

## **Critical Issues arising from the 8<sup>th</sup> Sri Lanka Government CEDAW Report of April 2015.**

**Submitted by Sri Lanka Women's Groups.**  
**10 June 2016**

### **Women and Conflict**

Relevant to Article 11-Employment, Article 13-Economic and Social Benefits, Article 14 - Rural Women and General Recommendation 30—economic and social rights

### **Low labour force participation, poverty and indebtedness in the post-war Northern and Eastern Provinces**

According to the World Bank, four war-affected districts of the North and East—Mullaitivu, Mannar, Kilinochchi and Batticaloa—have pockets of the highest rates of monetary and multidimensional poverty in Sri Lanka.<sup>1</sup> These areas are also found to be suffering from poor labour market links, especially in the case of youth and educated women; further, those suffering from disabilities, ex-combatants and widows are most vulnerable to exclusion.<sup>2</sup> Other studies have reflected many of the challenges faced by women due to the lack of a comprehensive approach in providing sustainable avenues of income.<sup>3</sup>

Questions to the government: With respect to the economic situation of women in the post-war North and East, the Committee may wish to ask the Government of Sri Lanka:

- a) Given the failure of many livelihood programmes, including micro-enterprise and micro-credit projects, what measures are being taken to ensure secure livelihoods and adequate incomes for women?**
- b) What measures are being taken to address high levels of poverty and low levels of labour force participation of women?**
- c) What measures are being taken to address the problem of high levels of indebtedness that is undermining well-being especially that of women and children?**
- d) How are existing social protection measures being reconfigured to address the concerns in b) and c) above?**

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<sup>1</sup> World Bank (2015), Sri Lanka: Ending Poverty and Promoting Shared Prosperity- A Systematic Country Diagnostic, p. 15, 26-27.

<sup>2</sup> Ibid. p.15.

<sup>3</sup> <http://www.irinnews.org/report/95828/sri-lanka-focus-on-food-insecurity-in-jaffna> ; <http://reliefweb.int/report/sri-lanka/food-security-northern-and-eastern-provinces-sri-lanka-2012>; K. Romeshun, V. Gunasekara and M.Munas (2014), Life and Debt: Assessing Indebtedness and Socio-economic Conditions of Conflict-affected Housing Beneficiaries in Jaffna, Kilinochchi and Mullaitivu Districts, Centre for Poverty Analysis (CEPA), Colombo; See, for example, Kadirgamar, A. (2013), Banking on Rural Debt, *The Island*, June 1, 2013; *supra n. 9*; Ibid. p.71; United Nations, Sri Lanka (2015) Mapping of Socio-Economic Support Services to Female Headed Households in the Northern Province of Sri Lanka, p.39; <http://www.irinnews.org/report/95828/sri-lanka-focus-on-food-insecurity-in-jaffna>; <http://reliefweb.int/report/sri-lanka/food-security-northern-and-eastern-provinces-sri-lanka-2012>; K. Romeshun, V. Gunasekara and M.Munas (2014), Life and Debt: Assessing Indebtedness and Socio-economic Conditions of Conflict-affected Housing Beneficiaries in Jaffna, Kilinochchi and Mullaitivu Districts, Centre for Poverty Analysis (CEPA), Colombo; United Nations, Sri Lanka (2015) Mapping of Socio-Economic Support Services to Female Headed Households in the Northern Province of Sri Lanka, p.39.

**Reform of Muslim Personal Laws**  
**SL Government Report paras 16,17,18,19,127)**

Muslims in Sri Lanka are governed by the Muslim Marriages and Divorce Act of 1951 (MMDA). Muslim women in particular strongly feel that many aspects of the MMDA need amendment in the interests of justice and equality for women. It is incorrect to imply that there has been no demand for MPL reform from within the Muslim community in Sri Lanka. In 1992 a Muslim Personal Law Reforms Committee appointed by the government (Shahabdeen's Committee) received submissions from the public including religious leaders and women's organizations; a series of significant recommendations to reform MPL in Sri Lanka were made; in 2006 an Independent Committee for Muslim Personal Law Reforms (ICMPLR) initiated by Muslim Women's Research and Action Forum in 2006 consisting of religious leaders, judicial officers, lawyers, women activists suggested a comprehensive set of reforms following inclusive consultations within the Muslim community; in 2009 the Government appointed Committee on Muslim personal Law reform. It is believed that the question of recognising the right of women to be appointed as quazis and increasing the age of marriage has divided the committee. Though Muslim progressives, scholars and intellectuals have supported the appointment of Women as Quazis and prescribing minimum age of marriage [which is at present 12 years] there is still a minority of religious leaders who argue that it is against their understanding of 'Muslim culture and tradition'.

Questions to the Government:

**Why has the Government ignored the many formal and informal requests made by the Muslim Community to amend the identified sections governed by the particular Personal Law?**

**Setting a standard minimum age of marriage for all citizens**

The Muslim community in Sri Lanka is subject to the Muslim family law on matters of marriage and divorce in the form of the Muslim Marriage and Divorce Act (MMDA) 1951, which includes many discriminatory provisions with grave impacts on women. The MMDA for instance does not set a minimum age of marriage for the Muslim community and therefore legally allows for child/early marriage of Muslims girls. Despite lobby and advocacy from women's organizations for the past many decades for the reforms of the MMDA including raising the age of marriage – there has been no concrete effort taken on part of the government to do so. There are also different opinions about what the minimum age of marriage should be for Muslims

Questions to the government:

**Why is the Muslim Personal law reforms committee not releasing its reports? Will the government recognize the right of Muslim women to be appointed as quazis?**

**Why does the Government not remove the minimum age of marriage from the discretion and jurisdiction of the Muslim family law and mandate a standard age of 18 for all citizens regardless of gender or religion.**

### **Vagrants Ordinance and Commercial Sex Workers**

(Relevant to CEDAW Article 6, 11 and General Recommendation 19)

We direct the Committee's attention to steps taken by the Ministry of Justice to amend the Vagrants Ordinance in 2014, and call on the Committee to urge the GoSL to implement the *Action Plan based on the Recommendations of the Leader of the Opposition's Commission on Violence Against Women and the Girl Child* that calls for the immediate repeal of the Vagrants Ordinance and strengthen the implementation of laws on forced prostitution and trafficking in women and girls for prostitution, and penalize those who exploit them in brothels, ensuring that women and girls are not prosecuted.

Furthermore, we believe the **Government should take necessary measures to decriminalize Commercial Sex Work and ensure their right to safe working conditions, and protection from violence.**

### **Rights of Migrant Women Workers**

With reference to the State party's report regarding the implementation of varied minimum age limits to particular countries of destination, and the mandatory requirement of the submission of a Family Background Report by females migrating for employment as domestic workers in order to ensure "the protection of small children (below 5 years of age) who are left behind by mothers", we recognize the direct contravention of Articles 1, 3, 5, 11 and 15 and urge the Committee to recommend repealing these policies due to their discriminatory terms and recommend the implementation of a rights based approach to safeguard the rights of migrant women workers, as outlined in General Recommendation 26.

### **Unpaid Care Work**

Women's labour performed in their households remains unaccounted for in national labour force statistics and in the economy.

Questions to Government:

**What measures are being taken to enumerate women's labour within households?  
What measures are being taken to economically value women's labour within households?**

## **Marital Rape** **CEDAW GR 19**

We note with concern that the State is yet to recognize marital rape as a criminal act, and urge

Questions to the Government: Why has the State not pursued a comprehensive understanding of consent in accordance with international norms, as well as the criminalization of marital rape, which includes establishing the legal framework for the recognition of the act as well as mechanisms for redressal and judicial remedy.

### **Implementation of the prevention of Domestic violence Act No.34 of 2005. (In response to para 38 of the state party report)**

While acknowledging the efforts made by GoSL to provide shelters and counselling for victims of violence, we note that there are several implementation issues pertaining to the above act. The Shelters are not able to meet the needs of the vast number of victims in want of alternate living spaces under this act, the shelter locations must also remain confidential. Mandatory counselling ordered by the Magistrates even after protection orders are given under this Act, work as a deterrence for women filing action under same, as forcing the victim to spend time in a closed area with the Accused is counterproductive.

**We believe the Government must institute changes in the Act urgently in response.**

### **Sexual violence in detention and as part of practices of interrogation**

A number reports by INGOs such as Human Rights Watch (HRW-2013), The Bar Human Rights Committee of England and Wales and the International Truth and Justice Project, Sri Lanka (BHRC-ITJP, 2014, 2015) and Freedom from Torture (2015) has documented sexual violence in a variety of places and contexts of detention against women suspected or alleged to be members of or involved with the LTTE during and after the war. The government has sought to completely ignore the evidence presented by these reports.

Question to the government:

**What response can the government give to the evidence presented in these reports?**

### **Rape and Sexual Violence**

The number of complaints of rape received by the Department of Police has been steadily increasing over the years<sup>4</sup>. However, during the period 2007 to 2013 complaints were filed in only about 20-25% of reported rape cases. In addition only there have been 0 convictions in 2009 and only between 3-7 convictions in the period 2007-2013 (The Report of the Leader of the Opposition's Commission on the Prevention of Violence against Women and

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<sup>4</sup> 2007, 1397 complaints; 2008, 1582 complaints; 2009, 1624; 2010, 1854; 2011, 1870; 2012, 2150 and 2013, 2175 - The Report of the Leader of the Opposition's Commission on the Prevention of Violence against Women and the Girl Child, 2014

the Girl Child, 2014). Even though the Penal Code was amended in 1995, to provide for mandatory minimum sentences of 10 years in cases such as rape, gross sexual abuse and acts of gross indecency, the courts are now back to giving suspended sentences of 1 or 2 years for such offences.

**Laws delays:** Rape litigation also takes an inordinate amount of time; the case of murder and attempted murder, a rape case must first go through a non-summary inquiry at the Magistrate Court to determine whether there is a prima facie case against the accused and whether the accused should be committed to stand trial in the High Court. The Magistrate can discharge the accused if he considers the evidence is insufficient to proceed to trial. Although the decision to commit to trial ultimately rests with the Attorney General's Department, in most cases the AG's decision is based on the decision of the Magistrate. These inquiries are supposed to be concluded in three months, however this initial non-summary inquiry can take up to three years, while the trial itself will take several more years- up to 15 years in some instances.<sup>5</sup> One of the most important deterrents to women seeking redress from the law, especially in cases of sexual violence is the length of time it takes for a case to be concluded. Non-summary inquiries are conducted only in respect of three offences: murder, attempted murder and rape.

Question to the government:

**Are there any efforts to address laws delays in relation to rape? Is the Sri Lanka government considering abolishing non summary inquiries in the case of rape?**

Progress of Rape cases and Rape statistics: neither the police nor the Attorney General's Department is able to furnish any information on the progress of prosecutions regarding rape or incest.

Question to the government:

**Will the Attorney General's Department and the police put in place mechanisms to monitor proceedings and progress of rape cases heard before Magistrate's Courts and indicted before the High Court, so that laws delays will be tracked and minimized?**

## **LBT Rights**

The Public Representations Committee on Constitutional Reforms recommended that the rights of the LGBTIQ community to equality, dignity and non-discrimination should be

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<sup>5</sup> Hussain, 2001: 17, Shyamala Gomez and Mario Gomez, Gender Violence in Sri Lanka From Rights and Shame to Remedies and Change, Shakti, Colombo 1999.

provided for in the new constitution and called for the inclusion of the terms sexual and gender orientations in the equality clause of the Constitution.<sup>6</sup>

The State Report elucidates the dualist nature of the country, and mentions that Sri Lanka's obligations under international treaties are facilitated in terms of the provisions of the constitution and local legislation. **(Section 7)** The State report cites that the constitution of Sri Lanka under Article 12(2) recognizes the right to equality before the law on the grounds of sex. **(Section 10)**. It further states that there is adequate provision within the existing legal regime of Sri Lanka to accord statutory recognition to the right to equality and recognize the right of women not to be discriminated on the grounds of gender all of which are supported by pronouncement of the Supreme Court. **(Section 12)**. The Constitutional protection from discrimination on the grounds of sexual orientation or gender identity is flagged in the State Report. **(Section 36)** However the Public Representations Committee on Constitutional Reform reflected that it received submissions from all parts of the country of discrimination exclusion and marginalization on the basis of sexual orientation. The state report goes on to cite legislation that criminalises sexual activity between two consenting adults of the same sex even in private spaces. The law in itself is discriminatory, towards this community and is a deterrent to seeking protection through the Supreme Court and Human Rights Commission, for fear of being exposed to penal provisions.

Question to the government:

**Would the Government explicitly extend Article 12(2) of the constitution to protection from discrimination on the grounds of sexual orientation and gender identity in its new constitution?**

**What action has been taken with a view to honouring Sri Lanka's commitment to bringing local legislation in conformity with international standards with regard to repealing articles 365 and 365A of the Sri Lanka Constitution?**

### **Equal right to access healthcare**

#### **Article 12**

With reference to the State parties report regarding availability of free healthcare at the point of service delivery to all citizens without discrimination, we note a contravention of Article 12 based on the lack of visibility of non-heterosexual women (LBTI) who are at higher risk of sexual violence and its negative RH related outcomes among service users. We urge the Committee to urgently recommend the adoption of rights based gender responsive reproductive health (MCH and STI/HIV) and general health services within the wider recommendations related to Constitutional and legal reforms impacting the LGBT community.

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<sup>6</sup> See Final Report of the Public Representations Committee on Constitutional Reform available at <http://www.yourconstitution.lk/>

## **Abortion**

We direct the Committees attention to **Para 85 of the state party report; the draft Bill hopes to include only limited reasons for a legal abortion which we believe then sabotages a woman's right to abortion and we urge the committee to take this limiting of rights up as a critical issue.**

## **Health Rights of Migrant women workers**

Many gaps/shortcomings in the State governance framework around the health of migrant domestic workers in both origin and destination countries pose HIV risks to the migrant woman worker and their families.

Sri Lanka has failed to ratify the ILO Domestic Workers' Convention (C189) that safeguards the health and labour rights of women migrating for domestic work abroad although the GOSL recognizes employment related migration as a right. The National Labour Migration policy supports safe migration at all stages, and the Sri Lanka Bureau of Foreign Employment (SLBFE) has instituted a compulsory welfare insurance scheme as a safeguard. The GOSL also has signed MoU to safeguard migrant workers during their period of employment in destination countries.

While migration per se is not recognized as a risk factor for HIV, national data has increasingly identified a history of external migration among reported HIV cases during the period 2009 and 2013. In 2013, among all reported HIV cases, 49% of males and 55% of women gave a history of external migration although data does not support the identification of point of infection.

Sri Lanka does not recognize mandatory HIV testing. However, migrant workers to the Gulf countries undergo pre-departure mandatory HIV testing as a requirement for issue of employment visa. Among health related rights violations are i) the breach of confidentiality of the HIV Test result due to GAMCA\* clinics (non-State HIV testing centers authorized by the Gulf countries to conduct pre-departure mandatory HIV testing for issue of employment visa ) forwarding the HIV test report with recruitment agencies (third party) instead of the migrant worker ii) The absence of a specific mechanism to routinely link returnee migrants and those deported due to testing HIV positive in the destination country, to general healthcare services, including STI/HIV prevention, treatment and care services.

We urge the Committee to strongly recommend that **State party takes steps to prevent rights violations of migrant workers through ratifying ILO Convention C189, reviewing and renegotiating MoU signed with Gulf countries and addressing gaps in governance and service provision related to departure and return/reintegration processes .**

## **Female heads of Households**

### ***Uniform categorization of FHH***

The Government of Sri Lanka has no official definition for FHH. Studies done by various organizations reveal that inclusion or the exclusion of FHH from different welfare programmes depends on the varied definitions and terms that are used. The terms include war widows; female headed household; and a single parent family. It is not clear as to how inclusive these terms are.

**Question: On what basis does the Government target FHH for specific welfare programmes? What data is available on FHH and the classification of FHH?**

### ***Sexual exploitation of FHH***

According to the documented studies, FHH are subjected to sexual exploitation by public servants and those in charge of public security; health care workers; and employers of civil society organizations. Offenders act with impunity and target FHH who are vulnerable due to several factors.

**Question: What measures has the Government taken to ensure that FHH are not subject to exploitation, particularly sexual exploitation, in the delivery of government services?**

### ***FHH and Transitional Justice***

FHH have not been included in transitional justice initiatives. Thus far, national policy in the post conflict period had focused on the development of infrastructure. The recently elected government has indicated that it would adopt a more holistic approach to transitional justice and reconciliation. To date, there have been no specific state led transitional justice or peace building initiatives in which FHHs could participate and be involved in.

**Question: What steps has the Government taken to ensure that women and FHH are represented in discussions regarding the establishment of Transitional Justice mechanisms for Sri Lanka?**

*These comments are based on representations made by the Women and Media Collective, the Muslim Women's Research and Action Forum, the Suriya Women's Development Centre, Women's Action Network (WAN), the Women's Support Group (WSG) and FOKUS WOMEN*