

Flygtningenævnets baggrundsmateriale

Bilagsnr.:	709
Land:	Sri Lanka
Kilde:	Centre for Equality and Justice og Equality Now
Titel:	Information on The Democratic Socialist Republic of Sri Lanka for consideration by the Committee on the Elimination of Discrimination against Women during the Pre-Sessional Working Group for its 86 th Session (27 February 2023 – 03 March 2023)
Udgivet:	26. januar 2023
Optaget på baggrundsmaterialet:	22. februar 2024



Committee on the Elimination of Discrimination against Women (CEDAW)
Human Rights Treaties Division (HRTD)
Office of the United Nations High Commissioner for Human Rights (OHCHR)
Palais Wilson - 52, rue des Paquis
CH-1201 Geneva, Switzerland
By email: cedaw@ohchr.org

26 January 2023

Information on The Democratic Socialist Republic of Sri Lanka for consideration by the Committee on the Elimination of Discrimination against Women during the Pre-Sessional Working Group for its 86th Session (27 February 2023 – 03 March 2023)

Introduction

1. We respectfully submit this letter to the Committee on the Elimination of Discrimination Against Women (“the Committee”) to complement its preparation of the List of Issues in relation to Sri Lanka’s review by the Committee.
2. **Centre for Equality and Justice (CEJ)** is a women’s organisation based in Colombo, Sri Lanka working primarily with Sinhalese, Tamil and Muslim women affected by war and political unrest. CEJ’s mission is the achievement of gender justice so that men, women and gender minorities live in a society that is free, just and equal. Its objectives are the promotion of gender equality, advancing the rule of law, good governance and democratic principles, promoting women’s advancement and economic empowerment, advocating for the commitment to international human rights standards and fostering partnerships with grassroots level women’s networks.
3. **Equality Now** is an international human rights organisation with ECOSOC status working to achieve legal and systemic change that addresses violence and discrimination against women and girls around the world. Founded in 1992, Equality Now is a global organisation with partners and supporters in every region. Ending sexual violence, ending sexual exploitation, ending harmful practices and achieving legal equality are the main areas of Equality Now’s work.
4. CEJ and Equality Now suggest a number of questions for the Committee to consider when formulating its List of Issues to the government of Sri Lanka to address the status of the implementation of the Convention in Sri Lanka as part of the Committee’s upcoming review process. The issues and practices detailed in our report highlight the State's failure to fulfil its duty to protect women and girls, including from female genital mutilation/cutting (FGM/C) and sexual and gender-based violence, and that the decisions and failures of the authorities and their agents

constitute demonstrable direct and indirect discrimination against women in contravention of Article 2(d) of the Convention.

Legal Equality and the lack of access to justice for survivors of sexual violence

5. The Constitution of the Republic of Sri Lanka recognises that every person has the right to equality and every citizen has the right to be free from discrimination. Article 12(4), in particular, states the following - “*Nothing in this Article shall prevent special provision being made, by law, subordinate legislation or executive action, for the advancement of women, children or disabled persons*”.¹ However, challenges existing within the criminal justice system and the legislation of Sri Lanka addressing sexual violence crimes continue to affect women, in violation of Articles 2 and 15 of the Convention.
6. While recognising that the majority of victims of sexual violence are women, most perpetrators are men and that the criminal justice system should make provision accordingly, all victims of sexual violence should receive equal justice. Therefore, the definition of rape should be expanded to make it gender-neutral and to include all forms of sexual penetration within its scope. Currently, the definition of rape under Section 363 of the Penal Code of Sri Lanka is defined as ‘*forced sexual intercourse/penetration by a man of a woman without her consent*’, excluding sexual violence in the context of same-sex partners and forced penetration using instruments. The law is restricted to penile penetration of the vagina and does not incorporate any oral or anal penetration or penetration by objects without consent. Any other act not amounting to rape falls under the offence of ‘grave sexual abuse’ under section 365B of the Penal Code. This gradation of offences between ‘rape’ and ‘grave sexual abuse’ creates the impression in the law that forms of penetration other than peno-vaginal penetration are not grave enough to be considered rape. Provisions that reinforce a hierarchy of rape have also been heavily criticised by GREVIO (the Council of Europe’s independent expert body responsible for monitoring the implementation of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention)) in its Baseline Evaluation Report on Georgia in November 2022, where it noted that instead the focus should be on the fact that “the victim does not consent to the act, which is what criminal liability should hinge upon”.²
7. The definition of rape also contains an exemption for marital rape; providing that sexual intercourse with a woman, even if it is without her consent, is not considered rape if such woman is his wife (unless they are judicially separated). Both the CEDAW Committee (in 2017)³ and the Human Rights Committee (in 2014) have issued recommendations to Sri Lanka that marital rape should be recognised as a criminal offence.

¹ Constitution of The Democratic Socialist Republic of Sri Lanka : <https://www.parliament.lk/files/pdf/constitution.pdf>

² GREVIO, Baseline Evaluation Report on Georgia (22 November 2022), available at: <https://rm.coe.int/grevio-report-on-georgia-2022/1680a917aa>, para 257

³ CEDAW/C/LKA/CO/8, 3 March 2017.

8. Section 363 of the Penal Code⁴ exempts statutory rape for Muslim girls⁵ who are married and aged 12 and above. Section 363 of the Penal Code therefore needs to be amended so that the crime of statutory rape applies to all girls under the age of 16 without exception.⁶
9. The Evidence Ordinance specifically allows for the introduction of purported evidence in rape cases which is used to show that ‘the prosecutrix was of generally immoral character’. There have been cases where courts have drawn adverse inferences based on the finding that the victim was ‘habituated to sex’. Laws which allow the introduction of a victim’s sexual history are based on patriarchal assumptions that only “chaste” and “moral” women can be raped, contribute to the impunity of perpetrators and lead to the re-victimisation of survivors who are subjected to traumatic and degrading cross-examinations in court. Since consent can only be evaluated according to the circumstances prevailing at the time under charge, evidence of past sexual history should be irrelevant in a rape trial.⁷
10. Currently there are no legal definitions identifying different forms of sexual and gender-based violence on online platforms in Sri Lanka. The lacunae in law in identifying and defining cyber violence particularly affect women, girls and sexual and gender minorities. Focus Group Discussions conducted in February 2022 and interviews conducted with stakeholders from October 2021 to December 2021, identified women and girls as the most common victims of Cyber Sexual and Gender-based Violence (CSGBV).⁸
11. At a focus group discussion held by CEJ, a representative from Women’s Development Foundation - Hambantota stated that victims in Hambantota are mostly young children and girls. Stakeholders⁹ who were interviewed from the Anuradhapura district stated that girls and women were the main victims of CSGBV. In Batticaloa, interviewees stated that children/school students/teenagers, young girls and (working) women especially between 18 and 30 years of age were the main victims of CSGBV. In the Puttalam district, interviewees observed that young girls and women between 16 and 25 were most affected by CSGBV. Stakeholders from Colombo also mentioned that women were the most targeted group for CSGBV.
12. With social stigma and the lack of awareness of the gendered impact of these violations, victims-survivors are discouraged from reaching out for support and this often results¹⁰ in psychological disorders such as depression, anxiety and suicide. Participants in stakeholder interviews conducted by CEJ conveyed the magnitude of

⁴ As amended by the Act, No. 22 of 1995

⁵ For Muslims, the Muslim Marriage and Divorce Act does not set any minimum age of marriage. Section 23, Muslim Marriage and Divorce Act 1951 also specifically provides that children under the age of 12 can be given in marriage with the consent of the Quazi (Muslim judges).

⁶ Reforming the Muslim Marriage and Divorce Act, Verité Research, Strategic Analysis for Asia. Available at: https://www.veriteresearch.org/wp-content/uploads/2018/05/Verit%C3%A9-Brief_Muslim-Marriage-and-Divorce-Act.pdf [Accessed on 20 January 2023].

⁷ Section 155(4), Evidence Ordinance.

⁸ Focus Group Discussion for representatives of CSOs, conducted in February 2022.

⁹ Stakeholder interviews conducted from October - December 2021

¹⁰ Women in Need commissioned research titled “Combatting tech facilitated gender-based violence in Sri Lanka”. Available at: <https://wincyberviolence.lk/research/>. Accessed on 19 January 2023.

the impact that SGBV and CSGBV could have on victims, stating that deterioration of mental health even to the extent of long-term mental illness/trauma, as well as suicidal thoughts and attempts and disruptions to family life, are possible.¹¹

13. Access to justice for sexual violence in the criminal justice system can be enhanced through improved legislation and procedures. Addressing the prevention of sexual violence generally is a fundamental step that ought to be taken by the State to achieve substantive and transformative equality for women and girls in Sri Lanka.

Suggested Questions to the State Party

We respectfully urge the Committee to raise with the Government of Sri Lanka the following questions:

- Please provide an update on the steps taken by the Government to implement recommendations provided by the Committee in its last Concluding Observations¹² on the need to expand the definition of rape so that it criminalises marital rape in all circumstances¹³ and includes all forms of sexual penetration.
- Please provide information on whether actions are being taken to amend Section 363 of the Penal Code to ensure that the crime of statutory rape applies to all girls under the age of 16 without exception.
- Please provide information on whether the government is planning on adopting any legal and/or policy initiatives to ensure greater legal protection for victims/survivors experiencing different forms of cyber-based sexual and gender-based violence and discrimination.
- Please provide information on what steps the Government will take to repeal the discriminatory provision under the Evidence Ordinance that currently allows for questioning of a rape victim's past sexual history during the trial.

Legal Equality for the protection of rights of LGBTQI persons experiencing sexual violence

14. LGBTQI people lack trust in the justice system and believe they do not have the right to seek redress when they face abuse, discrimination or violence. According to those who have experienced a miscarriage of justice, unwelcoming attitudes of legal institutions act as barriers for LGBTQI people seeking justice. The criminalisation of same-sex activity by Article 365A of the Penal Code of 1883 in Sri Lanka prevents persons from the LGBTQI community to seek justice when faced with abuse or violence. Under these circumstances, gender-based violence against women is

¹¹ Draft report on the inception phase of CEJ's project titled "Caught in the Web: Tackling Gendered Drivers of the Conflict and Exclusion in Cyberspace, page 11.

¹² A/57/38, part one, para. 289, and CEDAW/C/LKA/CO/7, paras. 23 and 25 reiterated within the Concluding Observations on the eighth periodic report of Sri Lanka, CEDAW/C/LKA/8, part D, para 23 and 44. Available at: <https://digitallibrary.un.org/record/1286137?ln=en> (Accessed on 18 January 2023).

¹³ A/57/38, part one, para. 289, and CEDAW/C/LKA/CO/7, paras. 23 and 25 reiterated within the Concluding Observations on the eighth periodic report of Sri Lanka, CEDAW/C/LKA/8, part D, para 23 and 44 Available at: <https://digitallibrary.un.org/record/1286137?ln=en> (Accessed on 18 January 2023).

exacerbated and lesbian women¹⁴ are disproportionately subjected to vilification, harassment and threats.

15. In line with the guidance provided in the Committee's General Recommendation No. 33, the State is required to provide training to law enforcement agencies on CEDAW, its Optional Protocol and the Committee's general recommendations, in particular general recommendations Nos. 19, 21, 28, 33 and 35, to raise awareness of the human rights of LBTQI women and so that crimes with homophobic undertones committed against LBTQI women will be understood as hate crimes requiring active State intervention.¹⁵

Suggested Questions to the State Party

We respectfully urge the Committee to raise with the Government of Sri Lanka the following questions:

- Please provide details on the steps that the Government is taking against threats, harassment and abuse, such as to which *the author* (Communication No. 134/2018 to the CEDAW Committee¹⁶) had been subjected, including through the adoption of preventative and protective measures, and whether any criminal procedures have been initiated to hold those responsible to account, as per the recommendations provided by the Committee to the Government of Sri Lanka.
- Please provide information on the Government's plans for the repeal of section 365A of the Penal Code of 1883 to decriminalise consensual same-sex sexual conduct between women having passed the age of consent and ensure that victims of gender-based violence have access to effective civil and criminal remedies and protection, including counselling, health services and financial assistance, as set out in the Committee's General Recommendation No. 33.
- Please state the steps that are being taken to ensure that laws relating to sexual violence expressly cover women victim-survivors from the LGBTQI community.
- Please provide information on whether the government is providing training to law enforcement agencies (as per the Convention's provisions, its Optional Protocol and the Committee's general recommendations, in particular general recommendations Nos. 19, 21, 28, 33 and 35) to raise awareness of the human rights of LBTQI women and so that crimes with homophobic undertones committed against LBTQI women are understood as hate crimes requiring active State intervention.

¹⁴ Rosana Flamer Caldera v Sri Lanka, CEDAW/C/81/D/134/2018, UN Committee on the Elimination of Discrimination Against Women (CEDAW), 23rd March 2022.

¹⁵ Paragraph 11 (viii), Views adopted by the Committee under article 7 (3) of the Optional Protocol, concerning Communication No. 134/2018; Rosana Flamer Caldera v Sri Lanka, CEDAW/C/81/D/134/2018, UN Committee on the Elimination of Discrimination Against Women (CEDAW), 23rd March 2022. Available at <https://www.humandignitytrust.org/wp-content/uploads/resources/CEDAW-C-81-D-134-2018-English-clean-copy.pdf>

¹⁶ Rosana Flamer Caldera v Sri Lanka, CEDAW/C/81/D/134/2018, UN Committee on the Elimination of Discrimination Against Women (CEDAW), 23rd March 2022. Available at <https://www.humandignitytrust.org/wp-content/uploads/resources/CEDAW-C-81-D-134-2018-English-clean-copy.pdf>

Conflict and sexual violence

16. In 2018, CEJ conducted a confidential research study on conflict-related sexual violence against Tamil, Sinhalese and Muslim women. The study interviewed 54 women victim-survivors and victim representatives who had been subjected to sexual violence. The alleged perpetrators included the military and the police. Of the 54 victim-survivors and victim representatives interviewed, only 22 had accessed law enforcement or courts in search of justice. Those accused were from various institutions, including the Grama Niladhari (Village Officer), Police, and Army camps. A few victim-survivors had filed cases in the courts. The culture of impunity, lack of accountability and lack of faith in the justice system dissuade war-affected women from accessing the criminal justice process in search of justice.¹⁷ Paragraph 32 of the Comprehensive Report of the United Nations High Commissioner for Human Rights on the Situation of Human Rights in Sri Lanka reports on how former Liberation Tigers of Tamil Eelam cadres, including women, are subject to intensive surveillance and female ex-combatants face serious security risks, including sexual abuse and extortion, by security forces and others.¹⁸

Suggested Questions to the State Party

We respectfully urge the Committee to raise with the Government of Sri Lanka the following questions:

- Please provide information on whether the Government is taking any steps to engage police and local authorities in the north and eastern provinces to build capacities and trust with the affected communities for the prevention of and protection against sexual and gender-based violence.
- Please provide details on the steps taken by the Government to ensure that security and law enforcement officers at all levels are aware of their responsibilities and the ways in which to implement them under UN Security Council Resolutions 1325, 1820, 1888/1889 and 1960, as well as domestic laws and regulations related to violence against women.

Ending Sexual Bribery

17. Research carried out by CEJ since 2015 has revealed that sexual bribery, (commonly termed sextortion) in the public sector in Sri Lanka is common where women, the LGBTQI community and people in the sex trade are asked for sexual bribes in return for public services. A total of 64 case narratives were collected since 2015, of which 45 were of women from war affected communities and 19 were of victim-survivors from the health and justice sectors.¹⁹ The lack of or denial of such services to

¹⁷ The Life I Used to Live: Realizing Reparations for Victim Survivors of Sexual Violence in Sri Lanka, Centre for Equality and Justice, July 2018, p3.

¹⁸ A/HRC/51/5: Situation of human rights in Sri Lanka - Comprehensive report of the United Nations High Commissioner for Human Rights published on 4 October 2022. Available at: <https://www.ohchr.org/en/documents/reports/ahrc515-situation-human-rights-sri-lanka-comprehensive-report-united-nations-high> (Accessed on 5 January 2023)

¹⁹ Centre for Equality and Justice, Sexual Exploitation of Female Heads of Households Affected by War in the North of Sri Lanka - Briefing Paper (2016), Centre for Equality and Justice *Asking for My Soul: A Study on*

vulnerable communities is a form of corruption and a form of gender-based violence. CEJ's advocacy with the Ministry of Justice has led to the inclusion of sexual bribery as a criminal offence in the Justice Minister's proposal to criminalise all forms of sexual harassment. CEJ has suggested recommendations to the Ministry of Justice on including provisions on sexual bribery in the draft Anti-Corruption Bill. CEJ's advocacy at the international level concerning sexual bribery also includes developments such as the inclusion of the term 'sexual bribery' for the first time in the Committee's Concluding Observations to Sri Lanka in 2017.²⁰

Suggested Questions to the State Party

We respectfully urge the Committee to raise with the Government of Sri Lanka the following questions:

- Please provide information on the amendments brought into the Anti-Corruption Bill on preventing and addressing sexual bribery.
- Please provide information on the policy measures being put in place to ensure zero tolerance of sexual bribery in the public sector.

Female Genital Mutilation/Cutting (FGM/C)

18. Article 2 of the Convention obliges State parties to modify or abolish customs and traditions which discriminate against women and are prejudicial to the health of the girl child through measures that include the introduction and enforcement of enabling legislation and policy to protect women and girls from all forms of discrimination. In Sri Lanka harmful practices such as female genital mutilation/cutting (FGM/C) and child marriage continue to give rise to inequalities and affect the overall rights and well-being of women.

19. FGM/C is understood to be prevalent among the Moor, Malay and Dawoodi Bohra ethnic communities in Sri Lanka.²¹ Currently there is no publicly available national data or information on the issue, but anecdotal evidence suggests that FGM/C is practised within these communities in a discreet and private manner.²² A study published by the Family Planning Association in Sri Lanka in 2019 surveyed 26 women, of which 20 women self-identified as having undergone FGM/C, while an additional four assumed that they had undergone the practice since everyone in the family had.²³ In 2017, a report on FGM/C put together by several women activists

Sexual Bribery in the Health and Justice Sectors in Sri Lanka (Pending Publication), Centre for Equality and Justice *Asking for My Soul: A Study on Sexual Bribery in the Health and Justice Sectors in Sri Lanka - Briefing Paper* (2022): <https://cejsrilanka.org/wp-content/uploads/Asking-for-my-soul-Briefing-paper.pdf>

²⁰ CEDAW/C/LKA/8, Concluding Observations on the eighth periodic report of Sri Lanka, part D, para 24, Available at: <https://digitallibrary.un.org/record/1286137?ln=en> (Accessed on 18 January 2023)

²¹ FGM In The Asia Pacific Region In Detail. Available at:

<https://www.equalitynow.org/resource/fgm-in-the-asia-pacific-region-in-detail/>

²² Vimukthi Fernando, 'Female Genital Mutilation: A lifetime of scarred agony', Sunday Observer, October 21, 2018, available at: <http://www.sundayobserver.lk/2018/10/21/news-features/female-genital-mutilation-lifetime-scarred-agony>

²³ Zainab Ibrahim & Ermiza Tegal, Towards understanding Female Genital Cutting in Sri Lanka, December 2019. Available at http://www.fpasrilanka.org/sites/default/files/towards_understanding_female_genital_cutting_in_sri_lanka.pdf

and survivors was submitted to the Sri Lankan Human Rights Commission and several Parliamentary Committees which included 15 personal testimonials “on the practice of FGM in Sri Lanka”.²⁴ Survivors of FGM/C and human rights activists also attended a confidential hearing at the Parliamentary Sectoral Oversight Committee on Women and Gender in early 2018. Although the Director-General of Health Services issued a circular to medical practitioners following the hearing, in reality FGM/C is practised through generations by an ‘Osthi Maami’ (barber woman) and sometimes by unregistered medical practitioners. Considering all of this, there is a need for effective legal and institutional measures to be put in place to address the practice of FGM/C in Sri Lanka in its entirety.²⁵

Suggested Questions to the State Party

We respectfully urge the Committee to raise with the Government of Sri Lanka the following questions:

- Please provide information on the steps the government is taking to develop and enact new legislation to make FGM/C a specific punishable offence in Sri Lanka; and the timeline for the same.
- Please provide information on any government led awareness initiatives that are currently in place to sensitise communities and medical practitioners on the fact that FGM/C constitutes a human rights violation.

²⁴ Legal Reform to Combat Sexual and Gender-Based Violence PART III Female Genital Mutilation. Available at: <https://www.cpalanka.org/wp-content/uploads/2020/11/Law-Reform-to-combat-SGBV-PART-3-FGM-Centre-for-Policy-Alternatives.pdf> (Accessed on 5 January 2023)

²⁵ Legal Reform to Combat Sexual and Gender-Based Violence PART III Female Genital Mutilation . Available at: <https://www.cpalanka.org/wp-content/uploads/2020/11/Law-Reform-to-combat-SGBV-PART-3-FGM-Centre-for-Policy-Alternatives.pdf> (Accessed on 5 January 2023).