

**List of Issues and Questions raised by the CEDAW Committee  
with the state party on the combined fifth, sixth and seventh periodic report  
of Sri Lanka.**

**Submissions of the Women and Media Collective**

January 2010

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**General**

While we are unaware of the internal process that was followed by the government in preparing the combined fifth, sixth and seventh periodic report of Sri Lanka, there was no constructive engagement with women's organizations as in the past with a view to including broad concerns of women's rights in the report submitted by the government. We see this as carrying forward the women's rights agenda. This was a gap in the process. We nevertheless hope that an environment conducive to a constructive and mutually beneficial dialogue between government and women's organizations will be opened up following consideration of Sri Lanka's fifth, sixth and seventh periodic report and concluding observations of the CEDAW committee.

**Legislative and institutional framework**

The Land Development Ordinance (LDO) is yet to be amended even though women's organizations have repeatedly raised this matter with the government. Provisions that discriminate against women therefore still remain. Even though the LDO enables surviving spouses to obtain a life interest in land granted to permit holders, this is lost on remarriage. Though gender neutral this impacts more adversely on women since there are more widows in the former conflict areas. Women have to give up land on remarriage which impacts adversely upon their economic independence.

Women IDPs returning to the former conflict affected areas also face considerable challenges accessing property due to loss of records, cumbersome bureaucratic procedures etc.

Transgendered men and women in Sri Lanka are denied the right to recognition by the state due to the fact that there is no structured system which allows transgender men and women to alter the category of sex on their birth certificate or national identity card. This has been left to the discretion of the medical practitioner who in effect risks his license if he /she performs sex altering surgery on a client whose birth certificate notes his/her sex at birth. As there is no legal provision to change one's sex people are advised to first change their birth certificates and only then go through sex altering surgery

**National Machinery for the Advancement of Women**

Please refer to pages 7-8 of the Shadow Report. We reiterate that the current draft proposed by the government does not meet the standards of the Sri Lanka Constitution or CEDAW. Women's groups have suggested that the act proposed by the government should be withdrawn and the

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<sup>1</sup> Please see also Shadow Report submitted by Women and Media Collective

original 2006 draft approved by the cabinet for legislation should be reinstated. It should be noted that the 2006 draft attempted to also address the accountability of non state actors and private sector in cases of discrimination, an issue raised by the CEDAW committee in CO 2002. This provision has been dropped in the current draft.

### **Stereotypes**

The high social indicators historically enjoyed by Sri Lankan women can be attributed, at least in part to the liberal social ethos with regard to women as well as to the welfarist approach of post independent governments. However, these gains are being increasingly undermined by official support for negative perceptions of and attitudes towards women. There is an increasing official discourse on private morality and behaviour which has largely focused on women's behavior and bodies. Consider the following examples:

- (a) Allegations made against the Vice Chancellor of a state university - the University of Sri Jayawardenapura that he sent six female students to undergo virginity tests after having found them on campus after hours in the company of fellow male students.. Despite media publicity and public requests for an official response there was no official investigation of this incident, since the students involved were not willing to come forward to make an official complaint. In the absence of such a complaint there is no mechanism to ensure that an investigation is conducted.
- (b) Refusal by the Vice Chancellor of another state university for a woman human rights activist to speak at an event organized with the UN to celebrate Human Rights Day and CEDAW.
- (c) A decision announced by the Women and Children's Desk of the Police Department to publish head shots of alleged women and men who appeared in locally produced pornographic video films in the newspapers; this has already had extremely negative consequences for the women involved as compared to the men.
- (d) Dress codes set by Principals of state schools for women parents and visitors to state schools.

We wish to state that it has become increasingly difficult to sustain the gains made by Sri Lankan women in public life including employment because of regressive ideas on women's place in society exclusively as mothers and a reluctance by the state to recognize the need for a work /home life balance for both men and women.

Negative stereotypes and discriminatory practices also continue to be perpetuated in relation to women affected by the conflict. For instance, women ex-combatants are being given vocational training in bridal dressing, sewing and beauty culture. Instead of, as the Committee states, providing 'more opportunities for women to attain higher education in science, engineering, and other technical disciplines'

### **Violence against women**

Although the Prevention of Domestic Violence Act (PDVA) was passed with great expectations in 2005, implementation remains a challenge. Law enforcement authorities are being encouraged to view domestic violence as a private issue. On Prisoner's Welfare Day, 2010, the President expressed the view that that the new law prevented reconciliation between husband and wife in line with the

old adage “Anger between husband and wife is only until the pot of rice cooks.” In a reference perhaps to Protection Orders, the President mentioned that in some instances courts had barred husbands from going near the wife, and that this was not helpful in reconciling the parties.<sup>2</sup>

Statistics maintained by Women in Need (WIN), a well-established NGO working with victims of domestic violence show that between 2005 – 2009, 219825 women sought their assistance. From among these, WIN has filed 101 cases under the PDVA to obtain protection orders. 85 cases were successful in obtaining a protection order. 5 of these protection orders were violated.

A study conducted by WIN<sup>3</sup> indicates that in many cases the court does not make provision for the monitoring of the Protection Order even though the court has the discretion to appoint a family counselor, probation officer, family health worker or social worker to do so. In some cases the order has been violated by the perpetrator and the abuse had continued. It would be advisable in these instances for the courts to consider additional steps that maybe considered necessary to expedite criminal action for breach of the court order.

With regard to gender sensitive training, there is no formal policy or information with regard to curriculums on legal education and gender sensitive training for lawyers and judiciary. The police conducts human rights training for their police officers, but it is hardly sufficient and rather ad hoc. The Police trainers that give these trainings are trainers on many subjects and admit that the amount of time they are allocated to concentrating on Human Rights training is insufficient.

Taking into consideration evidence of sexual violence in domestic violence cases, there has been a long standing demand for marital rape to be recognized as an offence even in cases of de facto separation, not merely judicial separation. However the law does not reflect this need and there has been no movement on legal reform to consider marital rape in all circumstances as a crime.

Additionally in line with General Recommendation 28, we make the following observations. As same sex consensual adult activity is criminalized by virtue of Section 365A of the Penal Code, there is an absence of data on violence against lesbian, bisexual and transgender (LBT) women. This leads to invisibility of the nature and forms of violence that affect LBT women. Additionally, although the PDVA of 2005 recognises the right of cohabiting partners to apply for protection orders, as the intimacy between LBT partners is not legally recognized, same-sex couples in situations of domestic violence are reluctant to access the PDVA.

In keeping with the principle of non-discrimination and substantive equality as specified in Article 2 and further elaborated by General Comment No.28 of CEDAW, we urge the Government of Sri Lanka to:

- a) Criminalize marital rape in situations of de facto separation;

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<sup>2</sup> Jayasekera, Sandun 15<sup>th</sup> September 2010, Prison Congestion a Grave Crisis Daily Mirror

<http://print.dailymirror.lk/news/front-page-news/21565-prison-congestion-a-grave-crisis-mr.html>

<sup>3</sup> Wijayatilake D , (2009) Cases filed under the Prevention of Domestic Violence Act No. 34 of 2005

- b) Repeal Section 365a of the Penal Code which criminalizes consensual same-sex sexual activities in public and in private spaces.
- c) Amend Article 12 (2) of the constitution which deals with non-discrimination to include sexual orientation and gender identity.

The areas of the country that were most affected by the conflict remains heavily militarized. The many army checkpoints and the heavy military presence throughout the North makes IDP women belonging to the minority Tamil community who have recently returned to their homes more vulnerable to violence and abuse than ever. This is all the more so since many communities consist mostly of families that are female headed. There are also many women who have lost their entire family and live alone in remote areas. Moreover, most returnee women and girls live in tents or other form of shelter that do not provide physical security, for example, most often the houses don't have doors that can be locked etc. Their vulnerability is increased due to the involvement of army personnel in the progress of building projects, thereby militarizing the post-war reconstruction process and placing women at risk of sexual harassment and violence.

### **Prostitution and Trafficking:**

There are reported cases of trafficking of women and girls for the exploitation of their labour and of their sexual services both internally and from abroad. Of particular concern is the situation of non-Sri Lankan women who are sometimes held in custodial detention; they are mostly from Eastern European and Central Asian countries, and some from China and SE Asia as well. They are arrested and often deported on charges of violation of immigration laws, without having had access to their earnings; those who brought them into the country are seldom held responsible. Since CEDAW GR 28 affirms the accountability of the State to all women living under its jurisdiction, there should be clear Protection Guidelines issued to the Police and to Immigration Authorities with regard to the human rights obligations of the Sri Lankan government towards non-citizens.

Though prostitution is not illegal under the Penal Code women who engage in street prostitution in Sri Lanka are subject to arbitrary arrest and detention and conviction under the colonial 'Vagrants Ordinance'<sup>4</sup> which criminalizes soliciting in a public place 'for the purpose of the commission of any act of illicit sexual intercourse or indecency'. Since there is no clear definition of soliciting, this makes for intimidation and harassment of women, who for example report that they are arrested for having condoms in their handbags.

### **Political Participation**

As stated in the shadow report Sri Lanka ranks as one of the countries with the lowest political participation of women in the region. It has failed to introduce affirmative action..... Despite the fact that Article 12(4) of the Constitution provides for this. The government is currently in the process of changing the electoral system at local level. A Bill titled "Local Authorities Elections (Amendment) Bill" was gazetted on 4<sup>th</sup> October 2010 and tabled in parliament on 21 October 2010.

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<sup>4</sup> An Ordinance to Amend and Consolidate the law relating to Vagrants: 1841, last revised 1947:

This legislation provides for a mixed system of elections which will replace the proportional representation system of elections currently in place. Accordingly approximately two-thirds of members of local councils are to be elected on the first-past-the-post system and one-third under the PR system. Sec. 22 (4) (2b) of the bill also provides that – **25% of the total number of candidates and additional persons whose names appear in each nomination paper . . . may consist of women and youth.** This provision is however clearly inadequate to fulfill SL’s constitutional standards on equality and CEDAW commitments to increase women’s representation in elected political bodies for the following reasons:

- (i) The quota is combined for women and youth with no specific guarantee of a quota for women.
- (ii) The quota is not mandatory and non compliance with this provision will not attract any legal consequences.

A number of civil society organisations including seven women’s organisation challenged this bill in the Supreme Court of Sri Lanka on various grounds including that government commitment to substantive equality requires a mandatory quota for women in local government. The petitioners cited commitments under the CEDAW, the Constitution as well as the Women’s Charter. We quote below excerpts from the judgement of the Supreme Court on the matter of affirmative action for women where the court took an extremely limited approach to the question of equality:

‘ . . . Art 12(1) of the Constitution has clearly laid down the principle that all persons are equal before the law and are entitled to equal protection of the law. It is true that Art 12(4) of the constitution has stated that nothing in Art 12 would prevent special provision being made by law for advancement of women, children or disabled persons.

However Art 12(4) cannot be used as a weapon in order to depart from the basic principle laid down in Art 12(1) of the Constitution. The right to equality which is one of the most important fundamental rights guaranteed by our constitution has clearly lead down the concept that all are equal before the law and are entitled to equal protection of the law. This would be applicable equally to all persons and should be regarded as of paramount importance.

Art. 12(4) of the constitution is not a weapon, but only a shield for the state in order to justify any kind of departure from the mainstream purely to encourage the advancement of women, children or disabled persons. Accordingly, Art 12 (4) cannot be used to authorize affirmative action on behalf of women, children and disabled persons’.<sup>5</sup>

This legislation provided an opportunity to increase women’s representation in local councils in Sri Lanka and yet that the government failed to ensure a separate and mandatory quota for women at local level. The Supreme Court also unfortunately failed to inteprete the norm of equality in line with jurisprudence and and developments in constitutional law on the concept of concept of substantive equality.

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<sup>5</sup> SC Special Determination No. 2 – 11 of 2010.

## **Education**

The national curriculum development agency in Sri Lanka agreed in 2010 to incorporate activity based gender modules prepared by the Center for Women's Research in (i) core subjects in the primary and secondary school teacher education curriculum (ii) the life competencies curriculum in secondary schools and (iii) in the pre-school teacher education curriculum. However this is yet to be implemented. .

Many areas to which IDPs are returning do not have schools and hence young girls have to travel long distances to attend schools. The prevailing situation of insecurity in recently resettled areas of the north and east of the island, coupled with inadequate transport facilities, restricts their access to educational facilities. A similar situation prevails in the plantation sector. The absence of prohibition of corporal punishment in schools also acts as a deterrent to education.

## **Employment**

As mentioned above sustaining the gains made by SL women in spheres of employment such as law, medicine and engineering is proving to be difficult, and career advancement in these sectors is often stymied due to the unchanging gender and sex-based division of labour within the domestic sphere that continues to place the greater responsibility for care on women. Rather, there is a reiteration of women's 'maternal' responsibilities accompanied by total silence on men's paternal responsibilities within the family and in the larger society.

There are no new areas of employment for women that have emerged that would reduce the unemployment rate of women. The gender based division of labour within and outside the home continues to put greater pressure on women to withdraw from paid work on grounds of marriage and family, especially with regard to nurturing young children and taking care of the elderly. The recent withdrawal of EU concessions on the GSP+ that supported the export garment industry where thousands of women are employed is likely to aggravate unemployment among women. Most women searching for work remain in the informal sector which is very significant in the rural sector and is expanding fast in the urban sector.

The pay gap between women and men is most glaring in the informal sector, especially in agricultural activities but also in the industrial sector. There are no specific measures by government to address this difference. The gap is based on perceived gender based differences that give a higher value to work done by men.

Although efforts have been taken by the Sri Lanka Bureau for Foreign Employment (SLBFE) which was established in 1985 by the Sri Lanka Bureau of Foreign Employment Act No.21, still women migrant workers remain vulnerable to deceitful agencies, especially to sub agents at the local level and to employers. Many women continue to work in exploitative situations and experience violence

and abuse at the hands of their employers and sometimes by those to whom they turn seeking support.

Although the adoption of a National Labour Migration Policy in 2008 is a major breakthrough in the area of migration, implementation remains a challenge and migrant workers, the majority of whom are women, remain largely unprotected and insecure.

Sri Lanka has ratified the UN Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, and introduced some laws and policies to address issues of women migrant workers. Bi-lateral agreements with host countries are essential to protect women workers working in these countries even though a few M.O.U.s have been signed. Sri Lankan foreign missions in West Asian countries are not adequately pro-active and do not implement measures to safe guard migrant women and their welfare.

### **Health**

Abortion, except to save the life of the woman, remains a crime in Sri Lanka under Section 303 of the Penal Code. Even victims of rape or incest who have conceived as a result of that violation are not permitted to seek a termination of the pregnancy. Probation Officers have pointed out that this condemns girls as young as 10 or 11 to carry a pregnancy to full term and to give birth. The physical and mental health of the woman is also not taken into account. In 1995 when a reform of the Penal Code was undertaken, a proposal to amend the section relating to abortion to include consideration for victims of rape and incest was drafted by the Ministry of Justice. The Minister of Justice later withdrew that amendment, following heavy pressure from a wide range of people and institutions.

Contraceptive awareness and use is high in Sri Lanka, overall. However, access to contraceptives remains a problem for young and/or unmarried persons, widows and women who are separated from their spouses, and Family Health Workers who are the community-based personnel of the state health sector are reported to refuse giving contraceptives to unmarried persons.

Due to the lack of health facilities in the conflict affected areas to which IDPs are returning women have to travel long distances to access health care. Due to inadequate transport facilities they have no means of accessing health care during the night for emergencies.

### **Rural women, older women and women with disabilities**

At present there are no programmes to identify the particular vulnerabilities of older women and women with disabilities who were displaced by the conflict and are now returning to their homes in the North. As they are returning to areas which do not have adequate basic services such as shelter, water and sanitation and health care they are particularly disadvantaged. There are also reports of older women being abandoned by their families at care homes and churches. There is also no sex disaggregated data on persons with disabilities.

### **Equality before the law and in civil matters**

According to recent testimonies of women, most women who were displaced by the conflict, most women who are returning to their homes have no means of livelihood. This places them at a



disadvantage in many ways from increasing their vulnerability to sexual violence to limiting their ability to rebuild their lives. For instance, since women cannot afford to employ persons to assist them rebuild their houses (even the World Bank project requires beneficiaries to construct the foundation themselves) they are forced to ask men in the community to help them. This in turn leads the men to demand sexual favours in return.

There is no formal, publicly available policy that addresses the needs of IDPs. Although a programme was initiated to draft a National Policy on Return, Resettlement, and Restitution, it was halted mid way by the government. In relation to ex-combatants the government has not implemented the National Action Plan on Re-integration of Ex-combatants drafted in 2009.

According to recent testimonies of women most women in return areas have no means of livelihood. This places them at a disadvantage in many ways from increasing their vulnerability to sexual violence to limiting their ability to rebuild their lives. For instance, since women cannot afford to employ persons to assist them rebuild their houses (even the WB project requires beneficiaries to construct the foundation themselves) they are forced to ask men in the community to help them. This in turn leads the men to demand sexual favours in return.

As mentioned in the Shadow Report, there is a need for a policy to address needs of IDPs and ex-combatants. Government also continues to disregard the National Action Plan on Re-integration of Ex-combatants. It has also stopped the drafting process of a National Policy on Return, Resettlement etc.