



Joint submission to the United Nations
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Sri Lanka

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UKRI GCRF Gender, Justice and Security Hub

International Centre for Ethnic Studies (ICES)

University College London (UCL)

Presented by

1. UKRI GCRF Gender, Justice and Security Hub – an international research network based at the London School of Economics. Established in 2019, the Hub works with over 40 partners and local and global civil society, practitioners, governments and international organisations to advance gender justice and inclusive peace.

2. University College London UCL is a partner on the Methodological Innovation and Migration and Displacement research themes on the Gender, Justice and Security Hub. The projects collectively analyse the gendered aspects of forced migration arising from conflicts and environmental disasters; the gendered dynamics of international labour migration; and issues of return, reintegration and socio-political restructuring in the wake of international, inter-regional and intra-state displacements.

3. The International Centre for Ethnic Studies (ICES) is one of the Sri Lanka's leading research centres, focusing on ethnicity, identity politics, conflict and conflict resolution, post-war reconstruction, democracy and governance, human rights, development and gender. The mission of ICES is to deepen the understanding of ethnicity, identity politics and conflict, and to foster conditions for an inclusive, just and peaceful society nationally, regionally and globally, through research, publication, dialogue, creative expression and knowledge transfer.

1. Executive summary

4. The Gender, Justice and Security Hub (GJS Hub), ICES and UCL submit comments concerning **gender and displacement in Jaffna, prosecution of conflict-related sexual violence across the State and land ownership and women's empowerment** for consideration by the Human Rights Council (HRC) within its Universal Periodic Review at its 42nd session.

2. Gender and Displacement

5. In October 2020 the GJS Hub conducted a household survey of internally displaced persons (IDPs) in Jaffna District in Northern Province, one of the areas that still has a large IDP population. The survey

¹ examined the gendered experiences arising from protracted displacements spanning over three decades, gathering data on IDPs current living conditions; finances; asset ownership; safety and security concerns; access to services; social networks and relationship with other IDPs and the host community; and water, sanitation and hygiene issues they face.

6. From the 220 households surveyed, significant disparities were found in the ways men and women in Jaffna may have experienced protracted displacement over the years in the following areas:

- **Male and female household finances.** The average income of female headed households (FHH) is half of that of male headed households (MHH), and the proportion of FHHs that had received aid or grants in the past year was nearly 50 per cent of that of MHHs. More than 80 percent of the IDP households (regardless of FHH and MHH status) have stated that they are currently facing financial difficulties. Borrowing is the most common coping strategy, where FFHs are disproportionately treated with MHHs able to borrow money more readily. In addition to this, nearly 60% of the FHHs had insufficient income to cover food expenses – often a sign of extreme poverty.
- **Safety and security concerns.** Contrary to the general pattern of women in displacement experiencing more safety issues than IDP men, in this survey, male respondents highlighted more safety and security concerns than female respondents. Alcohol and drug abuse, youth gangs, and the lack of street lighting are amongst the principle concerns, with male IDPs being more concerned about the former.
- **Land ownership and access.** Of the 132 households that own land, more than 50 per cent do not have the right to sell/mortgage/develop their land. Many IDPs have their lands in areas designated as high-security zones, or there is a military camp located in or close to their lands. Land being out of bounds, or unsafe due to landmines is a key reason why many IDPs cannot return to their homes. The expansion of Jaffna airport is another common factor.
- **Living conditions.** The majority of IDPs expected their current location to be temporary, yet they are still there after several decades. The camps are susceptible to flooring and other adverse weather conditions. There are limitations in accessing safe drinking water and many do not have access to toilet facilities. However, when it comes to bathing and handwashing facilities, a higher percentage of males than females said they do not have access - 55 per cent of females said they do not have access to bathing facilities, more than three-quarters of males stated so. The disparities between males and females are even higher when it comes to handwashing facilities, where 80 per cent of males say they do not have access to handwashing facilities.
- **Displacement and children's access to education.** There are high levels of early school leaving among the IDP population. While displacement was an issue, this was not the most common factor, instead this was largely due to a lack of financial resources to do so. Also, a lack of interest in studies and searching for jobs have been key reasons for early school leaving of respondents' children.
- **Social networks, health and quality of life.** Human contacts in the form of people talking to and helping each other have collapsed after displacement. There is also evidence that this negative impact is felt more strongly by male respondents. For example, while 44 per cent of the females reported that the number of people they could talk to had decreased during displacement, the corresponding proportion is nearly double (84 per cent) for male respondents.

Amongst all IDPs there is a high prevalence of feeling anxious, worrying about the future, and feeling sad, although this is more prevalent for female IDPs. In addition to this, regardless of gender, approximately half the respondents are dissatisfied with life while not even a single person was 'completely satisfied'. Many of the IDPs we spoke with have a low

life satisfaction due to a combination of the points raised here. For female IDPs this is exacerbated by the prevalence of domestic violence in the camps where nearly half of the respondents consider domestic violence common in their neighbourhood, and the need to take measures to avoid sexual violence, such as travelling in groups.

7. Overall there are significant disparities in the ways men and women may have experienced protracted displacement over the years, particularly with regards to household finances, and safety and security concerns. Amongst the female IDP population, paid work, the freedom to make financial decisions, participation in community decisions and access to education have significantly decreased while their household work has significantly increased since displacement. The results also shed light upon overall issues that apply to IDPs in Jaffna, with many remaining in camps where living conditions are deplorable. The majority do not have access to safe drinking water, and the vast majority do not have access to hygienic toilets and bathing facilities.

8. Economic and social rights, the right to adequate standards of living, and the right to health for IDPs are not being upheld by the Sri Lankan state where in many cases women are disproportionately affected. The civil society recommendations made in the 3rd cycle² remain unaddressed and there are barriers to many of the rights afforded by SDG 5 and 16. This includes the recognition and value of unpaid care work and domestic work through the provision of public services, infrastructure and social protection; equal rights to economic resources, including financial services for women; and the promotion of non-discriminatory policies.

Recommendations:

- Work must continue by the state of Sri Lanka to continue and expand on thematic and local level documentation of difficulties experienced by the IDPs so that this information informs policies of protection and assistance in resettlement and relocation in Sri Lanka. Community enumerations at settlement or neighbourhood scale are known to offer a practical and reliable policy engagement, especially in urban settings as in Jaffna.
- In regard to the disparities in FFHs and MHHs amongst the IDP population it is imperative that the Sri Lankan government recognises and values equal access to economic resources, and also recognises and values unpaid care work and domestic work through the provision of public services, as set out in SDG5.
- Land being out of bounds is one of the main reasons preventing IDPs from returning to their hometowns. Recommendations from the 28th session stakeholder report noted that this was one of the main obstacles for IDPs, thwarting their return to their home was the occupation of land by the military. This remains an on-going issue. We recommend that the Government release all occupied areas and resettle IDPs on their land giving full ownership rights.

3. Prosecution of conflict-related sexual violence³

9. Prosecution of conflict related sexual violence (CRSV) in Sri Lanka remains notoriously intractable.

State denials of the crime and its states of exception have led to an impunity which complements the gendered cultural attitudes that stigmatise the victim-survivor into silence. The lack of witness protection, particularly in highly militarised contexts, has also resulted in underreporting.

10. Analysis of national and international legal provisions, and in-depth interviews with stakeholders show systemic shortfalls, gaps in the law, and procedural blind spots which work against the delivery of due justice to victim-survivors of the crime. We must call attention to the multiple registers, other than cultural, on which victim-survivors are marginalised and silenced. The manner in which sexual violence itself is recorded in complaints at police stations, and the gaps in the judicial medical examination, the guidelines followed in compiling the medical legal report, and the reporting of its findings to the court display inefficiencies and systemic shortfalls. The Vishvamadu case⁴, which was on the sexual violence experienced by two Tamil women allegedly at the hands of four Sri Lanka army personnel, is a key example of this, where the case has taken 11 years to date, indicative of the long delays in the Sri Lankan judicial process.

11. In criminal cases, the prosecution procedure itself becomes a primary site of marginalising victim-survivors as the State prosecutes and speaks on their behalf. In such circumstances, the victim's role is limited to that of a witness. In the case of the Vishvamadu women, the prosecutor from the Attorney

General's department neither spoke to them nor to their lawyers about how charges were being framed. It was left to the police to communicate with them about dates of the trial etc., and that interaction too stopped at the High Court.

12. Under the Assistance to and Protection of Victims of Crime and Witnesses Act No. 04 of 2015, popularly referred to as the Witness Protection Act, even if information on the case is not explicitly requested, a victim has a right to be present at all judicial proceedings including the Appeal – a right that cannot be exercised if the victim is not informed of the proceedings. These lapses meant that the principle of consultation and the participatory rights of the victim-survivor in their case were severely undermined. Witness protection itself, which the women sought during the High Court trial, was also not provided by the State.

13. The silence of a legal definition of CRSV in the Sri Lankan law is another major obstacle to the prosecution of the crime with an appropriate threshold of penalty. In the absence of specific provisions for CRSV, the crime is currently prosecuted under Section 363 of the Penal Code as amended by Act No. 22 of 1995. This law is inadequate as it neither takes into account the highly militarised conditions under which CRSV occurs, nor the range of sexual violence that occurs in its context. In the case of rape, the language of the legal provision also accounts only for the violation of women's bodies, thereby leaving out male victims of rape, including detainees. At court, moreover, consent and corroboration are often sought even though the law does not require it. The silence in the legal definition also affects the legal recognition of victims and their families which in turn, prevents them from receiving adequate compensation. Punishments also fall short of a higher order of penalty that is called for, given the nature of the abuse of power that enables such crimes.

14. The crisis of institutions in Sri Lanka impacts on women victim-survivors of such crimes and suggests recommendations for a more transformative process in which they can become equal partners in the prosecutions of CRSV in a manner that also works towards greater gender security and justice.

Recommendations:

- **Training on gender:** Mandatory and more robust training of police officers and judicial medical officers in sexual and gender-based violence (SGBV) and trauma to ensure gender sensitivity and the protection of the dignity and rights of the victim-survivor. It is also recommended that a police officer of whatever gender preferred by the victim-survivor be present when the complaint is made at the police station, and a person of choice be also present at the medico-legal examination.
- **Guiding Principles and user-friendly standard operating procedures (SOPs)** in an easily accessible format to be developed which would provide both a practical step by step set of directives to stakeholders in cases of sexual violence (victims, befrienders and human rights defenders, the police, the Judicial Medical Officer [JMOs], the prosecutors) to ensure that due process takes place and that the process itself is in the public domain.
- **Law Reform:** A legal definition of CRSV to be included in the substantive law, and a review of legal standards on consent and corroboration in cases of sexual violence, the recognition of the impact of trauma on witness statements particularly in the context of intimidation and militarisation, to be conducted. Existing legislation such as the Witness Protection Act which grants victim protection and recognises victim statements to be fully implemented, and best practices from elsewhere be adapted to guarantee the participatory rights of victims in court.

4. Women's land ownership

15. In Sri Lanka, 35% of the population is directly or indirectly dependent on land.⁵ However, only 16% of all privately-owned land in Sri Lanka belongs to women⁶, limiting their access to different agricultural assets and benefits such as subsidies, credit, or irrigation water. The absence of a uniform law for land rights, the complexities in customary laws, the ethno-religious and cultural norms that shape women's land ownership and complexities brought about by the war all affect women's land ownership, and by extension, their empowerment, in Sri Lanka.

16. Findings from a quantitative survey of 2,000 households and 103 qualitative interviews with national and district key informants and households shows that residential land is owned mostly by the primary female respondents (51%) while agricultural land is mostly owned by men (73%).

17. Nearly all women agree that land ownership is important for their self-worth and security in a marriage and is useful for women to engage in livelihoods. Yet, nearly half of the respondents believe that even if a woman owns land legally, a man should have control over the land. Women also agree that it is difficult to deal with conflicts over land without a man. In essence, while there is a symbolic/intrinsic value in land ownership women recognise, many of them do not perceive land

as a means of gaining economic empowerment or agency.

Land ownership and agency

18. Having or not having land does not seem to impact agency related to marriage and post-marital employment decisions. Male members in the family influence these decisions even if women have land ownership. This is more prominent for Tamil women in Jaffna and Batticaloa, but in sharp contrast to Sinhalese women in Kandy and Matara. Women have considerable agency in terms of household decisions including household budget, children's education, and health, even if women do not own land.

19. Agency on land use is more prominent for home gardening but not large-scale cultivation. Even if the women do not own land but have access to family land or are renting land, women predominantly make decisions related to home gardening and generate food and income leading to food security in the household. In contrast, men have more agency in relation to utilising agricultural land even if it's the women who own that land.

Land Ownership and Empowerment

20. Land ownership is perceived to provide economic strength, courage, and empowerment to face challenges, ability to be independent, and recognition in the society for women. More women are socially empowered than men, with close ties to family, friends and neighbours. However, women's political empowerment is limited and participation in community organisations is low.

Recommendations:

21. Overall, we see a critical need for uniform law for land rights. Women's land ownership in all districts is markedly low and is affected mainly because of the various customary laws and traditional practices that are in place in the absence of such uniform law in the country.

- **Amendments to the law:** Schedule 3 of the Land Development Ordinance must be amended to allow women to access and control land more freely. The law, which currently restricts women inheriting state land, is detrimental for women and does not meet women's rights to equality and justice. The adjustments should permit landowners to pass on titles to their daughters or wives.
In cases where the state grants land, such title should be given to both spouses, and not only to the male. The notion of equating the 'head of the household' with the man/husband should be abolished from administrative practice and the state should provide land title to both spouses when land grants are made.
- **Evidence based policies:** there is limited collaboration on the ground with women to inform policy practice and decision making. It is crucial that women's voices are included in decisions made over land ownership to ensure women's full and effective participation and equal opportunities for leadership at all levels of decision making in political, economic and public life as upheld by SDG 5.5.

- **Capacity building:** the Government must adopt new policies and legislation that ensure the promotion of gender equality and empowerment of women and girls. This must include the creation of programmes and schemes that promote women's control over land that goes beyond home gardening related use.

5. Commitments to SDG 5 on gender equality and SDG 16 on peace, justice and strong institutions

22. Significant challenges remain for gender-equality and peace, justice and strong institutions with the Sustainable Development Report 2022 showing "stagnation" in both these areas.⁷

23. We see significant disparities in the way female IDPs experience displacement, the justice system and land rights, with stagnation in equal rights to economic resources, as well as access to, ownership and control over land and other forms of property, financial services, inheritance and natural resources as set out in SDG 5.7. We also see discriminatory practices and policies, particularly when it comes to land rights across the board that apply to both male and female IDPs. All IDPs have a right to be included in decision-making when it comes to national policies on IDPs to ensure responsive, inclusive and participatory decision-making and policies, as set out in SDD 16.7 and 16c.

24. In terms of women's land ownership outside of the IDP community, women have less access and control over land. Gendered discriminatory laws and differences in land ownership and inheritance mean that full legal protections to women are not being afforded. Restrictions on land ownership and rights coupled with complex legal provisions are preventing women from having economic agency and subsequently preventing long-term and sustainable gender equality.

25. The current prosecution rate and procedure for conflict related sexual violence is stark. We do not see equal access to justice (16.3), the development of effective, accountable and transparent institution (16.6) or the promotion and enforcement of non-discriminatory laws and policies (16.c).

26. Whilst Sri Lanka is on track to achieve its goals around the quality of education and climate change, we see little to no progress in gender equality and the establishment of peace, justice and strong institutions. Although access to and affordability of justice is moderately improving, when it comes to the prosecution of conflict related sexual violence there are significant gaps and silences in substantive and procedural law, the police investigative procedure, the judicial medical record, the Attorney General's department and witness protection as demonstrated by the Vishvamadu case.

6. Achievements, remaining concerns and recommendations

27. We are seeing upwards trends in some indicators for SDG 5 and 16. For example, Sri Lanka is on-track to ensure that women and girls meet mean years of education (SDG5), and that children in child labour and the export of conventional weapons are curtailed (SDG16). But, significant concerns remain since the 2017 3rd UNHCR UPR.

28. The 2017 stakeholder report stated that there were “serious obstacles, particularly relating to omissions and failings by the State, which thwart the achievement of durable solutions for those affected by displacement, currently living within the country and outside.”⁸, and that occupied land should be released and IDPs resettled on their traditional land⁹. Whilst we welcomed the introduction of the Policy on Durable Solutions for Displaced and Persons Affected by Conflict Displacement, our findings show that the recommendations made in 2017 have not been implemented.

29. In relation to CRSV, whilst the four members of the security forces were convicted of the rape of a woman and sexually harassing another woman in the Visvamadu case in 2015, we still see failings in the police handling of sexual and gender-based violence (SGBV). Whilst the national report from the 2017 review states that officers have been provided training on women’s rights and gender-based violence (GBV) including domestic violence¹⁰, our findings show that this training needs to be extended to the judicial medical officers handling SGBV and that many reforms to the law remain. These reforms include a legal definition of CRSV and a review of legal standards on consent and corroboration in cases of sexual violence. We also do not see the full implementation of existing legislation such as the Witness Protection Act.

30. We have made recommendations throughout our submission concerning gender and displacement in Jaffna, prosecution of conflict-related sexual violence across the State and land ownership and women’s empowerment. If Sri Lanka is to achieve the SGD targets, promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels as well as ensure inclusive and equality opportunities for both men and women, then all of these recommendations need to be actioned.

Annex

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¹ Rajith W. D. Lakshman, Kopalapillai Amirthalingam, Anoji Ekanayake and Brad K. Blitz, *Gender and Displacement in Jaffna, Sri Lanka: Survey of Internally Displaced Persons*, GCRF UKRI Gender Justice and Security Hub, 2020.

² United Nations General Assembly, *Summary of stakeholders' submission on Sri Lanka*, A/HRC/WG.6/28/LKA/3, paras 98

³ Danushka Medawatte, Neloufer de Mel, Sandani N. Yapa Abeywardena, and Ranitha Gnanaraj, *Conjunctures of Silence: Aphonias in the Prosecution of Conflict Related Sexual Violence in Sri Lanka - The Vishvamadu Case*, GCRF UKRI Gender Justice and Security Hub, 2022.

⁴ BBC, “Four Sri Lankan soldiers convicted of raping tamil women”, BBC, 7 October 2015, <https://www.bbc.co.uk/news/34470053>

⁵ Khushby Mishra and Abdoul G.Sam, “[Does Women’s Land Ownership Promote Their Empowerment? Empirical Evidence from Nepal](#)”, *World Development* (78) (2016): 360 - 371

⁶ Food and Agriculture Organization of the United Nations, *Country Gender Assessment of Agriculture and the Rural Sector in Sri Lanka*, (Colombo 2018) <https://www.fao.org/3/CA1516EN/ca1516en.pdf>

⁷ Jeffrey D. Sachs, Guillaume Lafortune, Christian Kroll, Grayson Fuller, and Finn Woelm, *Sustainable Development Report 2022: From Crisis to Sustainable Development: the SDGs as Roadmap to 2030 and Beyond*, (Cambridge: Cambridge University Press, 2022).

⁸ United Nations General Assembly, *Summary of stakeholders’ submission on Sri Lanka*, A/HRC/WG.6/28/LKA/3, para 91-99

⁹ United Nations General Assembly, *Summary of stakeholders’ submission on Sri Lanka*, A/HRC/WG.6/28/LKA/3, para 98

¹⁰ United Nations General Assembly, *National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21, Sri Lanka*, A/HRC/WG.6/28/LKA/1, para 101