

Sri Lanka Shadow Report

**To the Committee on the Elimination of All Forms of Discrimination
Against Women**



**Prepared by
The Women and Media Collective
Colombo**

July 2010

Preface

Sri Lanka ratified CEDAW in 1981 without reservations. The government of Sri Lanka (GOSL) presented its first report to the CEDAW Committee in 1986, the second report in 1992 and, the third and fourth combined reports in 2002. After a long gap in meeting the reporting commitments under CEDAW, the government submitted its 5th, 6th and 7th combined reports in 2009. This NGO shadow report is in response to the last government report.

The NGO Shadow report contains a critical assessment of the status of Sri Lankan women under Articles 2, 7, 10, 11, 12, 14, 15 and 16 of CEDAW; General Recommendation 19 of the Committee. It also contains a separate chapter on women and armed conflict covering all the substantive articles of the CEDAW in order to highlight Sri Lanka's 30 year experience of protracted armed conflict and the current period of post war transition emphasizing the conflict's specific impact on women.

The Shadow report was prepared by a group of authors who are experts in their respective fields, in consultation with women's organizations and was coordinated by the Women and Media Collective (WMC). The authors of the different chapters are: Article 2, - Prof. Savitri Goonesekere; Political Participation and Representation, Article 7 — Chulani Kodikara; Education, Article 10 – Prof. Swarna Jayaweera; Employment, Article 11 – Dr. Sepali Kottegoda; Equality in Access to Health Care, Article 12 – Dr. Lakshman Senanayake; Rural Women, Article 14 – Dr Ramani Jayatilleke; Equality before the Law and in Civil Matters, Article 15 and Equality in Marriage and Family Law, Article 16 – Prof. Savitri Goonesekere; Violence against Women, General Recommendation 19 – Women and Media Collective and, Women and Armed Conflict – Ambika Satkunanathan and Kumudini Samuel. The report was edited by Chulani Kodikara, Kumudini Samuel and Sepali Kottegoda.

WMC started the process of facilitating the writing of this report in 2007 in anticipation of the GOSL 5th and 6th reports, and used a participatory approach in identifying the critical areas of concern to Sri Lankan women under CEDAW. We wish to state that in the preparation of Sri Lanka's 3rd and 4th report under CEDAW, the GOSL adopted a transparent and inclusive process

including discussions on the report before its submission to the Committee. It is however unfortunate that in the case of the 5th, 6th and 7th Report, the government's consultations with women's organizations were limited to two brief meetings with a few organizations to discuss the contents page of the government report. WMC eventually accessed the report on the UN website after its submission.

This shadow report was prepared after a series of consultative meetings with other NGOs throughout the period 2008-2010. A final meeting was held with GOSL officials and NGO representatives on 13th July 2010 before this report was completed. At this final consultation, it was remarkable that while a number of Government Ministries were present, there was no representative from the Government's primary agencies for women's issues, the Ministry of Women's Empowerment and Child Development or the National Committee on Women.

This Shadow Report seeks to provide information from a non government perspective to facilitate and strengthen the Committee's review of the State Party's obligation under CEDAW in light of the concluding comments on Sri Lanka's 3rd and 4th periodic report. It is our hope that through processes such as these we can work together to eliminate all forms of discrimination against women in Sri Lanka.

The following NGOs gave inputs during the participatory exercise in connection with compiling this Shadow Report. Their valuable contributions are acknowledged with thanks.

1. Action Network for Migrant Workers
2. Agromart Foundation – Colombo
3. AKASA – Organisation of Women with Disabilities – Anuradhapura
4. Centre for Policy Alternatives - Colombo
5. Centre for Women's Research – Colombo
6. Centre for Women and Development - Jaffna
7. Christian Workers' Fellowship – Ja-Ela
8. Community Education Centre – Malabe
9. Community Encouragement Foundation - Puttalam
10. Da-Bindu – Katunayake
11. Diriya Kantha Padanama - Puttalam
12. Empowered Women's Forum - Moneragala
13. Hanguranketha Women and Children's Forum – Hanguranketha
14. Hill Country Women's Forum – Polgollawatte
15. Home for Human Rights
16. Human Development organization - Kandy
17. Human Rights Organisation – Monaragala

18. INFORM – Colombo
19. International Center for Ethnic Studies - Colombo
20. Kantha Shakthi – Colombo and Balangoda
21. Law and Society Trust - Colombo
22. Lawyers for Human Rights and Development – Colombo
23. Mannar Women’s Development Foundation - Mannar
24. Migrants Centre - Colombo
25. Mothers and Daughters of Lanka
26. Muslim Women’s Research and Action Forum
27. Neelan Thiruchelvam Trust - Colombo
28. Penn Wimochana Gnanodayam – Hatton
29. Rural Development Foundation - Vauniya
30. Raja Rata Kantha Padanama – Kekirawa
31. Rural Women’s Front – Kirindiwela
32. Rural Women’s Collective - Polonnaruwa
33. Rural Women’s Organisation – Hambantota
34. Rural Women’s Front – Galle
35. Sarvodaya Women’s Movement
36. Sinhala Tamil Rural Women’s Network – Nuwara Eliya
37. South Asia Partnership - Sri Lanka - Colombo
38. Sri Lanka Federation of University Women – Colombo
39. Sri Lanka Muslim Women’s Conference – Colombo
40. Sri Lanka Women's Conference - Colombo
41. Sri Lanka Women Lawyers' Association - Colombo
42. Sri Lanka Women’s NGO Forum
43. Suriya Women’s Development Centre – Batticaloa
44. Uva Wellassa Farmer Womens Organisation – Buttala
45. Vikalpani - Malabe
46. Vehilihini Development Centre – Siyambalanduwa
47. Voice of Women - Colombo
48. Weera Seva Sansadaya – Rambukkana
49. Welcome House - Colombo
50. Wilpotha Women’s Savings Effort – Chilaw
51. Women and Media Collective – Colombo
52. Women’s Centre – Ja Ela
53. Women’s Education and Resource Centre - Colombo
54. Women’s Development Centre – Kandy
55. Women’s Development Centre - Badulla
56. Women's Development Federation - Hambantota
57. Women’s Development Foundation – Akkaraipattu
58. Women’s Development Forum – Batticaloa
59. Women’s Resource Centre – Kurunegala
60. Women’s Support Group - Colombo
61. Women in Need - Colombo

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Sri Lanka Shadow Report to CEDAW

Contents

1. Executive Summary	7
2. Article 2	8
3. Article 7	12
4. Article 10	16
5. Article 11	18
6. Article 13	21
7. Article 14	25
8. Article 15	28
9. Article 16	30
10. Violence Against Women	35
11. Women and Armed Conflict	39

Abbreviations

APRC	-	All Party Representative Conference
COs	-	Concluding observations
DHS	-	Demographic and Health Survey
DMO	-	District Medical Officer
FHB	-	Family Health Bureau
GOSL	-	Government of Sri Lanka
HSZ	-	High Security Zone
JVP	-	Janatha Vimukthi Peramuna (People's Liberation Front)
LDO	-	Land Development Ordinance
MCD&WE	-	Ministry of Child Development and Women's Empowerment
MMR	-	Maternal Mortality Rate
NCW	-	National Committee for Women
PDVA	-	Prevention of Domestic Violence Act
PHM	-	Public Health Midwife
PTF	-	Presidential Task Force
STF	-	Special Task Force
SAARC	-	South Asian Association for Regional Cooperation
LTTE	-	Liberation Tigers of Tamil Eelam
MMR	-	Maternal Mortality Rate
MoH	-	Ministry of Health
TFR	-	Total Fertility Rate
UNF	-	United National Front
UNP	-	United National Party
UPFA	-	United People's Freedom Alliance
UXO	-	Unexplored Ordinance

Executive Summary

Sri Lanka (SL) is at a critical juncture in its history. After almost 30 years, the internal armed conflict between the GOSL and the LTTE was militarily resolved in May 2009. Wide scale violence that characterized the conflict has come to an end. The challenge of building a just and peaceful society which recognizes and respects the identities and rights of all people including women however remains. There is no disputing that women in Sri Lanka have made tremendous progress in the social and economic spheres in the last five decades. Women are now 90% literate and continue to enjoy good health indicators. Women are more visible than ever before in the public domain, including in the state bureaucracy, in the diplomatic services, the private sector, medical, legal and teaching professions, the arts, and in many other areas. The proportion of female workers in semi-skilled and unskilled jobs has also increased. There has also been some progress in relation to reform of gender discriminatory laws, and increased awareness of gender and women's rights issues among sections of the population.

Yet much more needs to be done. Women face continuing exclusion in politics, social marginalization and gender based violence. Patriarchal practices and discriminatory attitudes towards women still prevail. Despite women's increasing entry into the job market, the gender division of labour remains unchanged. Women continue to bear the major responsibility for housework and child care. Not all women across the board enjoy the favourable social development indicators that Sri Lanka so often take pride in. In areas affected by the conflict, in the plantation sector and impoverished or low income communities in urban and rural areas, women still face numerous challenges in accessing education and health services, as well as economic exploitation. As a result of 30 years of an internal armed conflict, women and children not only lost male relatives in combat, but constituted close to 80% of the displaced. More than 23.4% of households in Sri Lanka are now headed exclusively by women.

The 'National Machinery on Women' now comprises the Ministry of Child Development and Women's Empowerment (MCD&WE), the Women's Bureau and the National Committee on Women (NCW). Among its specific objectives are *protection of women from violence and abuse, empowerment of women in economic, social and political spheres and enabling participation of women in all decision making bodies*. However the national gender machinery has been stymied from achieving these goals due to overlap of functions and lack of cooperation between the three institutions, lack of understanding of gender issues amongst key officials, an increasingly pronounced welfarist approach to women's empowerment over a rights approach, lack of policy autonomy and, marginalization from the national decision making and planning processes.

It is noteworthy that the Ministry of Women's Affairs became a stand-alone ministry in the post Beijing period and ceased to be coupled with some other subject (Health and Teaching Hospitals, Transport and Environment, etc). The current trend, however, is to link the Women's Ministry with the subject of child development which reinforces the common attitude that children are the sole responsibility of women. It encourages viewing women only vis-à-vis their reproductive roles as mothers and prevents recognizing women as individuals in their own rights, resulting in conflicting ideologies in policy making.

Article 2

Successive Sri Lankan governments have accepted the importance of the norm of non-discrimination against women articulated in the Constitution (Art 12) and developed National Plans of Action to realize gender equality, even incorporating CEDAW in a policy document, the Women's Charter 1993 and various initiatives of law and policy were taken from 1993-2005 to achieve gender equality. The initiatives taken up to 2002 were recorded in the previous report.

The laws and policies introduced between 2002-2005 have been considered in the various sections of this report. In this general review under Article 2, this report will assess whether the state has demonstrated the necessary political will to address problems of discrimination and inequality and worked towards fulfilling its commitments in the period 2002-2010, highlighting the gaps in performance.

Article 2 (a) and 2 (e)

Women's Rights Act

Sri Lanka's 1978 Constitution contains a general article on the fundamental right to equality. There is also provision to introduce temporary special measures to achieve substantive equality [Art 12 (4)]. However, this standard needs to be developed in an anti-sex discrimination, equal opportunities Women's Rights Act. In 2002-2003 the Sri Lankan government proposed such an Act. The structure and provisions of the proposed Act, did not however meet the standards of the Constitution or CEDAW, and was critiqued by women's groups. In 2004, a special Committee was appointed, chaired by a former CEDAW Committee member, to draft a new Act.

After a series of consultations this Committee prepared a new draft Act which met Constitutional standards and also incorporated the CEDAW commitments stated in the Women's Charter (1993). The new draft specifically addressed the need to conform with CEDAW Article 2 (e) to ensure that Non-State actors would be made accountable to follow the constitutional standards of equality, and non-discrimination against women.¹

The new draft Act 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.

The draft of the new Women's Rights Act was approved by the NCW and the Ministry of Women's Affairs (designated the Ministry of Women's Empowerment and Child Development - MCD&WE in 2005), the Cabinet, and sent to the Attorney General's Department, responsible for finalizing legislation to be presented in Parliament.

In late 2009, women's groups were informed that the new draft Act had been placed as a Bill before Parliament. When copies of the Bill were obtained it was found that the whole of the first part of the new draft Act on Women's Rights had been omitted. The legislation now before

¹ There is some doubt whether under the present Constitution of Sri Lanka there is a procedure for making Non-State actors accountable to conform with the general Constitutional standards on equality. However there is jurisprudence in the Supreme Court making the State liable for inaction in preventing violation of fundamental rights by Non-State actors.

Parliament only provides for the establishment of a National Commission on Women. However, the concept of an “independent commission” had not been incorporated, since the proposed Bill provides for appointments to the Commission to be made by the Executive President - a procedure different from that adopted under legislation on the other independent Commissions in Sri Lanka.

Women’s groups have protested about the transformation of the new draft Women’s Rights Act into a completely different statute. We hope that the Bill will be withdrawn even at this stage, and that an Act on the lines of the previous draft will be placed before Parliament. This experience indicates lack of political will in enacting a comprehensive anti-discrimination and equal opportunities Act to fill the current gaps in the constitutional remedies on women’s rights in harmony with commitment under Article 2, **para 277 of the COs.**

Other areas of discrimination

We acknowledge the enactment of the Prevention of Domestic Violence Act (2005) (PDVA) and the Citizenship Act (2003) as critical initiatives of the government.² However, between 2005-2010 the available comprehensive research base on women’s issues has not been used by the MCD&WE and the NCW, to introduce changes in law or policy in responses to existing areas of discrimination, in conformity with Article 2 (b) 2 (f) 2 (g).

Impunity and Violence against women

The issue of impunity and weak enforcement of laws on violence against women especially in the conflict areas, **para 287 of the COs,** have not received an adequate response from the MCD&WE and the NCW.³ Discussions have sometimes been held with women’s groups and law enforcement authorities, but these discussions have not resulted in action to address impunity for gender based violence. Consequently, performance on Article 2 (c) and (d) has been flawed in this period.⁴

Affirmative action in politics and decision making

The state has not addressed the need to introduce affirmative action laws and policies to eliminate the unequal representation of women in politics and decision making - **para 278 and 279 of the COs.** Though an All Party Parliamentary Women’s Caucus, the MCD&WE and the NCW worked closely with women’s groups and made a series of proposals to a Parliamentary Select Committee on Electoral Reforms to increase representation of women in politics, none of these proposals were reflected in the final report of the Committee.⁵

The gender agencies were unable to ensure that even one woman is nominated or appointed to the Constitutional Council - the high appointment Committee, established under the 17th Amendment to the Constitution. The state gender agencies have not therefore been able to ensure state performance in these areas. They have failed to give leadership in initiating necessary changes to fulfill government’s commitments under Article 2 (a), 2 (f) and 2 (e).

² Refer Chapter on Violence Against Women for comments on implementation of the DV Act.

³ Refer Chapter on Women and Armed Conflict.

⁴ Refer Chapter on Violence Against Women.

⁵ Refer Chapter on Political Participation and Representation.

National Gender Machinery

The transformation of the Ministry of Women's Affairs into a Ministry of Women's Empowerment that is combined with Child Development from 2005 has in our view also undermined the women's right to equality agenda, carefully built through years of partnership between the state gender agencies and women's groups. National policy documents and events are increasingly tending to reinforce stereotypical negative cultural values on women, focusing mainly on women as mothers, ignoring the necessary balance the Constitution and CEDAW seek to achieve between women's right to equal life chances and shared social responsibilities with men in the family. The shift in focus to women as mothers has also resulted in a lack of capacity within the Ministry to understand and relate to women's rights issues. Some proposals from the Ministry demonstrate a lack of understanding of CEDAW or concern with Constitutional standards on gender equality. One proposal, abandoned due to protests, attempted to restrict overseas employment for women migrant workers with minor children in the interests of children.

On the other hand the gender agencies have also been marginalized in policy formulation at the national level. They had almost no role in the drafting of the 10 year National Policy planning document 2005-2010. The Minister of the MCD&WD was not included among the Ministers who were members of the National Disaster Management Council, though there is substantial evidence based research on the problems specific to women affected by conflict, and natural disasters like the Tsunami 2004. Hasty policy decisions of the government on expanding maternity leave in the state sector have had a negative impact on women's access to employment. These policies were formulated without any discussion with the MCD&WE or the NCW, and were an ad hoc government initiative presented through the national budgeting procedures.

The NCW has since 2005 been considered a department under the MCD&WE. Though the agency has many gender experts from the government and non-government sector, including women activists, the NCW has lost its capacity to provide the leadership that it did in the past in integrating a woman's human rights perspective based on the Constitution and CEDAW into the work of the gender agencies and government institutions, on matters impacting on the lives of women.

The Women's Bureau is the oldest national institution with a mandate to advance the status of women in Sri Lanka since 197. It now focusus mainly on income generation and awareness raising. The Bureau implements its work through a network of membership based societies called Kantha Karya Samajas. As at November 2007, there were approximately 6,693 registered associations with a membership exceeding 120,000 women members. Unfortunately this large constituency of women is never mobilized in support of law and policy reform undertaken by the Ministry or the NCW.

Gender Focal Points established since the 1980s have not achieved their desired objective due to lack of a monitoring mechanism, lack of planning and coordination and lack of capacity development programmes and junior officers who are appointed and subjected to frequent transfers. The MCD&WE itself does not appear to take these focal points seriously. A national Plan of Action for women developed in the 1990s was revised in 2006/2007 but has still to be approved by Cabinet and implemented, para 279 of the COs.

It is important to delink the Ministry of Child Development from Women's empowerment. It is also important establish an independent National Commission for Women as indicated in the first draft of the Women's Rights Act and in accordance with the 17th amendment to the Constitution. There is also a need to provide adequate resources to the Ministry for coordination with other Ministries. A formal link with the Department of Census and Statistics may also be necessary so as to create capacity for the collection and data processing of sex disaggregated data.

Lack of sex disaggregated data - paras 284, 285, 290, 291, 295 of the COs.

The need for sex disaggregated data is a problem highlighted in several chapters of this report. Sri Lanka which is recognized as a country with a solid statistical information base has nevertheless performed poorly on achieving the goals of a recent regional initiative, the SAARC Gender Information Base. The MCD&WE lacks capacity to undertake work on this initiative. The national agency on data, the Census and Statistics Department and the MCD&WE have not collaborated or networked effectively, on this project, as they have done in other countries of the SAARC region. There is an increasing lack of willingness to rely on research and professional expertise outside the MCD&WE, creating a situation where the Ministry lacks capacity, but does not obtain needed expertise available within the country. Women's groups lack the space they had to work with the State gender agencies and impact on important areas of concern relevant to achieving gender equality.

Criminal laws

The state has not performed on realizing Article 2 (g). Discriminatory provisions in colonial laws on criminal procedure and provisions that impact negatively on administration of criminal justice should have been reformed to reinforce the Penal Code reforms of 1995. These reforms have not been enacted. Much publicity was given to a proposal of the government to lower the age of statutory rape that had been raised to 16 in the 1995 reforms. This proposal had not been discussed with the gender agencies. It was dropped after protests from women's groups.

The need to reform abortion laws - para 283 of the COs, has not been addressed, because such reform is perceived as "politically sensitive".⁶

The state has not reviewed the law on marital rape to include de facto separation (para 284 of the COs.)

⁶ Refer Chapter on Health.

Article 7

Political Participation and Representation

Representation of women in elected political bodies

With reference to **para 278 and 279 of the COs**, the representation of women in Parliament has remained the same since 2002, while the representation of women at Provincial and local levels has in fact decreased. The majority of women currently represented in elected political bodies are women from the Sinhala Community; women from the minority Tamil and Muslim communities are further marginalized from these bodies. There is only one Tamil woman and no Muslim woman in the current Parliament.

Lack of commitment within political parties to increase women's representation

In our analysis the main obstacle to women's equal political representation remains within Political Parties, since they do not nominate an equitable number of women to contest elections.

Table 1: Representation of and nominations for women Political Office⁷

Elected Political Body	Year	Representation of Women			Nominations for Women		
		Total Number	No. of Women	% of Women	Total Nominated	Nominated Women	% Women Nominated
Parliament	2004	225	13	5.8%	6,060	375	6.2%
	2010	225	13	5.8%	7,619	Official data unavailable	Official data unavailable
Provincial Councils	2004	380	19	5.0%	4,863	373	7.7%
	2008/9	417	17	4.1%	9,356	711	7.5%*
Local Council	2006	3,942	74	1.8%	25,911	Official data unavailable	Official data unavailable

Source: Adapted from the Department of Census and Statistics

*Statistics personally compiled by author of this chapter

While there has been some increase in the levels of nominations for women this increase is mainly from smaller political parties and independent groups which proliferated following the introduction of elections based on proportional representation in Sri Lanka. The major political parties/coalitions such as the ruling United People's Freedom Alliance (UPFA) which includes the Sri Lanka Freedom Party (SLFP); the main opposition United National Front (UNF) which includes the United National Party (UNP), which win the most number of seats at elections are extremely reluctant to nominate women candidates. At the 2004 parliamentary elections, out of a total of

⁷ We have used Table 2 in Sri Lanka's 5th, 6th and 7th Combined Periodic Report Submitted under Article 18 of the Convention and incorporated statistics for nominations received by women and men.

375 nominations for women, the UPFA and the UNF fielded 15 (5.2%) and 11 (4%) women respectively.⁸ The same trend was observed at the provincial councils elections held in 2008/2009 and the parliamentary elections of 2010.

Table 2: Parliamentary Elections 2010 and Provincial Council Elections 2008/2009: Nominations given to women by the major political parties

Political Party/ Alliance	2010 Parliamentary elections			2008/2009 Provincial Council elections		
	Total no of nominations	Nominations for women	% of nominations for women	Total no of nominations	Nominations for women	% of nominations
UPFA	262	15	5.7%	417	18	4.3
UNF	262	15	5.7%	417	16	3.8
JVP	-	-	-	417	14	3.3
DNA including the JVP	262	9	3.4%	-	-	-

Source: Statistics personally compiled by author of this chapter

We observe a continuing lack of political will and internal democracy within mainstream political parties to nominate women, allocate resources to enable women to contest elections, and above all take affirmative steps to ensure that women both contest and win elections. We therefore reject the following assertion made in the GOSL periodic report

'that the number of women standing for election to and being elected to national, provincial and local government bodies indicates reluctance on the part of women to engage in active political work.

And

'Although the attempt has been made to reserve a mandatory quota in the nomination list exclusively for women and political parties have been advised to consider this principle the environment has certainly not been conducive to creation of a sense of confidence amongst women that it is an area that they could engage in.'

A study, commissioned by the UNDP⁹, in 2008 reveals that over 5000 women have been trained by both non-government and government organizations including the NCW and the Ministries responsible for Women's Affairs under various governments to take on political leadership between 1994 -2008.

Although no proper evaluation of these training programmes have been conducted, it is clear that they have fulfilled an important need in relation to not only building the capacity and confidence of women but also in relation to inspiring and motivating them to pursue a career in

⁸ The final report of the EU Election Observation Mission to Sri Lanka in 2004.

⁹ Kodikara, Chulani (2008) The Struggle for Equal Political Representation of Women in Sri Lanka: A Stock Taking Report for the Ministry of Child Development and Women's Empowerment and the United Nations Development Programme (UNDP), November 2008.

politics which otherwise they might not have wanted to do; therefore the GOSL assertion that “politics does not seem to be a preferred choice by a majority of women”, is difficult to accept.

Lack of sex disaggregated data in relation to nominations by political parties

We wish to state that obtaining sex disaggregated statistics of nominations for women at elections is becoming increasingly difficult. The Department of Elections does not release his data and neither the MCD&WE nor the NCW have this data or are interested in collecting it. Sex disaggregated nominations statistics further broken down by party is particularly important to understand which parties do and which are not nominating women.

No political will to implement a quota for women even at Local Council level

Women’s organizations have continued to advocate for a quota for women in political institutions and particularly at the level of local government with political parties and before the Parliamentary Selection Committee on Electoral Reform appointed in 2003 and (reconstituted in 2006). The two major parties /coalitions have now begun to include commitments to increase women’s representation in their party manifestos. For instance, the political manifesto of President Rajapakse in 2005 (Mahinda Chinthanaya) stated

“I will arrange to increase the number of nominations of women to a minimum of 25% of the total number of candidates in respect of provincial councils and local Government authorities” (p. 14). However this commitment was not met and Mahinda Chinthanaya 2 on which the 2009 Presidential election was based only committed to *“Implement measures to increase the representation of women within the political and administration framework, so that we could ensure that our educated women are given their due place.” (p. 23)*

The main opposition UNP/UNF also promised in 2010 to *“create 25 per cent representation for women in local authorities as well as in Provincial Councils”*. However UNP record of nominations at recent elections does not inspire confidence.

The Interim Report of the Select Committee (5 June 2007), while recognizing the need to increase women’s representation in politics, makes a very weak recommendation that:

- (i) political parties should include provisions in their policies to ensure nominations of women candidates in order to guarantee better representation of women in Parliament, Provincial Councils, and Local government bodies, and

- (ii) that necessary legal provisions be formulated to make it mandatory that every third candidate nominated by a party secretary from the national list shall be a woman candidate.

The Committee also recommends that the ‘ward system’ should be re-introduced for local government elections. We however note with disappointment that the two Bills which were subsequently drafted and presented in Parliament on 7 December 2008 made no mention of a quota for women or any other legally enforceable mechanism to increase women’s representation.

Note that the Local Authorities Elections (Amendment) Bill provides for the return to a ward system in respect of 70% of seats in local government institutions where candidates will be elected on a first past the post system. The remaining 30% of seats will be elected on the basis of proportional representation.

Despite the appalling statistics in Sri Lanka, policy makers continue to insist that there is a level playing field and equal access to elected political bodies. In our analysis this is yet another manifestation of a refusal to recognize historic discrimination against women.

Violence against women in politics

Women in Sri Lanka are also affected by a violent political culture particularly during election times, characterized by thuggery and voter intimidation as well as assaults against candidates and supporters. Some elections have witnessed gender specific and sexualized forms of violence. We are particularly concerned that no specific measures have been put in place to address gender specific forms of violence during election times.

Campaign financing

Election campaigns in Sri Lanka necessarily entail massive spending for posters, banners, transport, as well as advertising in the print and electronic media. Furthermore campaigners will often spend generously on lunch/dinner packets and bottles of alcohol for potential supporters. Male candidates who are recognized as 'winnable' candidates are able to mobilize funds from private contributions and the cooperate sector. Women on the other hand find it extremely difficult to raise large sums of money.

Buddhist Temporalities Ordinance

Under the Buddhist Temporalities Ordinance of 1931, only male public servants have the right to vote at elections of Diyawadana Nilames¹⁰ and similar posts of trustees of Buddhist Temples. At the time this law was promulgated women were not recruited to the public service. This is a long overdue amendment.

Voting Rights

There is currently no mechanism in place to allow Sri Lankans working overseas to exercise their franchise during elections. This is particularly detrimental to migrant workers, the majority of whom are women since the lack of a vote deprives them of leverage to influence policy making to protect their rights.

¹⁰ The Diyawadana Nilame is the office of chief lay custodian of the Temple of the Tooth, Kandy, Sri Lanka. These officers have to be Buddhist and male.

Article 10

Education

With reference to **para 280 and 281 of the COs** on representation of women in engineering and technology and **para 289 of the COs** related to stereotypical attitudes relating to women, we wish to state the following:

Gender imbalances in engineering and technology related courses

Gender imbalances are still wide in enrolment in engineering and technology related courses as career choices tend to be determined by the gendered process of socialisation that starts in the home and is reinforced at each educational level. A recent study found that university education has not changed conventional perceptions of gender roles among many women undergraduates.¹¹

This imbalance in enrolment in technological, technical and vocational education institutions and programmes further reinforce the gender division in the labour market. Uncoordinated and ad hoc policies and programmes in the past have resulted in the continuing under representation of students/trainees in technical related programmes as seen in enrolment data in the four island wide networks of training institutions – the Technical Colleges, the centres of the Vocational Training Authority and the National Youth Services Council, and the National Apprenticeship and Training Authority's programmes.¹² At the tertiary level women still tend to be concentrated in service sector related programmes. The only change has been in the expanding field of Information Technology but here too women tend to gravitate towards lower skill level courses such as in word processing, the modern equivalent of the earlier typing courses.¹³

We however recognize that the Technical Education and Vocational Training sector has seen some positive developments in recent years. A seven tier structure of National Vocational Qualifications leading to university level, an accreditation scheme for all public and private sector training institutions, career guidance centres and labour market linkages offer alternative attractive career paths. The Ten Year Plan has for the first time, the reduction of gender imbalances in enrolment as one of its stated objectives. There are no legal barriers to the access of women to any programmes and it remains to be seen whether attitudinal changes can be promoted to increase the representation of women in technical related courses.

Gender stereotypes

With reference to **para 289 of the COs**, a recent gender analysis of secondary school textbooks in a few core subjects has noted that there has been a conscious effort made to eliminate such stereotypes. However, it appeared, at the same time, that the authors of textbooks had still an inadequate knowledge and sensitivity to shift from acceptance of negative gendered norms to

¹¹ Gunawardena Chandra et al (2005) Not Adding Up: Looking Beyond Numbers-Gender Equity in Higher Education in Sri Lanka. Colombo: Open University Press

¹² Jayaweera, Swarna (2005) Gender Dimensions of Vocational Education in Sri Lanka, Research Convention, Ministry of Skills Development, Vocational and Technical Education, Colombo pp 60-78

¹³ Jayaweera, Swarna and Wanasundara Leelangi (2006) Gender and Information Technology in Sri Lanka: Inclusion or Exclusion, Centre for Women's Research, Colombo.

using the education process to empower girls to challenge social pressures and to diversify career options.¹⁴ A study of pre-school education from a gender perspective found that gendered norms of appropriate tasks and occupations are reinforced by the learning process in these initial years of education.¹⁵ However, gender modules are being introduced in the teacher education and secondary school curricula to promote the concept of gender equality.¹⁶

Thus even though girls are not disadvantaged in relation participation rates, retention rates and total enrolment, girls and women continue to face difficulties in translating their gains in education effectively into economic and social gains as a consequence of the impact of gendered norms on perceptions and attitudes of parents, educators, administrators and employers and on the aspirations of girls.

Barriers to universalisation of education: We recognize the achievements made in relation to education. Among the constraints to the universalisation of education has been over two decades of armed conflict in the north and east that escalated into war in 2006.¹⁷ 70% of all teachers are female but only 25% of principals are women.

¹⁴ Abeyasekera, Asha (2008) Gender Ideologies in the School Curriculum: A Textual Analysis of Secondary School Textbooks, Centre for Women's Research, Colombo

¹⁵ Abhayadeva, Chitrangani (2008) Gender and Pre-school education, Centre for Women's Research, Colombo Study Series No. 37

¹⁶ CENWOR, 2009, 2010.

¹⁷ Refer Chapter on Armed Conflict.

Article 11

Employment

Low levels of women's economic participation

With reference to **para 291 of the COs**, we wish to make the following points:

As reflected in the GOSL report, there is no substantial change in the women's labour force nor labour force participation rates. It should be noted that women's labour force participation (51.3) is highest from age the group (45 - 49).¹⁸ This is because:

- Women are able to take on regular paid work only after completing child rearing and caring obligations;¹⁹
- The non-enumeration of women's economic contributions within the home and women's role in provision of economically valued food items through home gardening and household based small scale activities. Non enumeration of women's work within the home and homesteads results in under estimation of actual economic contributions of women to the national economy;
- The lack of policy focus on meaningful paternity leave regulations and on nation-wide support and provisions to address changing household structures and responsibilities between women and men also is a cause for gender based differences in labour force participation.

Employment Status

Most employed women are found to be in the agricultural (36.9%) and service sectors (37.6%). Only 25.4% of women were found to be in the industrial sector²⁰. Furthermore, only 21% of women who have education above senior secondary high school (GCE A' levels) are employed while 47.9% of women with similar educational qualifications are unemployed²¹. A combination of gender based differences exist where women are strongly expected to comply with social norms of behaviour to take on roles as wives and mothers that deter them from either seeking regular employment and/or discourage employers from enlisting women of child bearing age into the workforce.

Maternity Leave

Sri Lanka has a long history of affording Maternity Benefits to women in employment in the formal sector. The Maternity Benefits (Amendment) Act, No 43 of 1985 places two limitations on maternity leave: i.e (i) it is limited to the birth of the first two children of a woman employee (ii) it is restricted to 'live births'.

The Act does not formally recognize entitlements to maternity leave of women who may have undergone a miscarriage (natural abortion) at any stage of the pregnancy. Maternity Leave benefits are also not applicable to the Informal Sector.

¹⁸ The Highest male participation rate (97.2) was reported from age group (35 – 39).

¹⁹ Department of Census and Statistics. Ministry of Finance and Planning. (2009). Quarterly Report of the Sri Lanka Labour Force Statistics. Excluding Northern Province.

²⁰ Department of Census and Statistics. Ministry of Finance and Planning. (2009). Quarterly Report of the Sri Lanka Labour Force Statistics. Excluding Northern Province.

²¹ Department of Census and Statistics. Ministry of Finance and Planning. (2009). Quarterly Report of the Sri Lanka Labour Force Statistics. Excluding Northern Province.

Furthermore, the Establishments Code 1985, Chapter XII, sets out that:

*A female officer required to retire on marriage will not be eligible to maternity leave under this section in respect of an illegitimate child.*²²

The operation of this regulation is optional, i.e. the employer may or may not penalize a pregnant woman on the basis of whether the child is legitimate (conceived within formal marriage) or not. However, the fact of its existence highlights the avenues that are available to discriminate against a woman based on social norms of marriage.

In addition, there are no clear guidelines that allow for women who adopt infants the right to paid maternity leave. Paternity leave is only limited to three days and is limited to the public sector. Furthermore, the Maternity Benefits Ordinance in section 12A (1) recognizes that the Minister has the power to make regulations requiring the establishment and maintenance of crèches in prescribed trades, with a prescribed number of women workers. Regulations related to these provisions are yet to be made. Recent ad hoc extension to maternity leave in the public sector has however created confusion among women workers and employers, as these were done without consultation with employers and women's groups.

Women with Disabilities

In 2001, approximately 158,446 women with disabilities were enumerated in the national census. It is likely that this figure is much higher today, due to the war and other factors. Many remain marginalized in terms of enjoyment of social and cultural rights, (marriage, child bearing) as well as economic rights (employment). There are few provisions available for persons with disabilities in access to employment and higher skills training. Most government and private schools and places of employment are not constructed with access to persons with disabilities. Many women with disabilities are vulnerable to abuse within and outside the family and community environments²³.

Migrant Women Workers

With reference to **para 292 and 293 of the COs**, The National Labour Migration Policy for Sri Lanka is a well formulated document which needs to be implemented without delay²⁴. The State actively encourages male overseas employment migration on grounds that female overseas migration impacts adversely on families, households and society in general. However, the fact that approximately 42% of females who migrated as housemaids were between the ages 30 and 44 years²⁵, indicates that women (of child bearing ages) are utilizing avenues for higher income employment opportunities overseas. There is growing evidence that the GOSL is unable to cope with the range and extent of rights violations of their citizens employed overseas. Voting rights for Sri Lankan migrant workers abroad should be considered.

²² Ministry of Public Administration (1985). Establishments Code of the Government of the Democratic Socialist Republic of Sri Lanka. Volume I. Colombo.

²³ Association of Women with Disabilities. 2010. Girls and Women with Disabilities. Colombo.

²⁴ Sri Lanka Ministry for Foreign Employment Promotion and Welfare. (2008). The National Labour Migration Policy of Sri Lanka. Colombo. The Official Poverty Line (estimated to be the Real Total Expenditure Per Person Per Month) in 2002 was Rs. 1,423 in 2002. This figure was estimated to be the same for the period 2006/07.

²⁵ Sri Lanka Bureau of Foreign Employment (2009). Annual Statistical Report of Foreign Employment 2008. Colombo.

There continues to be no social security benefits for migrant workers following their return to Sri Lanka. More directives could be given to sustainable economic interventions as well as to the voluntary pension scheme implemented by the Department of Social Services which could be availed of by returning migrant workers.

Trafficking

The 2002 SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution recognizes the extent of the problem within the South Asian region. The Sri Lankan government tightened regulations against trafficking of persons to 20 years imprisonment in the amendments to the Penal Code in 2006. Trafficking of women, however, continues to take place, albeit at a relatively smaller level compared to the numbers of women who travel overseas as migrant workers. Trafficking of women appears to be increasing as found in periodic reports in the media and is considered an emerging area of concern.

Women Free Trade Zone Workers

More than 50,000 women employed in mainly garment factories have been affected by changes in the global markets that saw a reduction in investment in and demand for products from Sri Lanka. Most workers who are between the ages 18 and 30 do not receive direct financial or other benefits that accrue to government through these exports. They are also vulnerable to losing their employment, especially in the light of trade sanctions against Sri Lanka being considered by the international community in recent years. For instance, it is not clear whether government has identified alternative employment opportunities for women should the GSP Plus trade benefit not be renewed in August 2010.

Women in Poverty

Official statistics give very limited sex disaggregated data which limits access to a gender based poverty profile; for example, there is no sex disaggregated data on number of persons and number of poor households by sector or, household size by poverty status.

In the Government's highly gendered poverty alleviation programmes, the family based household is conceptualised as being headed by a male. Hence, often in situations where the woman is the de facto main income provider for the household, she is not automatically entitled to the immediate benefits of such programmes.

Women in the Plantation Sector

With the privatization of the plantation sector over the past decade, there has been no significant improvement of the working conditions for women in relation to gender based wage discrimination and entitlements. Few women in the plantation sector have access to marketable skills which results in them continuing to be confined to low wage jobs.

Article 12

Health

Women's access to health care

This report recognizes that health care provision has been one of the strong points of Sri Lanka with achievement of good key health indicators, and government efforts to improve health care provision by decentralizing and strengthening provincial health administration has been commendable. There are however, regional differences in women's access to healthcare.²⁶ Furthermore, social and cultural attitudes of some care providers may make access to certain services (eg. contraceptive services), of certain sub populations like unmarried adolescent girls, older women and widows difficult. While total expenditure on health, considered as a percentage of GDP has been relatively small but constant (4.1% of GDP) over the years, private spending has emerged as an important source of health financing,²⁷ possibly widening women's access to health care. While a health insurance scheme targeting government servants of both sexes (*Agrahara*) is now available, there is a need for a similar scheme which targets the reproductive and other health needs particularly of informal sector and unemployed women.

Maternal Health

There is a discrepancy in relation to the MMR data which is compiled by three different state institutions. According to the Family Health Bureau,²⁸ MMR stands at 38 per 100,000.²⁹ Given that MMR is low, detailed investigations into deaths will become necessary if further reduction is envisaged. The present review system needs to be upgraded to a Confidential Inquiry to identify the specific interventions required to reduce MMR.

The Public Health Midwives of the MoH which maintains an "eligible mother's register" ensures early and almost 100% registration of pregnant mothers. However some districts such as Nuwara-Eliya, Mannar and Mullaithivu recorded rates less than 65%³⁰. This may be due to an acute shortage of PHMs within these districts and the prevailing security situation may be the possible causes.³¹

At present nearly 96% of deliveries take place in health institutions of which 90% are in State run hospitals.³² Although home deliveries contribute only to a very small percentage of the total deliveries, they are responsible for a significant proportion of maternal deaths occurring due to post partum hemorrhage. The breakdown of the care provision mechanism and transport services in the conflict affected areas may make women resort to take the option of home deliveries thereby putting themselves at risk.

²⁶ DHS 2006-07 Sri Lanka Demographic Survey Department of Census and Statistics in collaboration with Ministry of Health Care and Nutrition. 2009; Annual Report on Family Health Sri Lanka 2004- 2005; FHB, WHO, UNFPA publication.

²⁷ WHO information <http://www.who.int/whosis/en/index.html>.

²⁸ Which can be considered the most reliable.

²⁹ Annual Report on Family Health, Sri Lanka 2004 – 2005: FHB, WHO, UNFPA publication.

³⁰ Annual Report on Family Health Sri Lanka 2004 – 2005: FHB, WHO, UNFPA publication.

³¹ Annual Report on Family Health, Sri Lanka 2004 – 2005: FHB, WHO, UNFPA publication.

³² Annual Report on Family Health ,Sri Lanka 2004- 2005; FHB, WHO, UNFPA publication.

Fertility rates

The latest Demographic and Health Survey (DHS)³³ shows a rising in the TFR which has increased from replacement level of 1.9 in the year 2000 to 2.4 in 2006/7. TFR in the estate sector was still higher reaching 2.8. The change in fertility preference may be due to multiple causes such as reaction to loss of life during the Tsunami or the conflict. This is possibly made more complex by pressure from fundamental political and religious lobbies who mistakenly perceive family planning programmes as threatening to a particular group. It may also be due to the inadequate reach of contraceptive services to some populations.

Family planning

There is marked variation in the use of contraception between the districts. The lowest rate of use was seen in the conflict affected Batticaloa district where 34.5 was the rate for any method. There are no clear guidelines about the right of access to contraception and family planning for single women and access is left to the discretion of the medical practitioner. Data on the use of contraceptives among unmarried though sexually active women is not available and there is no planned strategy to reach these women in the state sector contraceptive service.

Although information on family planning methods is easily available to married adults, such information is not easily available to adolescents and young persons. Most policy documents do not recognize the right of adolescents to contraceptive services but the National Policy on Health of Young Persons has incorporated this issue. The policy is still in the draft form. The consent of the parent is often requested in responding to the contraceptive needs in the case of adolescents and the care provider often comes in to a conflict between maintaining confidentiality and respecting “parental responsibilities”. Clear guidelines need to be developed to guide the care provider.

The reproductive health module which has been included in the school curriculum does not include any information on contraception. Education material produced by a state agency for school children was never used since it contained information on contraception and teaching of the existing curriculum is not effective due to negative attitudes of officials and teachers..

Teenage pregnancies

Health Master Plan (2007 - 2016), identifies unwanted pregnancies and abortions as issues that pose a significant challenge to the well-being of adolescents. It proposes developing their knowledge attitudes, values, skills & behaviors with respect to biological, psychological, socio cultural & reproductive dimensions of adolescence. The recent DHS showed that there is a wide variation in the prevalence of teenage pregnancy between the districts. Ampara, Trincomalee which recorded high and Galle, Kandy and Gampaha which recorded low rates³⁴.

³³ DHS 2006/2007, Sri Lanka Demographic Survey, Preliminary Report, Department of Census and Statistics in collaboration with Ministry of Health Care and Nutrition.

³⁴ Situation study of women with disabilities conducted by Association of Women with disabilities (AKASA), 2007.

The number of births registered to mothers less than 18 years which is the legal age of marriage, shows that there is lack of knowledge or understanding of the law.

Table 3

Mothers Age at Delivery	1996	1997	1998	1999	2000	2001	2002	2003
12	15	01	02	00	00	02	00	00
13	19	19	26	25	10	22	24	34
14	105	99	117	127	117	96	151	127
15	641	575	615	566	576	564	508	584
16	2,303	2,203	1,874	1,939	1,917	1,974	1,729	1,689
17	4,643	5,172	4,729	4,291	4,459	4,503	4,341	3,906

Source: Registrar General's Department

Consent for permanent methods of family planning

The consent of the husband is needed in addition to the wife's in tubectomies and vice versa in vasectomies. There are no legal grounds to refuse a woman who is widowed or unmarried to get a tubectomy. However, social stigma often prevents women from asking for it and in such situations the attitude of the surgeon too would matter.

Although the Ministry of Health has prescribed forms to record consent for sterilization in all three languages, women in estate areas, whose literacy levels are poor, may have difficulty in comprehending the full significance of the procedure and are susceptible to be pressurized by the husband or the economic benefit of the incentive payment. A leaflet in Tamil explaining the advantages and the disadvantages in simple language specially designed for such areas would help to resolve the situation.

Abortion

With reference to **para 283 of the COs**, decriminalization of abortion and dealing with it in health legislation has not been done. This is however a critical concern from a woman's right to health perspective, given the high incidence of induced abortion, currently estimated to be 125,000-175,000 annually³⁵. Available data show that most of the abortion seekers (86% - 96%) are married and the commonest reason given for requesting an abortion was that the "last baby was too young' and the commonest age group was 25 - 29 years.

Some families may be resorting to abortion as a way of family planning. Strict implementation of the abortion law has made service providers go underground and there is a possibility of women being exposed to traditional and often harmful methods. The Medical Director of the Family Planning Association in 2004 commented "the government either should prevent induced abortions instead of turning a blind eye towards it or legalize it or at least liberalize it for certain conditions..."³⁶

³⁵ De Silva, Indralal W (1997) The practice of induced abortion in Sri Lanka, Research paper No. 137, Takemi programme in international health, Harvard School of Public Health. Although a large number of abortions are taking place the number of deaths due to abortion is low (around 20 a year). This may be because of factors such as the easy access to antibiotics to the abortion provider and the immunization against tetanus which is near 100%.

³⁶ Options, Vol 34, 2004, p. 20, Women and Media Collective, Colombo.

HIV/AIDS

Although HIV/AIDS has been detected in Sri Lanka since 1987 Sri Lanka still remains a low prevalence country. However women are vulnerable to HIV AIDS as the use of the male condom remain relatively low around 5%.³⁷ Female condom is hardly used and is not encouraged even among high risk groups such as sex workers due to concerns that they may be reused due to their high cost. Easy access to male condoms by sexually active groups such as factory workers, university undergraduates and adolescents is desirable and needs to be ensured. Condom vending machines are not available. There is also anecdotal evidence that women, suspected to be sex workers, are arrested for possession of condoms.

Girls and Women with Disability

Although free health care is available, most health institutional infrastructure has not provided special access facilities to the seriously disabled including women.

Sex Disaggregated Data

Sex disaggregated data is not collected and even if available is not analyzed in statistical data published in the health sector. The disaggregated data if available would help to plan many interventions that would benefit women.

Anaemia and low birth weight babies

While government healthcare programmes include free provision of nutritional supplements to pregnant women, anaemia among women is a primary factor in the relatively high rates of low weight births. A study on women's anaemia status by haemoglobin level records, anaemia levels as follows: 32.0 among women between 20-29 years, 35.0 among women between 30-39 years, 46.0 among women between 40-49 years.³⁸ These factors strongly indicate gender based differential access to food within the home.

³⁷ DHS 2006/2007, Sri Lank Demographic Survey, Preliminary Report, Department of Census and Statistics in collaboration with Ministry of Health Care and Nutrition.

³⁸ Department of Census and Statistics (2009). Demographic and Health Survey 2006/07. Prevalence of Anaemia among Children and Women in Sri Lanka. Department of Census and Statistics Health Sector Development Project, Ministry of Healthcare and Nutrition. Colombo; UNICEF State of the World's Children 2005.

Article 14

Rural Women

Although macro level economic and social policies and development projects have an impact on rural populations, and on their well being in general, they tend to have a differential impact on men and women due to prevailing patriarchal values and attitudes. Therefore in spite of certain interventions from the State and NGOs, rural women continue to face discriminations and hardships.

Non-Recognition of Women's Contribution to the Rural Economy:

The CEDAW committee in **para 295 of the COs** emphasized the urgency for the Government to recognize rural women's contributions to the economy by collecting sex-disaggregated data on rural production. Although certain measures have been taken towards this end, there is still a lack of sex disaggregated data. Women who are invisible in national statistics are therefore disadvantaged and lack the ability to access certain entitlements as seen in the implementation of tsunami livelihood recovery programmes. It has been stated,

"In project proposals women farmers are subsumed in the households; services and projects target the household head that usually is male. When women are identified as project beneficiaries, the major focus generally is on widows and female headed households ignoring the overwhelming majority of poor women who contribute to the household economy while bearing major responsibility in the domestic sphere. Despite being farmers in their own right, women's membership is limited in farmers' organisations or other agro-economic based societies and they rarely hold positions of authority"³⁹

While we agree that the government has emphasised rural development, we don't yet see any emphasis on addressing women's concerns and marginalization within rural communities.

Wage differences between men and women in agricultural activities

Furthermore in relation to **para 295 of COs**, in paddy cultivation and in other traditional agricultural activities, there is no formal wage structure and a minimum wage. A clear discrimination in wages for men and women prevails in rural agricultural activities. Women are paid less than men for the same agricultural activity due to the gender ideology that men are capable of more work than women and women's labour is considered less valuable than men. E.g. women are paid on average Rs.200 per day while men are paid Rs. 350-400. Accepting of such wage differences by both men and women perpetuates this discriminative practice.

Not accepting women as equal partners in the production process

Fishing is a major economic activity in the coastal areas of Sri Lanka. Both men and women are engaged in this activity in different capacities. Men are directly engaged in fishing either in the sea or inland. They also engage in selling fish in a large or small scale. Generally it is the men who own boats and other fishing equipment. Women's involvement varies according to the area and region. In some districts women are directly engaged in fishing in the sea. They go on their own but there are times when they are accompanied by their husbands. There is no inhibition for women to go out to sea in these areas. In some other areas women are engaged in inland

³⁹ <http://www.fao.org/docrep/009/ag114e/AG114E10.htm>

fishing in rivers and lakes. Women are also engaged in processing fish and selling fish. Women therefore do make significant contribution to the fisheries sector. However, women hardly have membership in fishing societies. Even if they do have membership, they hardly have a voice as fishing societies are male dominated. Furthermore, since the fisheries sector is male-centered and male dominated, women face many hardships in selling their products. The market place is dominated by men and women do not have space to sell their products. Women are pushed out from the market place and they are either confined to take their products to the door steps of customers or to sell them to a Mudallali (middleman) who exploits them. Those women who market their products on their own have limited mobility and therefore have to be confined to a small area. Thus compared to men, women engaged in the fishing sector have less opportunity to expand and improve their activities.

Women pushed out of work due to the mechanization of some agricultural activities

Traditionally women were equal partners with men in agricultural production. Women are engaged in many activities in paddy and Chena (slash and burn) cultivation. Women are also engaged in home gardening and subsistence farming. From time to time women have been pushed out from their traditional activities in farming due to the introduction of machinery. The recent introduction of a multi purpose machine that could perform several agricultural activities such as reaping, sorting, threshing and winnowing has drastically reduced the requirement of manual labour. This new technology has a differential impact on men and women. Today, most of the work is carried out by men, while women have got pushed out as they are perceived as incapable of operating machines. Therefore women have lost their traditional agricultural activities.

Unpaid family work

Unpaid family work is an issue related to female labour force participation. Labour Force Participation Survey in 2007 shows that 6.6% of females of working-age population were unpaid family workers while it was only 2.9% for males. Further the survey has highlighted that out of the unpaid family workers females comprised 71.6%. The contribution made to the total employment by unpaid family workers were comparatively higher in the districts of Anuradhapura, Monaragala and Badulla which were identified as having a higher female labour force participation. These are also districts where agricultural sector employment is highly concentrated. Such discriminatory practices are highly unacceptable as it affects the well being of women.

Plantation Women

In the tea plantation sector while women and men are paid equal wages, women work a longer day and thereby do not receive an equal wage for equal value of work.⁴⁰ Women are also expected to pluck an increased weight of 1 ½ kgs to receive an overtime payment. Further while any employee was eligible for housing on the plantations, housing is now given only to members of the housing committee and as members are invariably heads of household (perceived to be male), women become ineligible.

Undesirable situation of self-employment activities /micro-enterprises in rural areas

The importance of non-agricultural activities in rural areas is rapidly increasing. While there is no industrial development in the rural areas, it is self-employment /micro-enterprises that have

⁴⁰ Women pluck the leaves and are expected to work till 5 p.m. while men work only till 1 p.m.

become important in rural economy. Many women are engaged in such activities under many hardships due to most being categorised as home based small economic activities. However, they are an important income source for rural households. Such home-based activities are marginalised and they do not receive state assistance. Women engaged in such activities face difficulties of finding raw materials, credit and marketing products. Non-governmental organizations, on the other hand have taken certain interest on women's self employment activities, but yet the required security for such ventures are not received. The lack of security for women's livelihood activities is of concern which was clearly seen at the time of tsunami. Many women were unable to receive state assistance as their economic activities were not registered.

Rural Women with Disabilities

The study on women with disabilities (see above) also revealed that while all women with disabilities faced discrimination and were exposed to disadvantages, the situation was worse for rural women due to poverty, remoteness, less accessibility for services and less knowledge and awareness.

Rural Women and Access to Safe Water

According to UNFPA (2002) 83% have access to safe water in Sri Lanka. Rural areas are more disadvantaged than urban areas in the access to safe water which directly has a bearing on rural women. Carrying water from distant places affect women in two ways- their health, and takes away their time for productive work.

Article 15

Equality Before the Law

Article 15 (1)

In our view, Article 15 requires achievement of a standard of substantive equality of impact and result, and also a transformation of gender relations to ensure equality in result and not merely formal equality. Article 15 (1) is therefore interpreted in the shadow report to cover some areas of equality before the law not specifically referred to in other articles of the Convention.⁴¹

Article 15 (2) and 15 (3)

Legal Capacity in Civil Matters including Contracts

Under General Law and Muslim Personal Law women have legal capacity including *locus standi* in civil cases, and in relation to contract. A limitation in colonial law on a married woman's right to appear in court on behalf of children was removed by an amendment to the law in 2002. This was an ad hoc amendment, and did not address a major discriminatory issue in the current General Law, where a married man is considered the superior or preferential guardian of minor children.

The CEDAW Committee in **paras 274 and 275 of the COs** urged the State to undertake a review of personal laws applicable to minority communities and harmonize them with Sri Lanka's constitution and CEDAW norms. The internal conflict and identity politics in this period have contributed to a lack of political will to engage in review of these laws, or take initiatives in response to the Concluding Comments.

Consequently, Muslim women continue to lack legal capacity to manage their separate property due to jurisprudence in the courts that has introduced limitations, contrary to concepts of Islamic law, which is applicable under the Muslim Marriage and Divorce Act. Similarly, women governed by a customary Tamil personal law (Tesawalami) applicable in the Northern Province of Sri Lanka continue to be subject to a modification to the customary law introduced by colonial legislation in 1911, which made it essential for a married woman to obtain the written consent of their husbands to a transaction with land. This statutory provision has been interpreted in the Supreme Court to later deny her separate right to appear in court or enter into contractual transactions without the husband's consent. Upto now no effort has been made to amend these personal laws. 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.

A recent opinion of the Supreme Court on a reference on the ICCPR Act (2007) endorsed the conservatism of the State. The Chief Justice stated in the Supreme Court that amendment of personal laws was a "sensitive" matter and that amendment could only take place on the basis of internal review within the communities governed by these personal laws.

Article 15 (4)

Jurisprudence in the Courts has clarified that all Sri Lankan women above 16 years including Muslim women, despite any limitations in personal laws, have personal freedom of

⁴¹ Refer Chapter on Women and Armed Conflict

movement⁴². All Sri Lankan women have therefore a legal right to choose their residence and domicile. Since literacy levels of low income women are better than in many other South Asian countries, and women are in fact engaged in employment and economic activities outside the home, they have migrated overseas particularly for domestic service in the Gulf states. The State has also introduced laws, policies and programmes to facilitate women's travel overseas for employment, recognizing the contribution of these women migrant workers to national foreign reserves and family support. However, in 2006 the MCD&WE proposed placing limitations on these women's right to travel overseas for employment, if they had small children. These proposals were subsequently withdrawn due to an adverse reaction from women's groups and another state agency, the Bureau of Foreign Employment.

These negative policy initiatives by the State suggest that there is a need to include a clear provision on the right to residence and domicile in an amendment to Sri Lanka's Citizenship Act or the legislation on Registration of Persons, which regulates issue of personal identity cards.

Unless an institutional mechanism is established by the state to facilitate participation of women's groups and gender advocates on proposals for law reform of personal and family laws within a specified time frame, women in these areas will continue to be governed by discriminatory laws in these areas.

⁴² See *Ashokan vs Ashokan* (1994) which overruled an early colonial case of 1897, and decided that a married woman has a legal right to choose an independent domicile

Article 16

Marriage and Family Relations

Reforms of the Personal Laws

As discussed in considering Article 15 (2) and 15 (3) above, there are discriminatory principles in the Kandyan law on divorce and inheritance due to modifications introduced in the colonial period. The limitations on property rights in Tesawalamai law applicable to a minority of Tamil women in the North is also due to modifications introduced by legislation in the Tesawalamai in the colonial period, and Roman Dutch law influences. 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.

Age of Marriage – Article 16 (2)

Though the age of marriage was raised by legislation to 18 years for non-Muslim communities in 1995, parental consent is required for the marriage of Non-Muslim men and women between the ages of 18 to 21. This is contrary to the law on age of capacity to marry as well as the age of majority which is 18 years for both men and women (Age of Majority Ordinance 1865 as amended 1989). The need for reform has been raised by women's groups many times with relevant authorities, but up to date, (15 years after the age of marriage was raised to 18 years), there has been no effort to repeal this provision on parental consent to the marriage of adults between 18 -21 years.

The reference to parental consent in this anomalous provision in the General Marriage Ordinance has also created confusion among parents and lawyers. It has created the perception that even a child **under the legal age of marriage** can be validly married with parental consent. There is jurisprudence to clarify that an underage marriage has no legal effect even with parental consent⁴³.

Under Muslim personal law, the age of marriage is 12 years. It should however be noted that the age of marriage for Muslim girls has been rising steadily due to access to education.

Domestic Violence including Marital Rape, and Reform of the Law on Matrimonial Relief

Marital rape is not in general a criminal offence under the Penal Code as amended (1995), except in a case where the spouses are separated under a court order (judicial separation.) This type of matrimonial relief by court order is not in general used by women in situations of marital breakdown. Women's groups have repeatedly advocated for a review of these laws to cover at least marital rape in situations of de facto separation. The CEDAW Committee's Concluding Comments (2002) drew attention to the need to change the law on marital rape. This has not received a response, and no steps have been taken yet to amend the gap in Sri Lanka's Penal Code on marital rape.

⁴³ *Guneratna v Registrar General*. This decision was pronounced in a case where the Registrar of marriages refused to register the marriage of a girl who was below the minimum age when parents argued that their consent was adequate to give legality to the marriage.

A limited response to this issue came with the enactment of the Prevention of the Domestic Violence Act (PDVA), 2005. The introduction of this legislation was an important step taken by the State, after the last CEDAW Report (2002), and Concluding Comments of the Committee which highlighted the need for such legislation. The Act was drafted in consultation with women's groups and gender advocates. It provides a procedure for obtaining a protection order in response to domestic violence, which has been defined so as to include sexual violence including marital rape, even though marital rape is not in general a criminal offence in the Penal Code of Sri Lanka. The PDVA however does not penalize this conduct, but only provides a speedy remedy to a victim in the form of a protection order of court, and other relief which can serve to provide resources such as shelter, and economic support, and services like counseling.

Studies and anecdotal evidence indicate that the PDVA is being implemented, and women are filing cases, particularly with the support of women's groups, and the complaints and counseling centres of the State at the National Committee on Women, and the Police Women and Children's Desks. Studies and anecdotal evidence also indicate that the majority of women affected by domestic violence are unaware of, or unwilling to use the procedure. There have been some programmes on judicial training on the PDVA, but coverage is limited and judges and lawyers have poor understanding of the law. The consistent failure to reform family laws including the law of divorce, despite the matter being raised repeatedly by women's groups in reviews before the CEDAW Committee undermines the implementation of the PDVA.

A divorce or decree for separation may be obtained by women on the grounds of cruelty or malicious desertion, under the General Law, which is applicable to the majority of Sri Lankan women. However proceedings are long and can take years, since these fault grounds have to be proved in adversarial court proceedings, unless the divorce action is not contested by mutual agreement. Women's groups and gender advocates have not been successful in their efforts to obtain state support for a broad based review and reform of the matrimonial fault based general law of divorce in harmony with the Constitution and CEDAW Art.16(c). A Matrimonial Cases Bill was prepared by the Law Commission – the national agency mandated to propose legal reform several years ago. Some discussions were held with women's groups.

This Bill been revised by the current Law Commission. Women's Groups have not been consulted in the preparation of this new draft, but it appears that the Draft Bill seeks to move from a fault based divorce law to one based on breakdown of the marriage. In 2009 a new Minister of Justice appointed Committees to review Family Law, and the Personal Law. The Committee to propose reforms in Family Law chaired by a former CEDAW Committee member has submitted a report, calling for extensive reforms in the area of matrimonial relief. The Committee has also accepted the provisions of the Draft Matrimonial Causes Bill of the Law Commission, subject to new proposals to modify some provisions.

There is urgent need to address this issue of reform of the law on matrimonial relief including divorce law. The Kandyan law⁴⁴ permits divorce for irretrievable breakdown of the marriage in non adversarial proceedings, but the fault based adversarial court proceedings are essential if women of other Non-Muslim communities seek matrimonial relief. No reforms have been introduced in the Muslim law of divorce using comparative jurisprudence, as proposed by the Committee in 2002 in the Concluding Comments. A Committee appointed by the Minister of

⁴⁴ Applicable to a minority group of Sri Lankan women of the Sinhala Community

Justice, to propose reforms in Muslim personal law in 2009 has not yet submitted their report. An independent Committee on Muslim Personal Law Reforms initiated by the Muslim Women's Research and Action Forum (MWRAF) comprising prominent quazi judges, lawyers and MWRAF members has also put forward a set of recommendations for the reform of Muslim Personal Law.

The consistent failure to reform 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, means that formal discrimination in the law continues to impact on the legal rights of Sri Lankan women.

Other Aspects of Article 16

(i) Arts. 16 (a) (b) and (g) obligation are satisfied, since law and public policy do not place any limitations on women in regard to these rights. Health policy has given access to information, and contraception as an important aspect of reproductive health, and contributed to progress in achieving Art 16 (e).

(ii) 16 (c) (d) (f) and (h) are not satisfied because discriminatory Roman Dutch law principles in regard to marital obligations, and personal status continue to apply, with the father having a status of preferential guardian of a marital child. The application of the principles of the best interests of the child in jurisprudence developed by the courts has contributed to undermining the father's preferential status, but this is not adequate to ensure that CEDAW and constitutional standards in relation to this area are implemented. A recent enactment, the ICCPR Act 2007 clearly states that the 'best interests of the child' should be given priority, and this may impact in helping to review the discriminatory laws on parental status in harmony with CEDAW and CRC standards, which are complementary and undermine gender based discrimination in this area.

Discrimination against Female Heads of Household

This issue was addressed in paras 296 and 297 of the COs, but there has been little progress. Public policy and administration continue to focus on the concept of "Head of Household". Though the term is gender neutral, it is in fact interpreted as a reference to a male head of household. Though census enumeration has focused on obtaining information on female heads of household (24% in 2006/2007) male bias is reflected in allocation of State lands for agriculture and housing and in relief programmes and state housing allocation after the Tsunami disaster. Women who have lost a spouse in the armed conflict are required to stay single to qualify and retain state grants, further reinforcing the concept of male head of household.

There have been many discussions and evidence based research on the negative impact of this concept. Though the Maintenance Law (1999) eliminated the 'male bread winner' concept, this is not reflected in public administration. The discriminatory laws on illegitimacy and inferior legal status of women and children in the non marital family remain, as already noted, though the Citizenship Act (2003) and Maintenance Act 1999 have eliminated some discriminatory provisions on their rights.

There are also discriminatory provisions in the laws on pensions and social security for public servants. Gender neutral provisions deny these benefits on remarriage to both widows and

widowers. However, they impact more significantly on widows who are heads of household. These benefits pressurize them to remain unmarried, even when they form new relationships. The law on pensions in the public service was based on the colonial law concept of dependence on a male bread winner, and the colonial statute on pensions referred only to widows. The same legislation was later extended in the post independence period to widowers, and to both widows and widowers in the armed services. The discrimination in impact on widows in the public sector and armed services has not been addressed. These laws must be reviewed to conform with the general law on marriage which permits remarriage without any limitations, and also permits a widow or widower to inherit property from a spouse on death.

The Kandyan personal law on inheritance discriminates against widows. These provisions have not been reviewed, since the government has not addressed the need to review personal laws. There are widows governed by Kandyan personal law who suffer multiple discrimination today since they are denied pensions on remarriage, and property rights on the death of a husband, unless he has bequeathed property under a will. A widow without children is in a situation where members of the extended family inherit all the property the husband has inherited from his own family. She obtains even a life interest, (a limited property right) only if her husband has acquired property after marriage. Women affected by conflict and natural disaster governed by Kandyan personal law are particularly affected by these discriminatory provisions.

The provisions of the Muslim personal law that impact a woman's personal status and inheritance rights have not been reviewed, leading to multiple discriminations against Muslim female heads of households.

Property Rights

Dowry is not prohibited in Sri Lankan law. Dowry under all systems of law (General and personal) is considered the separate property of the woman. There is jurisprudence which indicates that even a man who receives property from the wife's side on marriage holds the property in trust for her, so that she is the legal owner.

The discrimination against women entrenched in the Land Development Ordinance 1935 (LDO) to application of a principle of primogeniture (or preference for males in any category of heirs) on death of a male permit holder of State land has not been eliminated by an amendment to the law, despite this matter being highlighted by women's organizations from the 1980s and in the Concluding Comments of the CEDAW Committee in 2002 (**para 274 of the COs**). Under this Ordinance too a surviving spouse has only a life interest in the land, unless nominated by the husband who is a permit holder as a successor to the land. She loses this life interest on remarriage. Though this provision applies to widowers too, research indicates that it impacts negatively on women who must leave the land after marriage. Women's groups have raised the issue of legal reform with government in the period 2005-2010, but changes to the LDO have yet to be made. Research studies in the settlement areas⁴⁵ clearly indicate that women are not being allocated permits for land under the LDO because of Schedule III.

Reforms need to be introduced as a matter of urgency, to Kandyan law and Thesavalamai law, as in the case of Criminal law and Citizenship law where colonial law was reformed in 1995 and 2003. These are laws that have been transformed due to the policies of colonial government

⁴⁵ Guneratne, 2006; Jayaweera and Sanmugam, 1983; Rajapakse, 1989.

and they have not yet been reviewed. Muslim personal law contains discriminatory provisions in relation to all these areas, and they have not been changed. Only Muslim personal law raises issues of religious sensitivity, but Muslim women's organizations have put forward proposals for reform which should be considered by the State.

It is important to amend the General Marriages Ordinance to clarify that parental consent is not required after 18 years, when the age of majority is completed, and clarify that an underage marriage is void and has no legal effect, in line with case law on the point. This clarification is particularly important in a context where there is evidence that the phenomenon of child marriage is surfacing in certain areas of the country, and expressly areas affected by the armed conflict.

There is a clear difference between the legal status of persons in the non marital family which is based on colonial law influenced by Roman Dutch law and English law. These principles entrench discrimination against cohabiting partners and non-marital children. Citizenship and Maintenance (family support laws) have been reformed to eliminate some aspects of this discrimination but there has been no consistent effort to do so. The definition of 'family' needs to be broadened from marital relationships to others such as non-marital and single parent families.

Extension to same-sex relationships in line with principles of non discrimination in Article 12 the Constitution will require a review of the Penal Code provision and decriminalization of homosexuality.

General Recommendation 19

Violence Against Women

The Prevention of Domestic Violence Act (PDVA) 2005 has its limitations

The PDVA limits the definition of domestic violence to offences in Schedule 1 of Chapter XVI of the Penal Code such as grievous hurt, causing miscarriage etc. and emotional abuse⁴⁶. There is reliance on the Penal Code for a formulation of the definition instead of recognizing the act of domestic violence as an offence in itself.

The PDVA does not make it mandatory for medical service providers to make complaints to the police of evidence of domestic violence. Neither does the Act provide instructions to the police about what action should be taken with regard to responding to complaints of domestic violence.

When an Interim Protection Order (IPO) is issued there is provision in the Act for the court to order counseling. The role played by the counselor in some cases has been far from satisfactory since counselors have advised the victim to return to the abusive environment and settle the matter, thereby making redundant the reason for the issuance of the IPO.

The Act does not make compulsory the setting up of shelters and other facilities making it difficult for women to access or sustain court proceedings. Between 2005 -2009, a total of 219,825 clients sought assistance from Women in Need;⁴⁷ however only approximately 101 clients filed for Protection Orders (PO).

The PDVA provides for a settlement procedure following an application for a PO. This should be cautiously used and used only in circumstances where the court is satisfied that the respondent has the potential to reform and the settlement should reflect an assurance from the respondent that he/she will refrain from conduct that could constitute domestic violence. This settlement would need to be monitored.

We also note that the 'The Plan of Action for the Prevention of Domestic Violence Act 2005' adopted by the NCW has a comprehensive set of strategies and activities to ensure the implementation of the PDVA. This GOSL report states that.

'Action is now being pursued in terms of this Plan to create awareness regarding the provisions of the Act and the remedies available as well as to sensitize partners in the law enforcement process with regard to the role envisaged of them in making the statutory remedies meaningful.'

We wish to state the Action Plan envisages more than just awareness creation and sensitization activities and 5 years since its adoption, the plan has yet to be implemented.

⁴⁶ Prevention of Domestic Violence Act No. 34 of 2005 Section 23

⁴⁷ An NGO offering legal assistance, counseling and limited shelter to women victims of DV.

Rape

There is lack of gender sensitivity in hearing and collection of evidence, victim testimony and sentencing, which resonates throughout the auxiliary actors of the judicial system such as law enforcement officers, judicial – medical officers, medical professionals and lawyers. Even in rare instances where these officers are aware of the remedies and gender sensitive procedures that could be observed they are hesitant in applying these in a manner that protect women from the consequences of discrimination. Women also continue to be unaware of the remedies that are available to them. This can be attributed to a society that has deep seated prejudice against women, in particular women victims of sexual violence, rape and incest.

For example in the Kamal Addararatchchi rape case, where the issue of “evidence of struggle” was discussed, the Supreme Court upheld the views of the Court of Appeal that the absence of injuries on the prosecutrix, was an indication of the fact that she had consented to sexual intercourse. The Court of Appeal applied the yardstick of accepted and expected behaviour of women in society and clarified this statement further by stating that it is the application of the test of normal human conduct. The court neglected in defining what normal behaviour patterns of women in Sri Lanka are, that determined that this act was consensual sexual intercourse.⁴⁸

Suspended sentences

The Committee may recall that following the amendment of the Penal Code in 1995, mandatory minimum sentences were imposed (10 years instead of 2 years) in cases such as rape, gross sexual abuse and acts of gross indecency between two persons following pressure from women’s groups. In a statutory rape case from Anuradhapura, a recent Supreme Court judgment (SC ref 30/2008) has however held that the mandatory sentence imposed under Sec 364 (2) (e) of the Penal Code is in conflict with Article 4 (C) 11 and 12 (1) of the Constitution and that a High Court is not inhibited from imposing a sentence that it deems appropriate in the exercise of its judicial discretion. Justice Ratnayake in his lengthy judgment, states, *“We are conscious that in terms of Section 363 (e) of the Penal Code (as amended by the Penal Code (Amendment) Act No.22 of 1995- a woman’s consent is immaterial for the offence of rape when she is under the age of 16 years. He then goes on to say that , ‘However, a woman’s consent is relevant for a Court in the exercise of its discretion in deciding the sentence for such an offence”.*

As a result of this decision, High Courts across the country in both rape and statutory rape cases are now issuing suspended sentences. This is perpetuating impunity in cases of violence against women and is a gross injustice to women victims of violence.⁴⁹ This decision has been analyzed and critiqued in academic writings and it has been suggested that the AG should request a review of the decision by a new bench of the Supreme Court.

The Vagrancy Ordinance

Since street prostitution continues to be an offence under the Vagrancy Ordinance, the police use this law in an arbitrary manner to intimidate sex workers and sometimes even to demand sexual favours from sex workers. They are unable to report this kind of harassment as a

⁴⁸ Addara Aratchige Gunendra Kamal alias Kamal Addararatchchi Vs. The Republic High Court Case 7710/96, Court of Appeal Case 90/97, Supreme Court Leave to Appeal 30/2001.

⁴⁹ Daily News, 21 October 2008.

complaint due to the fact that prostitution is illegal. There is also anecdotal evidence to suggest that women who have condoms in their possession are arrested under the Vagrancy Ordinance.

Unnatural Offence

Section 365A of the Penal Code (Amendment) Act No. 22 of 1995 can be read as criminalizing consensual same sex sexual relations committed in private spaces. It criminalizes the procurement of the activity, as well as being a party to such activity. It is recommended that this provision be repealed or at least amended to not include consensual adult same sexual relations in private spaces.

Brothels Ordinance

Criminalizes the keeping, management, acting or assisting in the management of a brothel. It is recommended that this provision be repealed.

Sexual Harassment

Sexual harassment was made punishable offence in the 1995 amendment to the Penal Code. Yet complaints relating to sexual harassment are rare, perhaps due to the lack of policy initiatives that make it imperative that employers put in place internal mechanisms and guidelines that deal with sexual harassment and complaints of sexual harassment. Guidelines that have been recommended to private sector institutions are not effectively implemented.

Custodial Rape

Refer chapter on Armed Conflict.

Procedure

Due to a two tier system of inquiry of Non Summary Inquiries and High Court many cases take between nine and twelve years to reach conclusion. Many of the procedures of the criminal justice system such as requirement of proof beyond reasonable doubt, difficulty of finding witnesses for corroboration, lengthy non summary inquiries into rape cases, stigma and the tendency for lawyers for the alleged perpetrator to portray the victim as someone with loose moral behaviour discourage the victims from using the legal mechanisms. In some cases, though there is no provision for it in the legislation, judges have referred to the lack of evidence of struggle and have failed to secure incamera procedures when the victim is giving evidence.

Medical Examination

The Medical Examination in sexual abuse cases should be structured in a manner that would assist the collection of evidence, and hold the perpetrator accountable. However measures need to be put in place that would minimize the trauma of the victim, promote healing and the addressing of the victim's needs. It is also recommended that victims of sexual abuse be given priority as emergency cases and responses should be timely. They should be provided with as much privacy while ensuring that they are supported. Victim service providers should also be involved in the exam process as soon as the victim reveals abuse, with the permission of the victim. Victims who have specific requests to have responders of a specific gender should be accommodated. Victims should also be provided information that is easy to understand with regard to the medical examination and with regard to other service providers such as counselors, legal aid etc. In Sri Lanka few hospitals have medical officers designated to examine violations of sexual abuse. The District Medical Officers (DMOs) are not qualified to conduct

medical examinations for victims of sexual violence. In some cases where no evidence has been detected by the DMOs, the Judicial Medical Officer has found evidence.

Lack of sex disaggregated data

Since there is an absence of comprehensive disaggregated statistics on incidents of violent crime it is not possible to assess the true extent of crimes against women. The Police Bureau for the Protection of Women and Children however recorded the following figures of violence against women in 2006 and 2008.

Grave Offences	2006	2008
Murder	144	128
Trafficking		4
Unnatural offences		2
Abduction		73
Rape	353	303
Incest		4
Grave Sexual abuse		15
Grave injury	449	

Source: Police Bureau for the Protection of Women and Children, 2006 & 2008

Minor Offences	2006	2008
Sexual harassment	963	841
Assault		1,111
Verbal abuse		45
Abortion		36
Domestic Violence		89
Other crimes		177
Beatings and injuries	1,144	

Source: Police Bureau for the Protection of Women and Children, 2006 & 2008

It must be noted here that though all the above cases require prosecution, neither the police nor the Attorney General’s Department is able to furnish any information on the progress of these prosecutions. The Attorney General’s Department does not have the mechanism to monitor proceedings at the High Court so they are unable to maintain records of rape convictions.

Women and Armed Conflict

In the 7 years that have elapsed since the GOSL submitted its 3rd and 4th periodic report to the CEDAW Committee the country's protracted armed conflict has gone through a period of ceasefire and peace negotiations (2002/03); the formal abrogation of the ceasefire agreement (January 2008); an intensification of armed conflict (2006/09) and the military defeat of the Liberation Tigers of Tamil Eelam (LTTE) in May 2009. The escalation of conflict from 2006 resulted in mass displacement and relocation; increased security measures such as a proliferation of checkpoints, cordon and search operations and a general state of insecurity, which led to women's safety and security being placed in jeopardy and their ability to fully exercise their rights diminished. The majority of women affected by the conflict are from minority communities – Muslim and in particular Tamil. While acknowledging the national security challenges faced by the government in the context of armed conflict, few measures were taken to ensure the rights of women were protected or provide redress to those affected by the conflict. One year following the end of the armed conflict, a state of emergency continues to prevail and although certain provisions of the Emergency Regulations have been repealed many problematic regulations that do not adhere to international human rights standards, such as those relating to preventive/administrative detention remain.

Displacement

Post 2009 displaced

Following the final battle with the LTTE, as at 2010 June, 60,900 persons remain in IDP camps at Menik Farm, while 142,772 have returned to their district of origin, 92,791 live with host families and 1,192 are in the care of social institutions.⁵⁰ No statistics on IDPs have been publicly made available by the government and the lack of readily available sex disaggregated data on displaced persons prevents the formulation of policy and programmes to meet the specific needs of displaced and conflict affected women.

The current IDP camp population at Menik Farm consists of 51% women, 35% children and 4% elderly.⁵¹ This population has been identified by the UN as those with 'significant vulnerabilities'⁵² with their needs including food, water and sanitation and health. The UN has reported that the suspension of supplementary feeding in April 2010 has adversely impacted the fragile coping mechanisms of this population.⁵³ At the same time protection activities for women have also been scaled back or discontinued at the camps thereby increasing their vulnerabilities.

The absence of adequate infrastructure and limited availability of basic services in the return areas places women in a vulnerable position, particularly female headed households and single

⁵⁰ Sri Lanka Humanitarian Snapshot: Focus Return Areas, June 2010 at http://www.humanitarianinfo.org/srilanka_hpsi/Files/Situation%20Reports/Humanitarian%20Snapshot/LKHS011_2010%20June%20Humanitarian%20Snapshot%20Return%20Areas.pdf

⁵¹ Humanitarian Snapshot: Focus Menik Farm, June 2010 at http://www.humanitarianinfo.org/srilanka_hpsi/Files/Situation%20Reports/Humanitarian%20Snapshot/LKHS010_2010%20June%20Humanitarian%20Snapshot%20Manik%20Farm.pdf

⁵² Humanitarian Snapshot: Focus Menik Farm, June 2010 at http://www.humanitarianinfo.org/srilanka_hpsi/Files/Situation%20Reports/Humanitarian%20Snapshot/LKHS010_2010%20June%20Humanitarian%20Snapshot%20Manik%20Farm.pdf

⁵³ Ibid.

women. While shelter, health facilities, water and sanitation were identified by the displaced as priority needs, women returnees stressed the importance of transitional shelter and proper sanitation facilities to increase their security and prevent harassment and abuse.⁵⁴ The returnee IDPs have been provided with tin sheets, tarpaulin and cement⁵⁵ to construct transitional shelters, however, women with no experience in construction are unable to erect shelters without assistance creating dependencies/obligations that are sometimes abused. Since most return areas are remote without basic infrastructure such as electricity and water women are also exposed to the possibility of violence and harassment.

The military continues to be involved in maintaining law and order in the conflict affected areas with former LTTE controlled areas remaining militarized with numerous military installations/posts in areas to which IDPs are returning. More than a year after the end of the war in May 2009, the government has announced that the high security zones (HSZs) and military installations in the northern part of the country will remain. Further, it was announced that if state land was not available the government would acquire private land for this purpose, which points not only to the maintenance of existing HSZs but also the creation of new ones. The continued militarization of the former conflict areas in this manner increases the vulnerability of women to violence and harassment.⁵⁶ Increased military presence heightens the vulnerability of women to violence and harassment as illustrated by cases of sexual violence allegedly perpetrated by armed forces in the return areas, such as the rape of two women in Visvamadu, Killinochchi on 6 June 2010.⁵⁷ This in turn restricts their freedom of movement which adversely impacts on other aspects of their lives including their livelihood opportunities.⁵⁸

Pre 2009 displacement

There are approximately 200,000 persons displaced by the armed conflict during earlier battles and edits who are yet to return to their homes. For instance, 6,000 persons are unable to return to their homes in the Eastern Province due to the High Security Zones while 60,000 Muslims forcibly evicted by the LTTE in 1990 continue to live in camps in Puttlam.⁵⁹ Since there is no national policy⁶⁰ on return, resettlement, rehabilitation and restitution, the state applies varying policies to the different groups resulting in inequitable distribution of benefits. Some among long term women IDPs re-settled in host communities and their children, many of whom have no knowledge of the place of origin of their families also demand the right of choice regarding return or remaining where they are.

⁵⁴ Sri Lanka Humanitarian Snapshot: Focus Return Areas, June 2010 at http://www.humanitarianinfo.org/srilanka_hpsl/Files/Situation%20Reports/Humanitarian%20Snapshot/LKHS011_2010%20June%20Humanitarian%20Snapshot%20Return%20Areas.pdf

⁵⁵ Although the government distributed 12 tin sheets per person, following the depletion of stocks in April 2010, returnees have been supplied with only tarpaulin sheets in terms of shelter assistance, *ibid*.

⁵⁶ 'High Security Zones to Stay', BBCSinhala.com, 15 July 2010.

⁵⁷ *Virakesari* newspaper, 9 June 2010.

⁵⁸ Sri Lanka Humanitarian Snapshot: Focus Return Areas, June 2010 at http://www.humanitarianinfo.org/srilanka_hpsl/Files/Situation%20Reports/Humanitarian%20Snapshot/LKHS011_2010%20June%20Humanitarian%20Snapshot%20Return%20Areas.pdf

⁵⁹ 'Still about 360,000 IDPs in Sri Lanka', May 2010, International Displacement Monitoring Centre at [http://www.internal-displacement.org/idmc/website/countries.nsf/\(httpEnvelopes\)/7E8CFF727BBFB54DC12576B3002DEBD9?OpenDocument](http://www.internal-displacement.org/idmc/website/countries.nsf/(httpEnvelopes)/7E8CFF727BBFB54DC12576B3002DEBD9?OpenDocument)

⁶⁰ Although in 2009 the state initiated a participatory process to draft a National Policy on Return, Resettlement, Rehabilitation and Restitution it was abruptly halted.

IDPs separated and detained for suspicion of involvement in LTTE activity

There are reportedly around 10,000 persons who have been separated from the general IDP population and detained on suspicion of involvement with the LTTE. Since the government has not provided sex disaggregated data on this population, the number of women amongst them is unknown, as well as whether their particular needs are being met. The majority of these persons have been sent to 'rehabilitation centres'. ICRC, the only agency previously given access to these centres, has been prevented from visiting them since June 2009. While being held at these centres, these persons do not enjoy procedural safeguards such as right to legal representation. Although it has been reported that persons at these centres are being provided vocational training it is focused mainly on sex-stereotyped activities such as sewing and hairdressing. Family separation brought about by this form of separation/detention has also increased the vulnerability of women and female headed households in the return areas. Women released from these centres face considerable challenges re-integrating into society as they are subjected to increased stigma within their communities. At present there is no national programme/policy on reintegration that sets out support to these persons or caters to their gender specific needs.

**Article 2 - Obligation of States; Article 3 - Appropriate Measures;
Article 4 - Temporary Special Measures to Combat Discrimination; Article 5(a) -
Modifying Social & Cultural Patterns;
General Recommendation 19**

In relation to the obligation of states to take appropriate measures to combat discrimination, existing mechanisms have not functioned effectively and in many instances women have not benefited from equal protection of the law nor have they been able to access legal remedies.

There have been a number of reports of sexual violence against women where the alleged perpetrators have been armed forces personnel, the police, army deserters and militant groups⁶¹. Not all cases have been reported since few women are willing to lodge official complaints due to fear hence there is no systematic documentation available on these cases. There have been few convictions in cases of custodial rape where security forces personnel have been implicated or charged, the exceptions being the Krishanthi Kumaraswamy judgment (1998) and the Vijitha Yogalingam decision (2000). At present, activists have also reported that men who commit sexual offences, often join or affiliate themselves with a paramilitary/armed group thereby silencing the victim who fearing retribution fails to report the crime. In the conflict affected areas there are also few or no women police officers to take the complaints of women who may have been subjected to violence or if they do the officer often does not speak the language of the majority population in the area, Tamil.

Existing safeguards such as the Presidential Directives on Arrest and Detention, issued in July 1996 and re-issued in July 2007, which require that when a child under 12 or a woman is arrested or detained, a person of her choice should be allowed to accompany her to the place of questioning and as far as possible a woman detainee should be placed in the custody of a women's unit of the relevant security forces or in the custody of a woman military or police officer, are rarely if ever implemented in practice.

⁶¹ D.B.S. Jeyaraj, 'Sexual Violence in the Past by Police and Security Forces Against Tamil Women' 5 October 2009 at www.dbsjeyaraj.com

For example, between 31 January and 23 March 2008, members of the Special Task Force (STF) of the Police stationed on the Pottuvil road in Akkaraipattu in the Eastern Province conducted intensive cordon and search operations in 17 Divisional Secretariat divisions in the Alayadivembu area (the Tamil part of Akkaraipattu), during the day as well as at night time. During this process, the STF was accompanied by a video cameraman who filmed each member of the family together and separately in front of their homes, asking them to state name, age, marital status, occupation, physical characteristics etc. This process was referred to as a 'registration'. These cordon and search operations were conducted by male officers of the STF. There were no accompanying female officers, as required by law, even when the search operations were conducted at night. Several allegations of sexual harassment and abuse of women during these operations surfaced, but not a single official complaint was made due to fear of repercussions. Following these processes of 'registration' and identification at night, men in civil clothes visited houses and committed acts of violence and sexual assault against women, including rape; again no formal complaints have been made due to fear of repercussions. Community outrage finally resulted in the removal of the STF camp from Alayadivembu.

Women's groups, concerned about the gendered nature of these 'registration' processes and search operations wrote to the NCW⁶², requesting them to urge the Inspector General of Police and the Human Rights Commission to investigate these incidents and put in place mechanisms that will safeguard women against gender based infringements of their right to bodily integrity and to live in safety and security. This and subsequent letters went un replied causing deep concern about the lack of political will in state institutions to ensure due process and safeguard human rights. Although cordon and search operations may not be conducted at present, protracted conflict has resulted in the erosion of basic procedural safeguards and protections as illustrated by the above example. This is likely to continue in the phase following the end of the war unless the state tackles systemic factors that encourage and enable the disregard for procedural safeguards and protection, such as lifting the state of emergency, ending impunity and repealing laws that provide excessive powers to the armed forces and police without checks and balances.

Reportedly persons in the return areas are currently being registered by the armed forces and the police in a non-uniform manner, sometimes along with the imposition of restrictions on the freedom of movement of civilians through the issuance of 'passes' to travel out of the locality. This too adversely impacts on the security and mobility of women and young girls and thereby on various other aspects such as access to livelihood, education and health care.

Many IDPs lack personal documentation such as death certificates for family members, property deeds and identity cards, all of which are integral to access benefits and inheritance. Particularly with regard to the issuance of death certificates for those who were killed during the last stages of the conflict, family members are unable to apply for certificates due to the lack of a corpse which prevents them from obtaining a certificate through the normal process. To date, the government has made no special provision to enable these persons to obtain death certificates for family members. Hence, at present women who have lost their husbands face considerable obstacles resuming their lives in the areas of return.

⁶² Letter dated 21st April written the NCW on the "Infringement of Privacy and Violence against Women in Alayadivembu".

To date there is no policy on compensation for civilians killed or disappeared in the conflict. There is also no accurate data on the number of war widows. Wives of members of the armed forces killed in the conflict receive the salary of the spouse until the retirement age of the deceased spouse and thereafter are provided with a pension. It has been reported that many women find it difficult to access these benefits due to cumbersome administrative procedures. These women would also lose the salary and pension upon re-marriage. Hence, many are unable to re-marry as they do not wish to forego the economic independence gained by receiving these benefits. Widows in general also report that they are subject to sexual harassment and 'policing' from members of the community.⁶³

Article 7 - Equality in Political and Public Life at the National Level & Article 8 - Equality in Political Life at the International Level
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The All Party Representative Conference (APRC) convened by the GOSL in January 2006 and charged with developing a southern consensus on a political devolution package that could be the basis for renewed talks, has still not reached a consensus in July 2010. In December 2006 the APRC appointed a panel of experts consisting of seventeen lawyers, public servants and scholars which produced two reports. The representation of women in the expert panel and the APRC was minimal; the expert panel had two women while the APRC had only one woman member.

At present, the Presidential Task Force (PTF) directs all initiatives (reconstruction, return, resettlement and development) and grants permission to both local and international non-governmental and inter-governmental organisations to undertake projects and provide assistance in the conflict affected areas. In a context where the armed conflict concluded not through a peace agreement but militarily, and where there has been no community or civil society participation in the formulation of such policy, groups that do not have access to power and capital, such as women, do not have the voice or space to articulate their concerns and needs. There are no women members on the PTF. Women's groups reported that they have been instructed by the PTF not to engage in awareness raising or protection work in the return/resettlement areas.

The State has at various times in the 30 years of conflict put in place measures to enable persons to claim compensation for loss caused through the conflict. Women have lacked the awareness and resources to make these claims. A Ministry of Disaster Management and Human Rights was established and legislation introduced to respond to situations of conflict and disaster. However, following the parliamentary elections in 2010 the Ministry of Disaster Management and Human Rights has been disbanded. To date there is no national policy on compensation and restitution.

Article 10 - Equality in Education.
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Schools in conflict affected areas which were closed and used as welfare centres for the internally displaced population have been reopened gradually since the cessation of war in 2009. Further, provision has been made for children including former child soldiers to attend school and to prepare for the G.C.E. O/Level examinations but all children have yet to access schools equipped with adequate facilities. The conflict has had an adverse impact on the

⁶³ 'Stigma, harassment add to war widows burden', Inter Press Service, 4 November 2003 at http://ipsnews.net/srilanka/note_041103.shtml

education of girl children and young women. For instance, in some parts of the North and East young girls are not sent to school due to the increased number of checkpoints and general insecurity and militarization. The conflict has also resulted in children dropping out of school or interruptions to school life and education which requires careful policy and planning to ensure that remedial education is offered. Since marriage is considered a premium for girls, it is their education that is most likely to be curtailed in the aftermath of war. There is also substantial anecdotal evidence of early marriage and underage pregnancy among displaced populations and those affected by conflict, restricting girls from pursuing higher education. There are reportedly also cases of young girls being asked to take care of the home while the mother, who is the primary income earner, engages in livelihood activities. Adult education and gender sensitive vocational training is also essential to ensure that girls and women have equal opportunities to access secure employment that offers a living wage.

Article 11- Equality in Employment and Labour Rights.

Although the government and international agencies have acknowledged the importance of gender sensitive policy in the phase following the end of armed conflict, both policy and practice have failed to adequately address the livelihood and employment needs of women. Further, in many instances, state income generation programmes tend to be only in sex-stereotyped activities, such as sewing. During the conflict period the role of women in the agricultural sector expanded with an increasing number of women engaging in casual wage labour.⁶⁴ Currently, there are greater numbers of women who are de facto and de jure heads of household seeking employment in general due to conflict and the flight or death of men. Coupled with the feminization of the informal sector this creates space for the exploitation of women as cheap labour.

Traditionally, rural women have generated income through the utilisation of forest resources.⁶⁵ Due to deforestation and prevalence of land mines and Unexplored Ordinances (UXOs) women are currently unable to access these resources, which limit their livelihood opportunities.

Further, even when women have ownership to land and thereby to means of generating an income, they often encounter problems with proving ownership due to loss or lack of documentation and accessing land due to land mines, high security zones, etc. When they are able to access land, use is not viable due to lack of water and agricultural implements.⁶⁶ No programmes currently exist to address the needs of women who were injured and/or disabled due to the conflict. There is also no gendered comprehension of women's role as primary care givers in the aftermath of armed conflict which increased the number of disabled. The plight of increased number of female headed households⁶⁷ is particularly precarious in this context and special initiatives by the state are required to address them. Wives of the disappeared are another group of conflict affected women who need assistance with suitable employment or income generating activities as in most cases the disappeared husband was the primary/sole

⁶⁴ Leelangi Wanasundara, 'Rural Women in Sri Lanka's Post-Conflict Rural Economy', Centre for Women's Research, 2006 at <http://www.fao.org/docrep/009/ag114e/AG114E08.htm>

⁶⁵ Leelangi Wanasundara, 'Rural Women in Sri Lanka's Post-Conflict Rural Economy', Centre for Women's Research, 2006 at <http://www.fao.org/docrep/009/ag114e/AG114E08.htm>

⁶⁶ Ibid.

⁶⁷ In 3 Grama Niladhari Divisions in the Mullaitivu district as of May 2010 1080 widows were identified by the local authorities- Report regarding resettlement in Mullaitivu as at 16 May 2010', The Kachcheri Mullaitivu.

income earner. The need to acknowledge and cater to women's role as primary income earners becomes critical in these contexts.

Article 12 - Equality in Access to Health Facilities.

There is no systematic emergency response in place to address the reproductive health needs of women in situations of enforced displacement. There are a number of accounts of child-birth in flight and inadequate conditions at camp sites to address the post partum needs of mothers and infants. Health services in host communities were seriously overstretched and women's immediate needs with regard to menstruation, birth control and essential clothing such as appropriate underwear and underskirts were often overlooked or neglected. Measures by the state to address the concerns of women in this context have been minimal.

At present health care targeting the special needs of women also needs to be improved in return areas with many health facilities continuing to lack basic infrastructure such as electricity, water and communication.⁶⁸ For instance, in the Mullaitivu district, as at May 2010, of 16 hospitals only 6 are functioning.⁶⁹ There are very few measures in place to address the psychological needs of women suffering trauma related disorders. The provision of adequate contraception services to these areas has to be treated as an immediate need.

Article 14 - Rural Women: participation in development, health care, training and education, participation in community activities, adequate living conditions.

Since most of the populations in the conflict affected areas are from rural/agriculture communities and many women work in family owned plots, as itinerant labour and small scale vegetable and fish vendors, security restrictions and the general disruption of conflict has an adverse impact on livelihoods. The environmental degradation due to conflict – use of heavy weapons, bombing and shelling, land mines and unexploded ordnances, the destruction of forests and waterways also impact adversely on women's livelihood activities which are often linked to the sustainable use of forests, land and water. Increased security considerations, concerns about sexual harassment and violence, more stringent observance of cultural practices such as veiling and restriction of movement also limit women's access to well remunerated employment opportunities and forces them to limit their income earning to less sustainable and secure home-based income generating activities. Lack of policy initiatives to understand the gendered impact of conflict on women's lives condemns them to the perceived role of secondary income earners in situations where women and their income are central for the survival of both families and communities affected by conflict.

⁶⁸ Sri Lanka Humanitarian Snapshot: Focus Return Areas, June 2010 at http://www.humanitarianinfo.org/srilanka_hpsl/Files/Situation%20Reports/Humanitarian%20Snapshot/LKHS011_2010%20June%20Humanitarian%20Snapshot%20Return%20Areas.pdf

⁶⁹ Report regarding resettlement in Mullaitivu as at 16 May 2010, The Kachcheri Mullaitivu.

Article 15 - Equality in Legal and Civil Matters: equal right to conclude contracts, administer property, movement of persons and freedom to choose residence and domicile.

Equality before the Law and Access to Justice in Situations of Conflict

Issues of equality in access to justice have arisen in relation to women affected by conflict. The key areas of personal security and violence against women have been discussed above. Certain specific issues affect both men and women, but have a dimension of gender based discrimination that is discussed under Article 15.

(1) Responses to Finding Missing Family members; Forced conscription by third parties engaged in the conflict; and Abductions and Violence perpetrated against women and girl children.

Both men and women have been affected by these phenomena. However, women seem to have even less opportunities of access to justice. This is despite the fact that there is in place an institutional framework to ensure equal access to legal remedies through the Courts, a Human Rights Commission, the NCW, the Police Women and Children's desk, and the Legal Aid Commission.

The Kalmunai Rape Case (2008) was an instance where a journalist surfaced a case of multiple gang rape of the daughter of a woman who said another daughter had been abducted subsequent to the incident. Women's groups who were in contact with the journalist requested the Women's Ministry, the NCW and the National Child Protection Authority to contact the law enforcement agencies in the area and investigate the matter. Despite several consultations of the gender agencies with the law enforcement authorities, there was no breakthrough. The journalist stated that the woman, who had originally filed her complaint with the police, had now gone into hiding for fear of reprisals. This is just one high profile case in which women's groups' encountered women's inadequate access to relief and remedy in a case of disappearance.

In the period of political conflict in the South, in the late 1980, the courts heard applications from women for a writ of habeas corpus, demanding police/armed forces accountability in relation to missing persons. The courts developed a jurisprudence that made the law enforcement authorities accountable to court to respond to these applications. They were held responsible for inaction in finding missing persons⁷⁰. However, these applications infrequently brought by women, who have little access to courts to obtain this kind of relief, due to inadequate legal aid and assistance, and the ineffective response of the law enforcement authorities and the courts in cases of disappearances. It should also be noted that a number of cases of the disappearance of women were recorded from the conflict affected Jaffna peninsula many of which were not brought to court or never resolved.

The State has at various times in the 30 years of conflict put in place measures to enable persons to claim compensation for loss caused through the conflict. Women have lacked the awareness and resources to make these claims. A Ministry of Disaster Management was set up, and legislation put in place to respond to situations of conflict and disaster. However, the Women's

⁷⁰ The Case of Kodippilige Sita vs A.E. Saravanathan and others – (1986) 2 Sri LR 228

Ministry is not a member of the major policy making body of this Ministry, the National Disaster Management Council.

The State gender agencies including the Women's Ministry, the NCW and the Women's Bureau have thus not been effective in responding to violence against women affected by conflict and in custodial situations. Responses have in general been through non-governmental humanitarian organizations that have provided women with legal assistance and legal aid to bring petitions in courts for violations of fundamental rights of torture and illegal detention and arrest against law enforcement agencies, or initiate proceedings in the Human Rights Commission.

(2) Owning and administrating property

In Sri Lanka, women's awareness about their rights related to property is limited.⁷¹ In many instances, women have difficulties even registering properties in their names because it is assumed property has to be registered in the name of the male head of the household, which places female headed households in particular in a vulnerable position. In the conflict areas in the North many women owned houses which were given to them as dowry upon marriage but were unable to claim compensation for destruction or damage in many instances due to loss of documentation such as deeds. During the period of conflict, the government declared several acres of land as high security zones (HSZ) leading to the enforced displacement of thousands of families. Women whose dowry property is located within the HSZ are unable to return and have no recourse to obtain compensation as there is no national policy on restitution for property lost, damaged or taken over by the state in the context of conflict.

The government to date has not made provision to enhance the capacity of existing land registration services to cope with the demand to replace lost documents or introduced measures to resolve multiple claims to property.

Article 16 - Equality in Family Law: right to freely choose spouse and enter into marriage only with free and full consent, same rights and responsibilities during and at dissolution of marriage, same rights and responsibilities, same rights in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property.

Early Marriage

Recent research indicates that there is some evidence of registration of underage marriage by falsification of birth registers in conflict affected areas, where there has been pressure on girls to marry young, or travel overseas as migrant domestic labour.

There is a high incidence of under-age 'marriages' in the North and East where parents either give consent to marriages of girls over the age of 16 or falsify their ages. This is done due to prevailing insecurity in the former conflict areas where the community perceived a breakdown in moral 'standards' and young girls were 'married' off soon after puberty as parents increasingly fear they cannot provide them with 'protection' demanded by traditional Tamil society. In the case of the areas previously under the control of the LTTE, it was done to prevent forced recruitment by the group. However, this phenomenon makes young girls vulnerable to

⁷¹ 'Women's Access to and Ownership of Land and Property in Batticaloa, Jaffna and Vanni', Centre for Policy Alternatives, September 2005.

early pregnancy and often girls and women are left destitute with children as boys and men abandon them. In the East desertion was found to be fairly commonplace in the IDP centres, resettlements and villages.

Customary Law

Thesawalamai is customary law that is applicable to the inhabitants of the Northern province as codified in the *Thesawalamai and Matrimonial Rights & Inheritance Ordinance No.1 of 1911* as amended by *Ordinance No.58 of 1947*. According to Thesawalamai, the woman does not have absolute power of disposition of her immovable property but requires written consent from her husband. If the husband's written consent is not forthcoming, Section 8 allows the District Court in which the woman resides or in which the property to be alienated is situated, to dispose of or deal with the property without the husband's written consent, i.e. the Court supplies the consent required by law. This is done if it is deemed that the husband is unreasonably withholding consent or is unable to give consent and the interests of the wife and children of the marriage require that such consent should be dispensed with. The husband cannot validly give general consent for future disposition as it is deemed that it would amount to the release of his *protectorship*, the purpose of the provision. In cases where husbands are missing, arrested etc women are forced to access the court to obtain permission which is cumbersome and costly.

Critical Areas of Concern

1. National policies on return, resettlement, re-integration and restitution should be formulated along with a comprehensive action plan to address the issue of protracted displacement in consultation with IDPs to ensure that policies and assistance responds to their gendered needs.
2. Special measures should be put in place to address the concerns and needs of female ex-combatants or women detained on suspicion of involvement with the LTTE to ensure they are not subject to further discrimination upon their release and establish re-integration programmes.
3. There is a need to establish civilian presence in law enforcement and reduce military presence with measures taken to enhance the security of recently conflict affected areas, for instance through the recruitment of Tamil speaking police officers and establishment of Women and Children's desks at police stations.
4. Activities to prevent and manage the consequences of sexual violence and provide protection from and prevent STIs must be in place in conflict affected areas, militarized zones and in humanitarian emergencies.
5. Education needs, including remedial education of girls and young women, affected by conflict, should be recognized and addressed. Integral to the success of such initiatives is to acknowledge the impact of other factors that impact adversely upon the ability of girls and young women to access education, such as physical insecurity, activities of paramilitaries, early marriage and pregnancy etc.

6. The role of women, including single women affected by conflict as de facto and de jure heads of households must be recognized and they must be provided with skills, training and access to employment and income earning opportunities as primary income earners.
7. Provision must be made to enhance the capacity of relevant government agencies to deal with the loss of documentation so that women can access legal and policy benefits and other services without hindrance.
8. Legal, policy and social obstacles to women owning and dealing with property including the right to compensation for damaged property or land lost through the declaration of high security zones or adverse possession must be dealt with through appropriate action, including legal reform.