



WOMEN’S RIGHTS

SUMMARY OF KEY ISSUES FROM PREVIOUS UPR CYCLES

In the first cycle, Sri Lanka accepted the only recommendation it received concerning women’s right, to further promote education, development and representation in politics and public life. In 2012, 12 second cycle recommendations referred to women. The 30 percent quota for women in the nomination lists at national, provincial and local elections was noted along with calls for amendments to the Penal Code to ensure the rights of women from all religious and ethnic communities and domestication of CEDAW. Remaining recommendations concerned the “Bangkok rules” in treatment of women prisoners, implementing the Prevention of Domestic Violence Act, criminalising violence against women, encouraging women’s participation in public life and peace-building and providing capacity building to state institutions on the Women’s Charter.

NATIONAL FRAMEWORK

The Sri Lankan Constitution does not recognize a right to substantive equality, right bodily integrity, a minimum quota for representation of women at local government, provincial and national levels. The nondiscrimination clause does not explicitly refer to discrimination based on gender identities among its protected characteristics. Regardless of the guarantee non discrimination, Article 16 together with no provision for judicial review of legislation, ensures that a gamut of laws continue to effectively discriminate women.

Government of Sri Lanka adopted a 25% quota for the appointment of women at the Local Government level in the Local Authorities Elections (Amendment) Act and the Cabinet approved, in 2016, a proposal to amend the Provincial Councils Elections Act, No. 2 of 1988 to enact a (minimum) 30% quota for women on political parties’

nomination papers for each province.

National policies adopt discriminatory concepts such as ‘head of the household’; nuclear ‘happy families’, ‘guardianship’ and ‘family background reports’ inform a number of state policies. The machinery to address GBV including sexual violence, domestic violence is weak and prohibitive. Abortion continues to be criminal and there is no comprehensive sex education. The GOSL has failed to address suspended sentencing for rape, criminalize marital rape, address weaknesses in the implementation of the domestic violence act.

There are no support services for women accessing justice. There are lengthy delays in securing justice, lack of information to victims about the legal process and the decisions taken affecting them by the Attorney General.

CHALLENGES

Discrimination permitted by the Constitution and discriminatory laws

As a direct result of Article 16 and no provision for judicial review of legislation, a number of laws continue to discriminate against women without having to conform with basic guarantees of equality enshrined in the Constitution (Article 12). Some examples of such laws are:

The Third Schedule of the Land Development Ordinance prescribes

IMPACT



CHALLENGES

IMPACT

Discrimination permitted by the Constitution and discriminatory laws

an order of succession to land permits issued by the State that discriminates against girl children, who, though may be the oldest in the family, are deprived of their inheritance rights merely because they are females.

Muslim Marriage and Divorce Act of 1951 explicitly prohibits women from holding the position of Quazi (judge) within the Quazi court system even though this is a tax payer funded, state office. It also permits marriage of children under the age of 18 resulting physical, emotional and economic abuse.

Jaffna Matrimonial Rights and Inheritance Ordinance of 1947 disables women subject to Thesawalamai law from entering into contracts without the express approval of their husband.

The Kandyan law of intestate succession contains discriminatory provisions towards girl children. A daughter given in digama marriage before the death of the father forfeits her rights to his estate. Where a daughter contracts a digama marriage after the death of the father, she can inherit the father's property but if within a period of one year after the date of her marriage, her brothers and binna married sisters tender her fair market value of the immovable property, she is bound to convey the property to them.

Discriminatory application of law

The Vagrants Ordinance of Sri Lanka is often used to round up and detain women sex workers. Women are arrested by the police for the offence being "an idle and disorderly person" and the fact that she was carrying on her person condoms is usually submitted by the police as 'productions' in proof of an 'offence'. Women sex workers become vulnerable to abuse by certain police officers. The penal code provision on impersonation is also used to victimize transgender persons.

Discriminatory policies

Discriminatory concepts such as 'head of the household'; nuclear 'happy families' inform a number of policies and result in discrimination of women.

The Family Background Report (FBR) circular by the Sri Lanka Foreign Employment Bureau on 07th June 2013 (No 13/2013) and circular (No 19/2013) issued by the Ministry of Foreign Employment Promotion and Welfare in December 2013, requires women migrants to be subject to a family background check, bans women with children under the age of five from migrating overseas for work, and requires all women with children over the age of five years to 'guarantee the protection of [her] children' by nominating a substitute caregiver and also sets a higher minimum age requirement than 18 for women hoping to migrate overseas for



CHALLENGES	IMPACT
<p>Discriminatory policies</p>	<p>domestic work. Strict implementation of this policy results in women prevented from migrating for employment, in detention of women at the airport for failing to comply, and results in vulnerability of women, particularly poor women, to officials issuing the FBR.</p> <p>There are no policies to address the situation of female headed households in conflict affected areas, particularly those living in internal displacement camps.</p> <p>Similarly in Free Trade Zones (FTZ) women live with limited facilities and in insecure situations. There is also a high incidence of violence of sexual harassments and sexual abuse. Working conditions are poor. In the 'manpower' sector female labourers do not receive statutory employment benefits such as provident fund contributions and also have a number of difficulties in securing their dues.</p>
<p>Representation of women in decision making</p>	<p>Female representation is 5.8% in the national parliament, (only 13 out of 225 representatives are women). In the year 2015, the female representation in Provincial Councils was 6% while in the regional representative structures (pradeshiya sabahs) it is less than 2%.</p> <p>Lack of representation of women in the constitutional reform process before the Constituent Assembly has meant that despite wide ranging submissions from women and the recommendations of the PRCCR, and the Fundamental Rights Sub Committee, the draft Bill of Rights proposed by the Sub-Committee does not include a section on women while it does include sections on the rights of children, the disabled, senior citizens, etc. and it also fails to include an Independent Commission on women.</p>
<p>Laws or gaps in the law that protect or promote gender based violence</p>	<p>Marital rape is not recognized. For Muslim girls the penal code also exempts statutory rape for girls 12 and above who are married (Penal Code Section 363). Penal Code Sections 365 and 365A also criminalizes sexual activity between two consenting adults of the same sex.</p> <p>Vagrants Ordinance and Brothels Ordinance contribute to the criminalization of prostitution and results in an environment devoid of protection and due process and contributes to violence against those engaged in sex work.</p>
<p>Laws designed to protect rights and protect from violence women victims are not implemented</p>	<p>The Supreme Court reference 03/2008 giving High Courts discretion in implementing the strict sentencing in the penal code for rape and statutory rape, continues to see accused 'settle' cases by payment of monies to the victim family and judgments of suspended sentences for these offences.</p>



CHALLENGES

Laws designed to protect rights and protect from violence women victims are not implemented

Violence Against women: Widespread violence, a culture of fear, intimidation, lack of faith and impunity in the investigation and prosecution.

IMPACT

The Muslim Marriage and Divorce Act of 1951 permits early marriage and as such exposes young girls to domestic and other forms of violence. Practices such ‘hadd punishments’ as dispensed by Mosque Committees are practiced with impunity and without police interference. There is no law preventing femal genital cutting which is a practice that exists in Sri Lanka.

The Penal Code does not include exceptions to the ban on abortion, termination of pregnancy for therapeutic reasons and cases where the pregnancy is the result of rape or incest and it has punitive provisions imposed on women who undergo abortion. There are no provisions guaranteeing women seeking the termination of their pregnancy will be provided with access to quality services, including the management of complications arising from unsafe abortions.

The Assistance to and Protection of Victims of Crime and Witnesses Act No. 04 of 2015 has not been fully implemented. There is no administrative system that provides the protection envisioned under the Act.

The implementation of the Domestic Violence Act of 2005 has anecdotal evidence to suggest that women are coerced into marriage counselling as part of the remedy to domestic violence, they are exposed to greater opportunity for harm as a result of interim orders not being granted as courts are unable to assure physical protection, and there are no services including shelters, etc that are available to those who access relief under the Act.

Women’s U.N. Report Network says 30 percent to 40 percent of women in Sri Lanka today suffer from some kind of violence, while more than 60 percent of women across Sri Lanka are victims of domestic violence. Women are routinely harassed both verbally and physically when traveling by bus, train or even walking on the street.

According to a 2015 report by UNFPA, gender-based violence is especially prevalent in areas most affected by the conflict (North and East), but violence and harassment is pervasive across socioeconomic groups.

Fear and intimidation, lack of Tamil police officers at police desks, female police officers at women and children desks at police stations who do not ensure the safety and protection of female victims, militarisation of the North and East, and the general culture of impunity that exists prevents women from making formal complaints of SGBV and GBV. Out of the total formal complaints made to authorities many continue to pend both at the



CHALLENGES

Violence Against women: Widespread violence, a culture of fear, intimidation, lack of faith and impunity in the investigation and prosecution.

Deep seated social gender stereotyping

IMPACT

investigative level and prosecution level with very low numbers of convictions. Identification parades are conducted with the victim in full view of the suspects. Cases drag on for long periods of time with multiple hearings without recourse to the victims providing greater chances for intimidation and re-victimisation. Furthermore, the normalisation of the use of PTA to investigate offences not related to those stipulated in the Act, such as in the case of Vithya Sivaloganathan.

Perpetuation of gender stereotyping and gender roles is deeply embedded in the Sri Lanka’s education system and curricula.

Women face multiple challenges to secure positions of leadership and even membership in trade unions, farmer’s societies and fisheries cooperatives. Priority is not given to unions headed by women when distribution of welfare grants are given by the government.

The lack of economic opportunities and political space for ethnic minorities, women and rural youth has created deep discontent. In this post war development landscape, Sri Lanka cannot avoid the challenge of addressing issues of inequality and real vulnerabilities of marginalized communities at the ground level if it is to attain sustainable peace and development.

A majority of rural women are involved in food production. However, they are unable to make decisions regarding the industry, lands, equipment, houses, properties, distribution of the products and the right to own the financial and economic valuables.

RECOMMENDATIONS

1. Repeal Article 16(1) of the Constitution to introduce judicial review of all laws.
2. Constitutionally embed rights specific to women as proposed by the Public Representations Committee (PRC), including the concept of substantive equality
3. Establish an effective National Independent Commission on Women and allocate it with adequate resources to ensure its effective functioning.
4. Adopt and implement policies and programs, including amendments to Family Background Report which address intersectional discrimination including caste-based discrimination.

RECOMMENDATIONS

5. Repeal discriminatory provisions of the Land Development Ordinance in relation to succession, inheritance and joint ownership
6. Amend all Personal Laws, including the Muslim, Kandyan and Tesawalamai Personal Laws, to remove discriminatory provisions regulating ownership, inheritance, transfer and disposal of land and property, as well as provisions regulating legal capacity, marriage, divorce, and child custody.
7. Amend and operationalize the Assistance to and Protection of Victims of Crimes and Witnesses Act to incorporate better safeguards for women victims
8. Amend and operationalise the Prevention of Domestic Violence Act to incorporate better safeguards for women victims.
9. Effectively implement the National Plan of Action for addressing Sexual and Gender Based Violence, and allocate adequate resources to ensure its implementation in a coordinated and effective manner,
10. Repeal the Vagrants Ordinance
11. Criminalize marital rape
12. Criminalize female genital cutting,
13. Repeal laws permitting suspended sentencing for offences of rape and statutory rape.
14. Ensure the enactment of the proposed minimum 30% quota for women candidates on nomination papers of political parties at the provincial level and national level.
15. Combat discriminatory gender stereotypes in education and mainstream gender into national education policies including the Education Sector Development Framework and Programme and integrate gender equality education into school curricula at the primary level.
16. Institutionalize age-appropriate comprehensive education on sexual and reproductive health and rights by addressing responsible sexual behaviour with special attention to the prevention of early pregnancy.
17. Implement laws and policies to protect and promote the rights of women working in informal sectors as well as free trade zones



RECOMMENDATIONS

18. Reduce the gender wage gap by applying regular pay surveys and establishing effective monitoring and regulatory mechanisms for employment and recruitment practices.
19. Pass a legislation to recognize rights of sex workers to engage in their occupation.

