. They had not heard of one case of a successful 1-1-9 call. They estimated that there is may be a one in five chance of someone actually coming.** In Vavuniya, **women activists similarly said they could not offer one positive example of 1-1-9 working. They said it could take 45 minutes for a call to go through, at which point the officers might say they don't have a vehicle available or are working on another case.** Once, **two male police officers showed up two hours after the woman called, and both were drunk.**

Cultural stigma

There are also **cultural impediments to justice. Many women refrain from talking about domestic violence because of the cultural stigmas around it and the value placed on marriage. Many women tolerate violence and only go to the police when the situation worsens. After a woman makes a complaint, she may return home to a sea of family and relatives, urging her to withdraw the complaint and stay with her husband. In the first court hearing, women may say they forgive their husbands because of pressure from family and relatives. It is very hard for women to leave abusive relationships; most women return to their abusers.**

Challenges with the PDVA

There are **problems with delays at every stage of the process of accessing justice.** For example, under the Prevention of Domestic Violence Act (PDVA, a woman

can seek a protection order against her husband in instances or threat of harassment and abuse. In one recent case, an abuser returned to his wife after she had received a protection order. The police asked for the order, but no one had yet received it from the court — not the affected woman, the police, or the GS office even though over a year had passed. Police also often do not arrest abusers immediately irrespective of an arrest warrant being issued. Sometimes the court will issue an arrest warrant, and the police will give it to the woman and ask her to find her husband and inform them of his location so that they can arrest him. **In at least one case in Mullaitivu, the police instructed the woman to find her abuser and bring him to court herself.** Sometimes, after the woman makes a complaint, the police tell her to pay for the cost of transport - a car or tuk-tuk (three - wheeler) - so they can find her husband because they don't have enough vehicles. Many women cannot afford to do so. After a woman files a **complaint, the police may ask her to accompany them when they bring the abuser to court, rather than bring her to a safe place.** In both Kilinochchi and Mullaitivu, women's organizations reported that police include closing dates in arrest warrants, which means they could not arrest the husband after a certain amount of time had passed. In one case in Kilinochchi, a court issued an arrest warrant that said the police had to locate the abuser within thirteen days. The abuser fled to a different district, and the police were unable to locate him in time. In Mullaitivu, a woman brought her husband to the police station after the closing date of the arrest warrant had passed, so the police said they could not arrest him, and he fled.

Challenges with arbitration bodies

Before a domestic violence case can go to court, it has to **go through the Mediation Board.** In Jaffna, the Mediation Board is comprised of religious leaders and societal elders who in most cases promote the notion that this is a private matter and tell the woman that she will be alone if she gets a divorce, and society will not respect her. This normally scares the woman, and she feels pressure to return to her abuser. Women's organizations in Kilinochchi reported that the Mediation Board usually sides with men. Muslim women are asked to go to the Quazi Court (courts with Muslim judges under the Muslim Marriage and Divorce Act) by the police when they complained of domestic violence. The Quazi court has no mandate to deal with domestic violence but only to mediate between husband and wife when there is a dispute or application for divorce. The Quazi court is mandated to facilitate the divorce and maintenance process. **Whenever a case is filed, whether a divorce or domestic violence case, women must attend compulsory counseling with their husbands. Often they are referred to the court's counselor and face pressure to work on the relationship and get back together. (...)**

Adverse experiences within courts

Courts provide women with minimal levels of protection. Only extreme or very private cases are discussed in the judge's chambers rather than a public hearing. From the period that the woman makes the complaint to the first time she goes to court, the woman is at high risk of more violence. Sometimes the court orders a woman to stay at a safe house. To go a safe house, however, a woman has to go to the GS and get paperwork signed. During court proceedings, women have

*no rights to speak to their lawyers within the courtroom. They have to leave the courtroom to address their lawyers unless they are formally testifying. If a woman says something in the middle of the proceedings, she is viewed as disrespecting the judge. If the lawyer forgets to mention something important, the woman cannot say anything in court. Judges also ask questions that are victim-blaming or re-victimizing, and even lawyers cannot contest what the judge says. If a woman leaves her husband and has to care for children, there is no direct support from the government. The government pays a small amount of money for widowed women (PMA) but nothing specifically to women who are divorced or separated. Families living below poverty level receive samurdhi (relief program), but most families are registered under the husband's name. If a woman wants to change the account to her name, there is a very long procedure involving a lot of signatures, including that of a judge. In the meantime the husband can just go to the GS and tell them not to give his wife the money. **Divorce hearings face repeated delays. Divorce cases can take three or four years on average and even up to ten to twelve**, and in the meantime, the husband has the family card. If a woman wants to change the card to her name or get a new one, the authorities ask for a divorce card, which means that the card change, too, can take three or four years. **A court will only grant the divorce if both parties consent. If a husband refuses to consent, the divorce cannot go through.** Women also face practical obstacles to divorce: they have safety concerns about living alone and economic concerns about finding their own livelihoods. Women can file two kinds of civil cases against abusive husbands: protection order cases and maintenance cases. In Jaffna, women reported that there is no organized system to get maintenance after a court orders a husband to pay. A woman has to go to the court or police station at an appointed time every month to get the money, and the authorities do not notify her in advance if there is no money there to collect. If the abuser pays less than the required amount or says they can't pay because of unemployment, the police will not ask him any questions. Women also have to pay their lawyers an agreed-upon amount following maintenance collection and still have to pay them even if their husbands have been delinquent on maintenance. In Jaffna, one woman had to take leave from her job as a hospital cleaner to deal with her maintenance case and risked losing her job. Her husband neglected to pay the maintenance at the end of the case, but she still had to pay legal fees. If a woman cannot pick up her maintenance money on the appointed date, she has to go to court and re-apply for maintenance, which means the payment will be delayed by more days or weeks.» Quelle: WAN - Women's Action Network: Women's Access to Justice in the North and East of Sri Lanka; CEDAW Shadow Report submitted by Women's Action Network (WAN); August 2016, S. 3-8: http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/LKA/INT_CEDAW_NGO_LKA_25964_E.pdf.
http://www.ecoi.net/file_upload/1930_1497432878_int-cedaw-ngo-lka-25964-e.pdf.*