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**WOMEN BREAK
THE SILENCE
GENDER-BASED
TORTURE IN ASIA**



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FOREWORD

I started my legal career in Pakistan at a time of an oppressive military government that sought to legitimize its power on the basis of conservative and religious laws which were interpreted in a way to minimize women's human rights and to reduce women and girls to second-class citizens. Through my work defending women victim of gender-based violence in court, I realized that women face obstacles and prejudice from the very institutions that administer the legal system and should protect their rights. I became deeply aware of the injustice, inequality, and violence women daily face.

As a women's human rights defender as well as through my various mandates, including as Special Representative of the United Nations Secretary General on Human Rights Defenders or member of UN Fact Finding Commissions, I have observed that gender-based violence against women (GBVAW) is one of the most, if not the most, serious human rights violations of our time as it affects literally millions of people. While distinct political, economic, social, geographical, and cultural contexts in different parts of the world give rise to different forms of GBVAW, its patterns are remarkably consistent, spanning national borders, socio-economic strata and cultural and gender identities. Instead of taking responsibility, we observe that States, particularly in Asia, ignore or deny GBVAW, or claim that the abuse is justified as culturally or socially acceptable behaviour. Indeed, all country chapters in this report identify social and cultural norms that perpetuate patriarchy and oppress women as one of the root causes of gender-based violence and torture against women.

Unfortunately, recent data shows that all forms GBVAW have increased since the outbreak of the Covid-19 pandemic. I run a women's shelter in Lahore that provides protection to women victims of violence and since the outbreak of the Covid-19 pandemic, we have been overwhelmed with requests by women for protection. The Covid-19 pandemic has revealed again that in times of crisis women are particularly exposed to violence, while

systems for their protection are too limited and not sustainable. Several chapters in this report account of similar determinantal impacts lockdown measures had on women in their country: violence against women has increased while at the same time already limited services for women and girls were further reduced making women even more vulnerable.

There is yet another recent worrying political development in Asia which is the return to power of the Taliban in Afghanistan. The Taliban promote a conservative interpretation of Islamic law, which forms the basis of their government. The progress in the protection and promotion of women's rights made over the last 20 years is already being reversed and GBVAW normalised again, as the chapter in this report on Afghanistan reveals. This could likely have a negative effect on women's rights in the whole region as other equally conservative strands and groups could become empowered.

Finally, I would like to mention the worrying global trend of certain world leaders to undermine multilateralism. Over several decades the international community has developed norms and values that promote tolerance, equality, justice, and human welfare that also advance the rights of women and address gender-based violence. These very core values are being threatened by governments, including democratically elected heads of states. Women rights defenders have a strong contribution to make and a role to play in addressing this determinantal narrative. It was with this idea in mind that the Working Group on Women and Torture was established and this report developed by women rights activist from the region in order to stimulate discussions, new actions and strategies to continue the promotion of human rights of women that have a real and positive effect on the lives of women in Asia.

Hina Jilani
President of the OMCT

EXECUTIVE SUMMARY

Despite international efforts to improve the lives of women around the globe for more than 30 years, **gender-based violence against women (GBVAW) is on the rise**. Progress made in the development and interpretation of norms that advance women's rights in the last three decades have failed to make women safer from gender-based violence¹. The Covid-19 pandemic further emphasised the vulnerability of women to violence and laid bare not only the failure of previous efforts to effectively respond to GBVAW, but also the systemic nature of violence perpetrated against women and girls². Many countries around the world report a steep increase in domestic violence, femicide and barriers to access justice institutions³.

The situation is particularly deplorable in Asia, a region that has the highest lifetime prevalence of intimate partner violence among women⁴ and the largest number of killings of women and girls⁵. As this report reveals, there are several factors that put women in Asia at particular risk and prevent them from gaining justice, such as a lack of regional human rights mechanisms; dysfunctional criminal justice systems and weak governance; religious laws and cultural values accepting violence against women; and the absence of relevant laws criminalizing torture, child and forced marriage, marital rape, female genital mutilation (FGM) and other forms of GBVAW.

The international community has developed norms and values that promote equality, justice, and human welfare, and also advance the rights of women and address gender-based violence. Yet, more and more governments in Asia, including democratically elected heads of State, threaten these core values. Women human rights defenders play an important role in countering patriarchal narratives, and is the reason for bringing nine such defenders from Afghanistan, Bangladesh, Cambodia, Mongolia, Nepal, India, Pakistan, Philippines, and Sri Lanka together in the **Working Group on Women and Torture**, established by the World Organisation Against Torture (OMCT) and the Philippine Alliance for Human Rights Advocates (PAHRA) in 2019.

The experiences of the members of the Working Group show that there has been a lack of real progress in combatting GBVAW and providing justice for victims both domestically and internationally. There is a need to highlight and analyse the root causes of this failure and to promote real change. With this in mind, the **anti-torture framework** constitutes a unique tool that has been consistently overlooked by many relevant stakeholders.

1. See e.g. WHO, *Devastatingly pervasive: 1 in 3 women globally experience violence*, March 9th, 2021, <https://www.who.int/news/item/09-03-2021-devastatingly-pervasive-1-in-3-women-globally-experience-violence>.

2. See e.g. UN Women, *The Shadow Pandemic, violence against women during Covid-19*, <https://www.unwomen.org/en/news/in-focus/in-focus-gender-equality-in-covid-19-response/violence-against-women-during-covid-19>.

3. See e.g. GA, *Report of the Special Rapporteur on violence against women, its causes and consequences*, UN Doc. A/75/144, 24 July 2020, para. 3; UN Women, IDLO, UNDP, UNODC, The World Bank, Pathfinders, *Justice for Women Amidst COVID-19*, 2020, https://www.idlo.int/sites/default/files/pdfs/publications/idlo-justice-for-women-amidst-covid19_0.pdf.

4. For South Eastern Asia it is 21%. World Health Organisation, *Devastatingly pervasive: 1 in 3 women globally experience violence*, March 9th, 2021, <https://www.who.int/news/item/09-03-2021-devastatingly-pervasive-1-in-3-women-globally-experience-violence>.

5. United Nations Office on Drugs and Crime, *Global Study on Homicide. Gender-related killing of women and girls*, 2018, https://www.unodc.org/documents/data-and-analysis/GSH2018/GSH18_Gender-related_killing_of_women_and_girls.pdf.

Together with slavery, genocide, piracy, war crimes, and crimes against humanity, the prohibition of torture forms part of *jus cogens*⁶. Historically, torture, as defined under Article 1 of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT Convention) has been interpreted narrowly and referred only to violence and abuse that was perpetrated by State officials, whereas GBVAW is most commonly committed by private actors, e.g., in the home or at the workplace⁷. However, two decades ago, the UN Committee Against Torture (CAT) started to integrate a gender perspective in its concluding observations⁸ and, in 2007, it adopted General Comment No. 2. This specified the due diligence standard, establishing that if states fail to adopt measures to prevent, investigate, prosecute and punish non-State officials or private actors, the State bears responsibility under the Convention.

Labelling GBVAW as torture has numerous advantages. The notion of torture carries a special stigma as it is attached to the deliberate ill-treatment causing severe pain and suffering⁹. This attached stigma may have the effect that States prevent and respond to GBVAW promptly and thoroughly to not to be held accountable for torture at the international level. Moreover, the anti-torture framework provides for a holistic approach with requirements of prevention through relevant laws and public awareness raising; legal safeguards for victims; training of relevant actors, like police, prosecutors, judges, and military; and comprehensive reparative concepts that entail restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition¹⁰. States that have ratified the CAT Convention and are therefore periodically reviewed by the CAT, additionally benefit from the CAT's distinctive expertise in criminal procedures; the protection of complainants, victims, and witnesses; and in the prevention of re-victimisation.

Based on the anti-torture framework, the members of the Working Group developed eight separate country chapters through extensive research, including interviews with victims, relevant civil society organisations, service providers, authorities, and lawyers representing women victims of gender-based violence. The Working Group members have analysed in their respective countries the prevalence and patterns of specific forms of torture against women and the circumstances in which these forms of torture take place, the far-reaching consequences, and women's access to reparation and rehabilitation.

To effectively eliminate GBVAW in Asia, the members of the Working Group on Women and Torture propose the following ten steps to governments and the international community:

- 1. Confront patriarchy and religious interpretations:** Patriarchy and the resulting inequality in power relations between men and women are major root causes for GBVAW and the lack of justice for these crimes. Patriarchy and religious interpretations that oppress women manifest in many ways, including legislation (e.g., lack of criminalisation of underage marriage for girls), criminal or judicial proceedings (e.g., a judge asking a victim of sexual violence about their history of sexual relations), medical practice (e.g., the so-called “virginity test” to assess

6. Human Rights Council, Implementation of General Assembly Resolution 60/251. Report of the Special Rapporteur on violence against women, its causes and consequences, Yakin Ertürk, UN Doc. A/HRC/4/34, January 17th, 2007, para. 24.

7. OMCT & Women's Link Worldwide, Concept Note. Thematic Briefing: Protecting women from violence through the UN Convention Against Torture, 2018, https://www.omct.org/files/2018/11/25161/concept_note_thematic_briefing_vaw.pdf.

8. The CAT expressed for the first time in 2001 concern about trafficking and domestic violence by private actors in its concluding observations and recommendations to Georgia and Greece (UN Doc A/56/44).

9. Nowak, Manfred, *What Practices Constitute Torture?: US and UN Standards*, Human Rights Quarterly, 2006, pp. 809-841.

10. CAT, General Comment No. 3 (2012), Implementation of article 14 by States parties, UN Doc. CAT/C/GC/3, December 13th, 2012, para. 11; Grossman, Claudio & Amezcua, Octavio, *Panel II: The Role of the Committee against Torture in Providing Full and Adequate Reparation to Victims*, Human Rights Brief, 2013, Vol. 20.4, p. 22.

whether a woman has been raped or is “accustomed” to sexual intercourse), and societal norms (e.g., shaming women for the violence they have suffered and the perceived dishonour put upon their families and communities).

2. **Address intersectionality and multiple discriminations:** Intersectionality is based on the idea that the concept of gender is not an isolated category but intersects with other categories of identity, such as race, economic status, or belonging to an ethnic or religious minority group. These intersections are important to identify and understand to combat inequality and GBVAW¹¹. The chapters from the Philippines, India, Bangladesh, Sri Lanka, Afghanistan, and Mongolia demonstrate forms of intersectionality and multiple discriminations. For example, FGM, obstetric violence, forced sterilization, and child marriage in Sri Lanka intersect with cultural, racial, and religious discrimination¹²; and trafficking and sexual exploitation in the Philippines consistently intersects with socioeconomic marginalization¹³.
3. **Address the public and private divide and exercise due diligence to prevent, investigate, prosecute, and punish those who violate women’s rights in both the private or public sphere:** The system of international human rights law has almost exclusively focused on “public” State actions against individuals (e.g., in detention, when exercising freedom of expression, etc.) rather than on “private” attacks against women in a domestic setting. This cannot withstand in practice. GBVAW often transcends through both the public and private spheres. Victims of trafficking, for instance, are recruited by private individuals, but also exploited by police officers and immigration officers, who are corrupted into allowing traffickers to operate freely. Moreover, it is vital that public officials who inflict violence against women are prosecuted under torture laws and not under other laws that carry less stigma, like the Suppression of Repression against Women and Children Act 2000 of Bangladesh or under the rape provision in the penal code of the Philippines.
4. **Bring domestic legislation in conformity with the CAT Convention and other international standards:** In several countries, domestic legislation does not conform with international law and is therefore one of the reasons for GBVAW impunity. For example, abortion is criminalized in Sri Lanka and the Philippines, contrary to the CAT Convention; FGM is not criminalized in Sri Lanka; Indian law does not provide compensation to women victims of gender-based violence; and marital rape is not criminalized in Bangladesh.
5. **Invest in functioning criminal justice systems:** Many states in Asia suffer from dysfunctional criminal justice systems that are characterized by political interference, corruption, and favouritism. They not only violate basic human rights of both complainant and defendants but are also unable to deliver justice and redress for GBVAW. Consequently, conviction rates for GBVAW are very low. For instance, in Bangladesh GBVAW conviction rates stand at a mere 3%¹⁴. Moreover, victim blaming and revictimization through in-court assessments of the “virtue” or “moral character” of a victim of violence frequently occur in Bangladesh, Nepal, India, and Cambodia.



11. See e.g. Grabham, Emily; Cooper, Davina; Krishnadas, Jane & Herman, Didi, *Intersectionality and Beyond. Law, power and the politics of location*, Routledge Cavendish 2009.

12. General Assembly, *A human rights-based approach to mistreatment and violence against women in reproductive health services with a focus on childbirth and obstetric violence*, UN Doc. A/74/137, July 11th, 2019, para. 44.

13. On the intersectionality approach see e.g. UN Women, *The Value of Intersectionality in Understanding Violence against Women and Girls*, July 2019, <https://www2.unwomen.org/-/media/field%20office%20eca/attachments/publications/2019/10/the%20value%20of%20intersectionality%20in%20understanding%20violence%20against%20women%20and%20girls.pdf?la=en&vs=3339>.

14. Dignity Alliance International and Equality Now, *Sexual Violence in South Asia: Legal and Other Barriers to Justice for Survivors*, 2021, <https://www.equalitynow.org/sexualviolencesouthasia>.

6. **Invest in public awareness raising and education that address gender stereotypes:** Many school curricula perpetuate and normalize misogyny and the subordination of women. It is therefore important that governments invest in public awareness raising, education, and training to change harmful narratives. To achieve this, men and boys should be fully engaged as strategic partners and allies in achieving gender equality and in preventing and eliminating GBVAW.
7. **Adopt a gender-sensitive approaches to disasters and crises, including the Covid-19 pandemic:** Although disasters, like Tsunamis, wars, or health crises can harm everyone, women and girls are affected differently than men and boys¹⁵. Women and girls in conflict and post-disaster settings are often vulnerable to trafficking, exploitation, sexual violence, and denial of life saving treatments¹⁶. When large scale crises and disasters occur, pre-existing gender-based inequalities and obstacles are amplified. The global Covid-19 pandemic particularly laid bare the inequality of rights and opportunities between men and women and the systemic nature of GBVAW. Women lack political power, due to their continued underrepresentation in decision-making bodies¹⁷. Consequently, women lack important roles in the prevention and resolution of conflicts, peace building and crisis management.
8. **Support women's economic independence and political power:** Economic insecurity and dependence have been identified as risk factors contributing to GBVAW and are barriers when accessing justice. For instance, in Nepal and India, women lack economic independence to afford legal procedures¹⁸; in Afghanistan, most women are no longer able to pursue professional activities, contributing to a severe hunger crisis¹⁹; and, in Cambodia, employers took advantage of the Covid-19 pandemic to lay off or suspend female workers, leaving them unable to support themselves²⁰. Since economic empowerment of women is related to the elimination of GBVAW, States need to invest in ensuring that women have access to and control over regular, secure, and long-term incomes. This is also a commitment under SDG 5 (to achieve gender equality and empower all women and girls) that requires states to undertake reforms to give women equal rights to economic resources²¹.
9. **Establish gender-sensitive rehabilitation programs and social services:** The anti-torture framework does not only require prevention, criminalization, and prosecution of GBVAW but also obliges States to provide adequate reparation and restitution with gender-sensitive rehabilitation programs and social services that include access to medical, legal, and social services, counselling, rehabilitation, shelters, and remunerative compensation. Unfortunately, many States lack gender-sensitive programs. In Sri Lanka, for instance, there is no medical treatment provided to victims of FGM and obstetric violence; in Cambodia, there is neither healthcare nor social services for women victims of violence; and, in Bangladesh, it is upon the discretion of the court whether a rape victim is provided with financial compensation, resulting in compensation being provided in less than 10% of reported cases²².

15. See Security Council, Resolution 1325, UN Doc. S/RES/1325, October 31st, 2000; Alam, K., and M.H. Rahman, *Women in Natural Disasters: A Case Study from Southern Coastal Region of Bangladesh*, 2014, International Journal of Disaster Risk Reduction 8: 68- 82.

16. UN OCHA, *Global Humanitarian Overview 2019. United Nations Coordinated Support to People Affected by Disaster and Conflict*, p. 17, <https://www.unocha.org/sites/unocha/files/GHO2019.pdf>.

17. See e.g. Inter-Parliamentary Union, *Women in National Parliament*, October 1st, 2019, <http://archive.ipu.org/wmn-e/world.htm>.

18. See e.g. Advocacy Forum-Nepal, *Torture in Nepal in 2019 The Need for New Policies and Legal Reform*, 2020, <http://www.advocacyforum.org/downloads/pdf/publications/torture/26-june-2020.pdf>.

19. Refugees International, *Afghan Women and Girls Under Immediate Threat: The Responsibility to Protect and Assist is Just Beginning*, October 7th, 2021, <https://www.refugeesinternational.org/reports/2021/10/5/afghan-women-and-girls-under-immediate-threat-the-responsibility-to-protect-and-assist-is-just-beginning>.

20. Solidarity Center, *Survey: Cambodian Workers Struggle to Survive in Covid-19*, 2021, <https://www.solidaritycenter.org/survey-cambodian-workers-struggle-to-survive-in-covid-19/>.

21. United Nations, *Achieve gender equality and empower all women and girls*, <https://sdgs.un.org/goals/goal5>.

22. Huda, Taqbir, *No Justice Without Reparation. Why Rape Survivors Must Have a Right to Compensation*, BLAST, 2020, <https://www.blast.org.bd/content/publications/No-Justice-without-Reparation.pdf>.

10. Support women human rights defenders and their organisations: Unfortunately, in many current political climates, where misogyny, sexism, and homophobia are normalized, women human rights defenders from across the globe face increasing risks and violence²³. Women human rights defenders, including some who contributed to this report, have stressed that they have been facing increased repression, violence, and that perpetrators enjoy impunity for their crimes. Funding has been identified as a critical aspect by the members of the Working Group to address attacks against women human rights defenders and to support their work. The way funding for human rights, and, in particular, women's rights, operates can diminish women's empowerment and limit their impact in the fight against GBVAW. Short-term, project-oriented funding, that does not cover staffing and core costs, can be damaging to smaller civil society organisations. Allocating sufficient resources to women's rights organisations, defenders, and networks is vital to ensure their voices are heard and that women's own pathways and recommendations in addressing GBVAW are followed and implemented.

This report is divided in 10 chapters. Chapter 1 provides an introduction and is followed by eight country chapters each focusing on a different issue. The Sri Lanka chapter covers reproductive violence and FGM; the Philippines chapter, trafficking and sexual exploitation; the Nepal chapter, detention and conflict related GBVAW; the Mongolia chapter, violence against LGBTI women in mental health institutions; the India chapter, GBVAW by law enforcement at the India-Bangladesh border; the Cambodia chapter, GBVAW at the workplace; the Bangladesh chapter, rape; and the Afghanistan chapter, GBVAW under the Taliban. Chapter 10 draws overall conclusions from the country chapters on the root causes for GBVAW and provides a set of recommendations to states and the international community on how it should be addressed.

23. Human Rights Council, *Situation of Women Human Rights Defenders. Report of the Special Rapporteur on the situation of human rights defenders*, UN Doc. A/HRC/40/60, January 10th, 2019, para. 24.

LIST OF ACRONYMS

ACJU	All Ceylon Jamaiyathul Ulema, Sri Lanka
AF	Advocacy Forum Nepal
AIBA	Afghan Independent Bar Association
AIHRC	Afghanistan Independent Human Rights Commission
ASEAN	Association of Southeast Asian Nations
ASK	Ain o Salish Kendra, Bangladesh
BAL	Bangladesh Awami League
BI	Bureau of Immigration, Philippines
BJP	Bharitya Janata Party, India
BLAST	Bangladesh Legal Aid and Services Trust
BMP	Bangladesh Mahila Parishad
BSF	Border Security Force, India
CAT	UN Committee against Torture
CATAW	Sri Lankan Women's Coalition for Assisting Tsunami Affected Women
CATW-AP	Coalition Against Trafficking in Women-Asia Pacific
CCHR	Cambodian Center for Human Rights
CEDAW	Un Committee on the Elimination of Discrimination Against Women
CESCR	UN Committee on Economic Social and Cultural Rights
CRC	UN Committee on the Rights of Children
CSO	Civil Soicety Organisation
DSWD	Philippine Department of Social Welfare and Development
EVAW	Law on Elimination of Violence against Women, Afghanistan
FGM	Female Genital Mutilation
FIR	First Information Report
GA	UN General Assembly
GBVAW	Gender-Based Violence Against Women
HRC	UN Human Rights Committee
HRI	Human Rights Institution
IACAT	Inter-Agency Council Against Trafficking, Philippines
ICC	International Criminal Court

ICCPR	International Covenant on Civil and Political Rights
ILO	International Labour Organization
LBTI	Lesbian, bisexual, transgender, or intersex persons
LGBTQI+	lesbian, gay, bisexual, transgender, queer, or intersex persons
LTTE	Liberation Tigers of Tamil Ealam
MASUM	Banglar Manabadhikar Surakasha Mancha, India
MoH	Ministry of Health, Sri Lanka
MOWA	Ministry of Women Affairs
NCMH	National Centre for Mental Health, Mongolia
NGO	Non-governmental Organization
NHRC	National Human Rights Commission
NHRCM	National Human Rights Commission of Mongolia
NIA	National Investigation Agency, India
NPM	National Preventive Mechanism
OHCHR	Office of the High Commissioner for Human Rights
OPCAT	UN Optional Protocol to the Convention Against Torture
RRPTP	Recovery and Reintegration Program of Trafficked Persons, Philippines
RTI	Right to Information Act 2005, India
SC	Scheduled Classes, India
SDG	UN Sustainable Development Goal
SRWCA	Suppression of Repression against Women and Children Act 2000, Bangladesh
ST	Scheduled Tribes, India
TCA	Compensation Relating to Torture Act, Nepal
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNAMA	UN Assistance Mission in Afghanistan
UPR	Universal Periodic Review
WAW	Women for Afghan Women
WHO	World Health Organization
WPC	Women's Protection Center, Afghanistan

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INTRODUCTION

I. Gender-based Violence against Women on the Rise

Over the last 30 years, world leaders undertook numerous efforts to better the lives of women around the globe¹. As a result, there has been progress on many fronts. Today, as many girls as boys are now enrolled in primary schools, maternal mortality rates have fallen, and the percentage of women in parliament has doubled in the last 25 years², just to name a few developments. But violence against women remains consistently high. In fact, for years, the United Nations (UN) and the World Health Organization (WHO) report that more than one in three women experience physical violence in their lifetime³. In the last three decades, progress made in the development and progressive interpretation of norms that advance women's rights have not resulted in women being safeguarded from gender-based violence. This has also been the finding of this report. Patriarchy, cultural norms, and religious traditions pose serious risks to women's physical and mental integrity⁴; relevant legal provisions criminalizing gender-based violence, like marital rape, child marriage, or female-genital mutilation, are missing in many Asian countries⁵, or fall short in protecting women⁶; and essential services to support survivors, like shelters, legal aid, or healthcare are lacking⁷.

The outbreak of the Covid-19 pandemic emphasised once again the vulnerability of women to gender-based violence in emergency situations⁸. Many countries around the globe report a steep increase in domestic violence, including sexual violence, unwanted pregnancies, and femicide⁹ and more barriers to access justice institutions¹⁰. Gender-blind lockdown measures force millions of women to be confined at home with an abusive partner¹¹. At the same time, resources are redirected towards fighting the Covid-19 pandemic and shelters, helplines, or reproductive health services are deemed as non-essential and are thus suspended or reduced¹². Moreover,

1. E.g. in 1991 the UN Economic and Social Council adopted a resolution on the advancement of women; 1994 a UN Special Rapporteur on violence against women, its causes and consequences was appointed; in 1995, the UN World Conference on Women held in Beijing; 2000 the UN General Assembly adopted the Millennium Declaration which resolved "to combat all forms of violence against women and to implement the Convention on the Elimination of All Forms of Discrimination against Women"; in 2010 UN Women, the United Nations Entity for Gender Equality and the Empowerment of Women was created; in 2015 The Sustainable Development Goals (SDGs) 2030 Agenda was adopted by all United Nations Member States with its 5th Goal related to the achievement of gender equality and empower all women and girls.

2. UN Women, *Infographic: Gender equality - Where are we today?*, 2015, <https://www.unwomen.org/en/digital-library/multimedia/2015/9/infographic-gender-equality-where-are-we-today>.

3. See e.g. WHO, *Global and regional estimates of violence against women: prevalence and health effect of intimate partner violence and non-partner sexual violence*, 2013, p. 2, http://apps.who.int/iris/bitstream/handle/10665/85239/9789241564625_eng.pdf?sequence=1; WHO, *Devastatingly pervasive: 1 in 3 women globally experience violence*, 2021, <https://www.who.int/news/item/09-03-2021-devastatingly-pervasive-1-in-3-women-globally-experience-violence>.

4. E.g. women subordinated to men and violence against them normalized in Afghanistan; stigma and discrimination of lesbian, bisexual, transgender, and intersex women in Mongolia are one of the root causes for verbal abuse and ill-treatment in mental health settings.

5. E.g. FGM is not criminalized in Sri Lanka.

6. E.g. statutory limitations to complain about sexual violence and rape in Nepal; lack of investigations into rape cases in Bangladesh.

7. E.g. lack of legal aid, health care or social services for victims in Cambodia; psychological support, counseling, and a victim compensation scheme missing in India.

8. See e.g. UN Women, *The Shadow Pandemic, violence against women during Covid-19*, <https://www.unwomen.org/en/news/in-focus/in-focus-gender-equality-in-covid-19-response/violence-against-women-during-covid-19>.

9. Ibid. See also WHO, *Devastatingly pervasive: 1 in 3 women globally experience violence*, 2021, <https://www.who.int/news/item/09-03-2021-devastatingly-pervasive-1-in-3-women-globally-experience-violence>; GA, *Report of the Special Rapporteur on violence against women, its causes and consequences*, UN Doc. A/75/144, July 24th, 2020, para. 3; UN Economic and Social Commission for Asia and the Pacific, *The Covid-19 Pandemic and Violence Against Women in Asia and the Pacific*, 2021, pp. 18-19, https://reliefweb.int/sites/reliefweb.int/files/resources/SDD_Policy_Paper_Covid-19-VAW.pdf.

10. UN Women, IDLO, UNDP, UNODC, The World Bank, Pathfinders, *Justice for Women Amidst COVID-19*, 2020, https://www.idlo.int/sites/default/files/pdfs/publications/idlo-justice-for-women-amidst-covid19_0.pdf.

11. Ibid.

12. GA, *Report of the Special Rapporteur on violence against women, its causes and consequences*, UN Doc. A/75/144, July 24th, 2020, para. 7.

lockdowns and restrictions in leaving one's home severely limit access to health facilities, police stations, and courts¹³. These devastating effects of the virus have created a "shadow pandemic", according to the UN¹⁴. With more and more people struggling economically, in particular in Asia, where many countries had or still have long lockdown measures, gender-based violence against women (GBVAW) could increase even further in the coming months.

II. Violence against Women from a Torture Perspective

Together with slavery, genocide, piracy, war crimes, and crimes against humanity, torture prohibition forms part of *jus cogens*. These crimes count among the gravest failings of humanity. It has been argued that this also applies to the historic oppression of women and associated violence¹⁵. However, for a long time, torture, as defined under Article 1 of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT Convention) was narrowly interpreted. Historically, torture referred only to violence and abuse that was perpetrated by State officials, whereas GBVAW is most commonly committed by private actors, e.g., in the home, the workplace, or on the street. While women were not excluded from the CAT Convention, its uniform and gender-blind application did not lead to women enjoying equal prevention of and protection from torture, and to access of remedy and reparation, including rehabilitation¹⁶.

Two decades ago, the Committee Against Torture (CAT), the UN treaty body monitoring State compliance with the CAT Convention, started to integrate a gender perspective in its work through addressing torture and other ill-treatment of women by private actors in its concluding observations (COBs) adopted after a State review¹⁷. Then, in 2007, the CAT adopted General Comment No. 2 on the implementation of Article 2 of the CAT Convention by State parties¹⁸. In the Comment, the CAT clarified in paragraph 18 that where State authorities fail to exercise due diligence to prevent, investigate, prosecute, and punish non-State actors, "its officials should be considered as authors, complicit or otherwise responsible under the Convention for consenting to or acquiescing in such impermissible acts". In the same paragraph, the Comment goes on to explain that "the State's indifference or inaction provides a form of encouragement and/or de facto permission" to non-State actors. The CAT concludes the paragraph by noting the applicability of this principle "to States parties' failure to prevent and protect victims from gender-based violence, such as rape, domestic violence, female genital mutilation, and trafficking". After the adoption of General Comment No. 2, the CAT continued to take a gender-specific approaches by addressing marital rape, so-called crimes committed in the name of honor, femicide, early marriages, bride kidnapping, and violence against lesbian, gay, bisexual, trans, intersex, and queer (LGBTIQ+) persons as ill-treatment and sometimes as torture in its COBs¹⁹.

13. IDLO, *The Shadow Pandemic: Addressing Gender-Based Violence During Covid-19*, December 3rd, 2020, <https://www.idlo.int/news/story/shadow-pandemic-addressing-gender-based-violence-during-covid-19#>.

14. UN Women, *Violence against women and girls: the shadow pandemic*, April 6th, 2020, https://www.unwomen.org/en/news/stories/2020/4/statement-ed-phumzile-violence-against-women-during-pandemic?gclid=CjwKCAjwiY6MBhBqEiwARFSCPPQnYKt-tQv0R_erNgIYfwilffC8p7cqmqm7IWEi01n7NXSyWYi-1a-xoCcCcQAvD_BwE.

15. HRC, *Implementation of General Assembly Resolution 60/251 of 15 March 2006. Report of the Soecial Rapporteur on violence against women, its causes and consequences*, Yakin Ertürk, UN Doc. A/HRC/4/34, January 17th, 2007, para. 24.

16. OMCT & Women's Link Worldwide, *Concept Note. Thematic Briefing: Protecting women from violence through the UN Convention Against Torture*, 2018, https://www.omct.org/files/2018/11/25161/concept_note_thematic_briefing_vaw.pdf.

17. The CAT expressed for the first time in 2001 concern about trafficking and domestic violence by private actors in its concluding observations and recommendations to Georgia and Greece, GA, *Report of the Committee Against Torture*, UN Doc. A/56/44, October 12th, 2001, paras. 82j & 88d.

18. CAT, *General Comment No. 2. Implementation of article 2 by States parties*, UN Doc. CAT/C/GC/2, January 24th, 2008, para. 18.

19. E.g. in the Concluding Observations of the 2008 review of Lithuania, the CAT considered the lack of efforts to prevent, combat and punish domestic violence a violation of article 1, UN Doc. CAT/C/LTU/CO/2, January 19th, 2009; in the Concluding Observations of the 2012 Russia review, the CAT labeled domestic violence and marital rape a form of torture owing to small number of complaints, investigations and prosecutions of acts of domestic violence and marital rape, UN Doc. CAT/C/RUS/CO/5, December 11th, 2012; or in 2017, in the Concluding Observations to Mauritius, the CAT considered the failure not to have criminalized marital rape, not to have repealed the law which renders manslaughter committed by any person on his spouse in case of adultery excusable, and the lack of prosecutions and convictions of perpetrators of trafficking a violation of the right to be free from torture as defined under Article 1, UN Doc. CAT/C/MUS/CO/4, December 22nd, 2017.

Many country chapters in this report also address GBVAW perpetrated by non-State actors as torture, as defined in Article 1 of the CAT Convention, or other ill-treatment as prohibited under Article 16 of the CAT Convention, where the State fails to exercise due diligence to prevent, investigate, punish, and provide redress for such acts. Articles 1 and 16 of the Convention require that pain and suffering “is inflicted [...] with the consent or acquiescence of a public official”. By failing to exercise due diligence, States are found to be in breach of this through consent or acquiescence. On the other hand, when States have exercised due diligence to prevent and respond to GBVAW, they have fulfilled their international obligation and the violence does not constitute torture or another form of cruel, inhuman, or degrading treatment, and is treated as a crime²⁰. In other words, whether States are responsible for torture and other ill-treatment perpetrated by non-State actors under the CAT Convention is dependent on the due diligence conduct and response of the State, not on the gravity of the act.

Labelling GBVAW as torture has numerous advantages. The notion of torture carries a special stigma, as it is attached to deliberate ill-treatment causing severe pain and suffering²¹. This stigma attached to torture may have the effect that States prevent and respond to GBVAW with due diligence in order not to be held accountable for torture at the international level. Moreover, the anti-torture framework, be it under the CAT Convention or the UN Covenant on Civil and Political Rights, provides for a holistic approach with requirements of prevention through relevant laws and public awareness raising; legal safeguards for victims; training of relevant actors, like police, prosecutors, judges and military; and a comprehensive reparative concept that entails restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition²². All these standards are essential for procedures dealing with GBVAW, regardless of whether perpetrated by the State or private actors²³. The *ius cogens* status of the prohibition of torture and other ill-treatment reinforces that GBVAW is a violation of fundamental rights, and is prohibited in absolute terms as a principle of customary international law²⁴. It is further important to add that the absolute prohibition of torture also prohibits the forcible return to a country where they would face torture and other forms of ill-treatment. Therefore, States are obliged to ensure that women are not transferred to another territory where there are substantial grounds to believe that they would be in danger of being subjected to violence and torture²⁵. Finally, States that have ratified the CAT Convention, and are reviewed by the CAT, additionally benefit from the body’s distinctive expertise in criminal procedures; the protection of complainants, victims and witnesses; and in the prevention of re-victimisation.

III. Focus on Asia

Although the abuse of women is rife throughout the world, there are several reasons why Asia requires increased focus and why current sociopolitical and sociolegal landscapes in the region have severe deficits in preventing GBVAW. First and foremost, the prevalence of violence against women is disturbingly high in Asia, in particular Southern Asia. According to the most recent data available from the World Health Organisation in the context of the SDGs, the highest lifetime prevalence of intimate partner violence among women was in Oceania (43%), followed by

20. OMCT, Amnesty International, Global Justice Center, Women’s Link Worldwide, *Briefing Report. Thematic Briefing: Protecting women from violence through the UN Convention Against Torture*, 2019, p. 7, https://www.omct.org/site-resources/legacy/briefing_report_protecting_women_from_violence_through_the_un_convention_against_torture_2020-12-11-144516.pdf.

21. Nowak, Manfred, *What Practices Constitute Torture?: US and UN Standards*, *Human Rights Quarterly*, Vol. 28.4, 2006, pp. 809-841.

22. CAT, General Comment No. 3 (2012), *Implementation of article 14 by States parties*, UN Doc. CAT/C/GC/3, December 13th, 2012, para. 11; Grossman, Claudio & Amezcua, Octavio, *Panel II: The Role of the Committee against Torture in Providing Full and Adequate Reparation to Victims*, *Human Rights Brief*, Vol. 20.4, p. 22.

23. OMCT, Amnesty International, Global Justice Center, Women’s Link Worldwide, *Briefing Report. Thematic Briefing: Protecting women from violence through the UN Convention Against Torture*, 2019, https://www.omct.org/site-resources/legacy/briefing_report_protecting_women_from_violence_through_the_un_convention_against_torture_2020-12-11-144516.pdf.

24. See *ibid* for a more detailed reasoning.

25. *Ibid*.

Southern Asia (35%)²⁶. The largest number of killings of women and girls happen in Asia²⁷. In addition to this, according to UNICEF, South Asia has the highest rates of child marriage in the world²⁸.

Apart from the high prevalence of violence, there is a combination of several factors that put women at risk and prevent them from getting justice. First of all, there is no regional mechanism addressing human rights, including women's rights. Unlike in Africa, Europe, and Latin America, there is no regional Commission or Court that has adjudicated on human rights and has guided states on how to address violence against women. Although, ASEAN, the only sub-regional intergovernmental body in Asia, has a human rights charter and Declaration on the Elimination of Violence Against Women, these instruments remain non-binding and lack an independent monitoring body.

Insufficient supranational mechanisms and legislation protecting women from gender-based violence in Asia speak to larger issues of deficient national criminal justice systems that are characterized by nepotism and corruption. While powerful members of society are able to use the system to their advantage, the general public have little faith in proceedings. Many Asian countries have to deal with citizens' reliance on unofficial channels of arbitration, creating in-country dual-legal systems. The influence of alternative dispute mechanisms, particularly those based on *Sharia* law, a topic covered by several chapters in this report, acts as a substantial barrier to proper legal remedy for women. Victims of gender-based violence often use communal hearings as a first point of recourse, opposed to legitimate legal institutions and mechanisms. This allows perpetrators of violence to evade justice and for underreporting of GBVAW to continue. Consequently, several UN human rights bodies have criticized these alternative dispute resolution mechanisms and found them in conflict with international law. *Sharia*, whether in the form of an alternative dispute resolution mechanism or as part of a country's laws, has particularly been shown to not only discriminate against women in its application²⁹ but also to encourage and enable violence against women³⁰.

Regrettably, many governments of Asian countries do not regularly report to the CAT. Their progress towards the elimination of GBVAW as a form of torture is therefore not regularly reviewed. All member States to the CAT Convention are obliged to report to the CAT every four years. Out of the 24 member states in Asia that have ratified the CAT Convention³¹, only four states have submitted a report to CAT between 2018 and 2021; two of them being New Zealand and Australia³². In the last ten years only 15 Asian States have submitted reports³³. It is further important to note that 14 Asian member States of the UN, i.e., more than one third³⁴, have not ratified the CAT Convention, including India and Malaysia, two important countries in Asia. In the absence of State reviews, domestic non-governmental organisations, national human rights institutions, national preventive mechanisms, as well as relevant UN institutions are also not able to provide reports on GBVAW to the CAT.

26. For South Eastern Asia it is 21%. See WHO, *Devastatingly pervasive: 1 in 3 women globally experience violence*, March 9th, 2021, <https://www.who.int/news/item/09-03-2021-devastatingly-pervasive-1-in-3-women-globally-experience-violence>.

27. UNODC, *Global Study on Homicide Gender Related Killing of Women and Girls*, 2018, https://www.unodc.org/documents/data-and-analysis/GSH2018/GSH18_Gender-related_killing_of_women_and_girls.pdf.

28. 45% of surveyed women aged 20-24 reported being married before the age of 18, with 17% of respondents stating they were married before the age of 15, see UNICEF, *Child Marriage*, 2021, <https://www.unicef.org/rosa/what-we-do/child-protection/child-marriage>

29. Sardar Ali, Shaheen, *Conceptualising Islamic law, CEDAW and Women's Human Rights in plural legal settings: a comparative analysis of application of CEDAW in Bangladesh, India and Pakistan*, UNIFEM, 2006, <https://www.worldcat.org/title/conceptualising-islamic-law-cedaw-and-womens-human-rights-in-plural-legal-settings-a-comparative-analysis-of-application-of-cedaw-in-bangladesh-india-and-pakistan/oclc/255774318>.

30. Barber, Rebecca, *Sharia Law, Traditional Justice and Violence against Women: Lessons from Sudan*, The Journal of Human Rights, Vol. 28.2, 2019, pp. 247-269.

31. For ratifications of the UN Convention against Torture see United Nations Treaty Series Online, <https://treaties.un.org/Pages/showDetails.aspx?objid=080000028003d679&clang=en>.

32. The other two states are Thailand (submitted in 2021) and Bangladesh (submitted its report in 2019 after the CAT had scheduled Bangladesh as a non-reporting state since its state report was overdue for 20 years).

33. Maldives, Viet Nam, Pakistan, Republic of Korea, Timor-Leste, Afghanistan, Mongolia, Philippines, Sri Lanka, China and Japan.

34. There are 38 Asian UN Member States, see United Nations Treaty Series Online, <https://treaties.un.org/Pages/showDetails.aspx?objid=080000028003d679&clang=en>.

Underreporting of national rates of torture and other ill-treatment of women, including GBVAW, to the CAT further increases the need to focus on these areas in Asia. As long as the full scale of the problem is not being reported, may it be at the international, regional, or national levels, it is hard to ascertain the true set of circumstances on the ground. This is why the stories of victims and the societal norms that allow for GBVAW to take place need to be identified and reported. Without having true knowledge of the extent of GBVAW in Asia and its consequences, there is little chance of ensuring that institutes can adequately cater for the needs of women victims of gender-based violence or that preventative changes in cultural attitudes will take place.

IV. Methodology and Objective

At the beginning of 2020, the OMCT and PAHRA created the Working Group on Women and Torture, composed of nine representatives from OMCT's SOS-Torture Network and other partners who are dealing every day with female torture victims from the following Asian countries: **Afghanistan, Bangladesh, Cambodia, India, Mongolia, Nepal, Pakistan, the Philippines, and Sri Lanka**³⁵. We wanted to give a voice to our Network members and creating this Working Group responded to their need to exchange knowledge and experience, and to conduct collective in-depth research on sexual and gender-based violence from a torture lens in hopes of developing collective strategies³⁶.

The Working Group was supposed to meet in March 2020 in Nepal. However, due to sanitary and travel restrictions, as a result of the Covid-19 pandemic, this meeting was cancelled and the members of the Working Group met several times online, including with the former Special rapporteur on violence against women, Dubravka Šimonovic, as well as through bilateral exchanges with the OMCT International Secretariat and PAHRA.

Eight members of the Working Group are the authors of this Report on Torture and Women in Asia³⁷. Through extensive research, interviews with victims, relevant civil society organisations, service providers, authorities, lawyers representing women victims of gender-based violence, and legal landscape mapping, the Working Group members have analysed the prevalence and patterns of specific forms of torture against women and the circumstances in which these forms of torture take place, the consequences of torture, and women's access to reparation and rehabilitation. The analyses were conducted against the backdrop of the legal frameworks in their respective countries, including the anti-torture framework and the GBVAW framework, and further illustrated with relevant cases. Their findings are documented in the following country chapters.

It is important to add that all research was carried out during the Covid-19 pandemic. Many authors faced difficulties in gathering information from primary sources due to restrictions in meeting with people, including victims, and in accessing places of detention and other facilities.

One of the objectives of this report is to identify common patterns and gaps toward achieving greater protection of women from violence in Asia. Moreover, the gendered experience of violence, as described in the country chapters, advances the argument to apply the anti-torture framework to violence against women. The findings should inform domestic actors and international actors, including the CAT, to look at GBVAW from a torture perspective, and should enable them to make more robust and more specific recommendations when it comes to this form of violence. Moreover, there is a glaring gap when it comes to the protection of women from gender-based violence,

35. Organisations represented in the Working Group are: Civil Society and Human Rights Network (CSHRN), Afghanistan; Philippines Alliance of Human Rights Advocates (PAHRA), Philippines; Association of Women for Awareness and Motivation (AWAM) and National Commission for Justice and Peace (NCJP), Pakistan; Banglaer Manabadhikar Suraksha Mancha (MASUM), India; Advocacy Forum, Nepal; Psychological Responsiveness NGO, Mongolia; Women's Action Network, Mannar Women's Development Federation / Muslim Development Trust, Sri Lanka; Cambodian Center for Human Rights (CCHR), Cambodia.

36. The OMCT and PAHRA published a call to apply for participation in the Working Group Women and Torture in Asia in November 2019: <https://www.omct.org/en/resources/events/new-initiative-to-protect-women-from-torture>.

37. The member of Pakistan was unable to provide a chapter.

many anti-torture organisations, including members of OMCT's SOS-Torture Network, do not work on GBVAW. Conversely, many women's rights organisations that work on GBVAW, including some that form part of this working group, do not do so from a torture perspective. This research also aims at motivating our Network to integrate a gender perspective into their work, put more emphasis on GBVAW, and to motivate women's rights organisations to use the anti-torture framework as a tool to fight GBVAW.

The country chapters that follow each present a particular form of GBVAW that is prevalent in the country concerned, has received little attention, or that has not been looked at from a torture perspective.

The chapter on **Sri Lanka** looks at female genital mutilation (FGM) and reproductive violence, including obstetric violence and forced sterilization. It is not well known that FGM exists in Sri Lanka and none of these violations have received attention by relevant UN treaty bodies, including the CAT. Obstetric violence, in particular, has hardly been addressed from a torture perspective.

The chapter on the **Philippines** addresses trafficking and sexual exploitation. Case studies reveal the mechanisms of trafficking and show how the police and immigration officers are directly implicated in the trafficking of human beings. Despite the involvement of public servants, trafficking is not prosecuted under the Philippine's comprehensive anti-torture legislation.

The chapter on **Nepal** addresses conflict-era sexual violence and detention conditions of women. Despite the female prison population being much smaller than the male prison population, prison conditions for women are considerably worse. The author's investigations reveal how prisons were not designed for pregnant women and mothers with babies, etc. The Nepal chapter exemplifies the obstacles women face in transitional justice mechanisms when seeking redress for violence during conflict.

The chapter on **Mongolia** addresses violence that lesbian, bisexual, transsexual, and intersex (LBTI) women face in the mental healthcare setting. Since there is little data and not much information about the experience of LBTI women in Mongolia's mental health facilities, the author conducted 45 interviews with a variety of stakeholders, including victims of gender-based violence, healthcare providers, and representatives of relevant civil society organisations. While UN treaty bodies have addressed both violence inflicted against LBTI women and violence in the healthcare setting from a torture and other ill-treatment perspective, analysis and recommendations typically remain vague and do not address the intersectionality of certain vulnerabilities e.g., identifying with a sexual minority and having mental health issues.

The chapter on **India** looks at the violence women face at the India-Bangladesh border, mostly by the Border Special Forces. The scale of violence, torture, extrajudicial killings, and disappearances in the border area is disproportionate to the attention it receives by the international community. The chapter on Cambodia covers violence against women in the workplace, in particular, in garment factories. Typically, workplace conditions are analyzed from a social and economic rights perspective. The analysis reveals, among other things, the benefit of the anti-torture framework when looking at violence inflicted by mostly private actors.

The chapter on **Bangladesh** addresses rape. The analysis of the causes for violence and obstacles victims face when seeking redress reveal that dysfunctional justice systems and authoritarian structures based on favoritism maintain a system of oppression of women.

The last chapter is dedicated to **Afghanistan**. Originally, the author addressed the scale and prevalence of domestic violence in the country and analyzed the progress made over the last 20 years in the protection from GBVAW. Although the progress made was marginal, all gains were reversed immediately when the Taliban took power in August 2021. The chapter has therefore been adapted. The author has been able to gather information showing how the Taliban are building a regime of oppression that normalizes violence against women.



01

FEMALE GENITAL MUTILATION AND REPRODUCTIVE VIOLENCE IN SRI LANKA

SHREEN ABDUL SAROOR ¹

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I. INTRODUCTION

The elimination of Female Genital Mutilation (FGM) and access to reproductive rights are two targets under the Sustainable Development Goal (SDG) 5 of achieving gender equality and the empowerment of all women and girls. It is commonly understood that both targets are key factors for gender equality and paramount for prosperity and peace in the world. However, many countries, including Sri Lanka, lack the political will to achieve these objectives. In fact, Sri Lanka's voluntary national review on the status of implementing the SDGs neither mentions FGM nor reproductive rights when addressing positive developments and gaps in achieving gender equality².

Women's rights are highly politicized in Sri Lanka. Their bodily integrity and sexual reproductive health and rights are bound and dictated by culture and religion. Women and girls are therefore not only placed in subordinate positions socially and culturally but legally as well. Women, their health, well-being, and needs are treated as secondary at best. Value is placed on female "piety" and "purity", which by default results in severe social implications for those who do not conform to these ideals. Legislation and social norms restrict the self-determination girls and women have over their own bodies. It is not surprising that FGM and reproductive violence, such as forced sterilization, obstetric violence, and child marriage are practiced with impunity. In addition, these practices in Sri Lanka have received little attention by relevant international bodies, including the United Nations (UN) Committee on the Elimination of Discrimination Against Women (CEDAW) and the UN Committee Against Torture (CAT Convention). The latter remained completely silent on violence against women when reviewing Sri Lanka.

II. FEMALE GENITAL MUTILATION

FGM is a form of gender-based violence against women (GBVAW) and girls and a form of torture³. This practice which is known as "female circumcision", is colloquially referred to as "sunnat" or "khatna". For a long time, the practice remained largely undetected in Sri Lanka. For example, the World Health Organisation (WHO) reported a "zero-score" for FGM in Sri Lanka in a report on gender-based violence in 2008, echoed by the UNICEF's national report card on essential indicators relevant to maternal and child health in Sri Lanka since 2005 that stated instances of FGM have remained at nil. A 2008 joint Ministry of Health (MoH) and WHO report on violence and health in Sri Lanka stated that FGM "does not exist in Sri Lanka". The Department of Census and Statistics, the State organization recording the status of SDGs in Sri Lanka, as of December 2017 had not included indicator 5.3.2 on "Proportion of girls and women aged 15-49 years who have undergone FGM"⁴.

2. Government of Sri Lanka, *Voluntary National Review of the Status of Implementing the Sustainable Development Goals*, 2018, https://sustainabledevelopment.un.org/content/documents/19677FINAL_SriLankaVNR_Report_30Jun2018.pdf.

3. See e.g. CAT, *Concluding Observation on Congo*, UN Doc. CAT/C/COG/CO/1, May 28th 2015, para. 20.

4. Wickramage, K., Senanayake, L., Mapitigama, N., Karunasinghe, J., & Tegal, E., *The need for an evidence-informed, multi-sectoral and community participatory action framework to address the practice of female genital mutilation in Sri Lanka*, Ceylon Medical Journal, Vol 63, 2, (2018), 53-57.

It is only since 2016 that the practice of FGM received public attention in Sri Lanka⁵. Women affected by the practice have begun advocating for State intervention to protect children likely to be harmed. Confidential submissions were made to the Human Rights Commission of Sri Lanka, the National Child Protection Authority of Sri Lanka, the Sectoral Oversight Committee on Women and Gender of the Sri Lanka Parliament, and the Women's Caucus of the Parliament of Sri Lanka⁶. In response to this advocacy, the MoH issued a circular to all medical professionals highlighting the potential harm and prohibiting the practice⁷. Medical professionals also responded to religious resistance in public debates on the subject by introducing clarity and medically accurate information⁸.

However, many UN human rights treaty bodies, including CEDAW⁹, the Committee on Economic, Social and Cultural Rights (CESCR)¹⁰, and CAT¹¹, having adopted concluding observations on Sri Lanka after 2016, have failed to address FGM. Only the Committee on the Rights of the Child (CRC) included a reference to FGM by recommending that the State ban female circumcision for girls and carry out awareness-raising activities, including campaigns on the patriarchal nature of the practice and its negative effects on women's health¹².

1. Scope and Scale of FGM in Sri Lanka

FGM in Sri Lanka falls within the WHO classification Type 1, which refers to the partial or total removal of the clitoral glans and/or the prepuce or clitoral hood, and Type 4, which includes all other harmful procedures to the female genitalia for non-medical purposes, e.g. pricking, piercing, incising, scraping, and cauterizing the genital area¹³. A majority of those affected appear to have experienced the Type 4 form of FGM of a nick, scrape, pinch, or slight cut to the clitoris or thereabouts. Victims of this practice are new-born girls, or girls at seven days, nine days, 15 days, or 40 days after birth. Consequently, victims have no memory of the procedure¹⁴. A minority of those affected described a more serious Type 1 form of FGM. Young girls of the Dawoodi Bohra community around the age of seven are reported to have experienced Type 1. Anecdotal information also suggests that adult women are subject to the practice as a ritual associated with being accepted as Muslim¹⁵.

The prevalence of FGM has not been systematically studied. The practice is observed as mainly prevalent amongst the Muslim communities of Sri Lanka. Approximately half of the Muslim population consists of women and girls, amounting to close to 5% of the Sri Lankan population.

5. Ibrahim, Zainab & Tegal, Ermiza, FGM in Sri Lanka: It's never 'just a nick', December 25th, 2017, <https://www.aljazeera.com/indepth/opinion/fgm-sri-lanka-nick-171218122855118.html>; Daniel, Smriti, *Butter knife or sharp blade?* Either way, FGM survivors in Sri Lanka want it to stop, Reuters, November 22nd, 2017, <https://www.reuters.com/article/us-sri-lanka-women-fgm/butter-knife-or-sharp-blade-either-way-fgm-survivors-in-sri-lanka-want-it-to-stop-idUSKBN1DM023>; & Ibrahim, Zainab & Tegal, Ermiza, *Towards understanding female genital cutting in Sri Lanka*, Family Planning Association of Sri Lanka, 2019, http://www.fpasrilanka.org/sites/default/files/towards_understanding_female_genital_cutting_in_sri_lanka.pdf

6. Ibid.

7. Ministry of Health, Nutrition and Indigenous Medicine Sri Lanka, *General Circular Letter 02/33/2018: Medical Professionals Involved in Female Genital Mutilation*, 2018, <http://www.health.gov.lk/CMS/cmsmoh1/circulars.php>.

8. Haniffa, Ruvaiz & Sherriffdeen, A.H., *Female Circumcision: A Medical Perspective*, Sunday Times (Sri Lanka), September 30th, 2018, <https://www.pressreader.com/sri-lanka/sunday-times-sri-lanka/20180930/283373357926312> & Haniffa, Ruvaiz & Sherriffdeen, A.H., *Right of Reply: female genital mutilation*, Daily Mirror (Sri Lanka), September 28th, 2018, <http://www.dailymirror.lk/article/Right-of-Reply-female-genital-mutilation-156101.html>.

9. CEDAW, Concluding observations on Sri Lanka, UN Doc. CEDAW/C/LKA/CO/8, March 3rd, 2017.

10. CESCR, Concluding Observations on Sri Lanka, UN Doc. E/C.12/LKA/CO/5, August 4th, 2017.

11. CAT, Concluding Observation on Sri Lanka, UN Doc. CAT/C/LKA/CO/5, January 27th, 2017.

12. CRC, Concluding Observation on Sri Lanka, UN Doc. CRC/C/LKA/CO/5-6, March 2nd, 2018, para. 26a.

13. Ibrahim, Zainab & Tegal, Ermiza, *Towards understanding female genital cutting in Sri Lanka*, Family Planning Association of Sri Lanka, 2019, http://www.fpasrilanka.org/sites/default/files/towards_understanding_female_genital_cutting_in_sri_lanka.pdf.

14. Ibid.

15. Ibid.

From within this, owing to a diversity of ideological and sociological factors, the practice varies from group to group and sometimes from place to place within the country¹⁶. Geographically, this means that areas within provinces in which there are significant Muslim populations, such as the Central, Eastern, Northwestern and Western Provinces, are most likely to see FGM observed¹⁷. Exploratory studies thus far suggest that the practice is highly prevalent amongst the very small Dawoodi Bohra community (approximately under 3000 persons). Prevalence is also perceived as high amongst groups of Moors and Malays in Sri Lanka. Within the Dawoodi Bohra community the practice is treated as a mandatory ritual. Other groups appear to be motivated by conceptions of religious belief and social enforcement for various reasons¹⁸.

The practice is institutionally promoted by the All Ceylon Jama'iyathul Ulema (ACJU), the Center for Islamic Studies, Young Muslim Men's Association Conference, and United Religions Initiative¹⁹, and in the case of the Dawoodi Bohra community it is believed to be mandated by their leadership. In response to women complaining about the practice, these groups advocated medicalization as opposed to an outright ban. At the level closest to the practice, FGM is protected, promoted, and carried out mainly by women in the communities. Most often mothers, grandmothers, and mothers-in-law have been described as insisting on the practice being continued. The practice is carried out by "Ostha Mamis", who are medically untrained female traditional practitioners, and sometimes by licensed medical practitioners²⁰.

Many justifications are given by those who promote or practice this form of violence. The reasons appear to be broadly that it is required by religion, it is necessary to continue tradition, it is perceived as necessary for health reasons (for cleanliness, to prevent infection, or to make child delivery easier), or to control women's sexual desire and conduct, i.e. to prevent girls being promiscuous, prevent women from being unfaithful to their partners, or to control excessive emotions²¹. Reasons given vary and are often contradictory and based on medically inaccurate information²². Those advocating against the practice appear to be motivated by their own memories of the experience and by concerns for the safety and well-being of girls and women²³.



The health implications of FGM in Sri Lanka have not been systematically studied. Recent literature revealed a range of experiences, including medically diagnosed exposure of nerves causing pain during sex, reduced sexual gratification, and having no perceived impact. Perceptions of impact also appear influenced by the memory of the FGM procedure and the type of FGM carried out²⁴.

16. Ibid.

17. Dawson, Angela & Wijewardene, Kumudu, *Insights into preventing female genital mutilation/cutting in Sri Lanka: a qualitative interpretative study*, *Reproductive Health*, Vol 18, 51, (2021), <https://reproductive-health-journal.biomedcentral.com/articles/10.1186/s12978-021-01114-x#citeas>.

18. Ibrahim, Zainab & Tegal, Ermiza, *Towards understanding female genital cutting in Sri Lanka*, *Family Planning Association of Sri Lanka*, 2019, http://www.fpasrilanka.org/sites/default/files/towards_understanding_female_genital_cutting_in_sri_lanka.pdf.

19. In September 2018, these groups made joint representations to the Parliamentary Oversight Committee on Women and Gender demanding the withdrawal of a circular preventing medical professional carrying out FGM (Daily Mirror, *Muslim groups call for female circumcision to be medicalised*, September 7th, 2018, <http://www.dailymirror.lk/article/Muslim-groups-call-for-female-circumcision-to-be-medicalised-155186.html>). In 2018, the Centre for Islamic Studies in Sri Lanka criticized the government after the health ministry denounced FGM and prohibited doctors from any involvement in the practice (Banerji, Annie, *Sri Lankan Islamic center condemns ban on female circumcision as 'affront'*, Reuters, July 12th, 2018, <https://www.reuters.com/article/us-sri-lanka-women-fgm-idUSKBN1K12OZ>).

In 2008, the ACJU of Sri Lanka issued a fatwa on "female circumcision", saying it is obligatory and recommended, citing religious teachings as well as the view that circumcision is important to maintain cleanliness of the genitals and 'for enjoyment in family life' (Fatwa on Female Circumcision Ref 005/ACJU/F/2008).

20. Dawson, Angela & Wijewardene, Kumudu, *Insights into preventing female genital mutilation/cutting in Sri Lanka: a qualitative interpretative study*, *Reproductive Health*, Vol 18, 51, (2021), <https://reproductive-health-journal.biomedcentral.com/articles/10.1186/s12978-021-01114-x#citeas>.

& Ibrahim, Zainab & Tegal, Ermiza, *Towards understanding female genital cutting in Sri Lanka*, *Family Planning Association of Sri Lanka*, 2019, http://www.fpasrilanka.org/sites/default/files/towards_understanding_female_genital_cutting_in_sri_lanka.pdf.

21. Ibid.

22. Ibid.

23. Ibid.

24. Ibid.

Faiza is often told by her grandmother that her tomboy like behaviour has to do with her not being adequately tamed. She was 12 years when she first heard this phrase from her grandmother. It took another 10 years for her to understand what was done or partially done to her body. She comes from a middle-class Muslim family and while she was reading for her degree she read an article in a newspaper about FGM. She discussed with her fellow classmates, and she was shocked to learn that all four of her friends belonging to the Islamic faith, including a close friend belonging to the Bohra community, have undergone Sunnat. Faiza was scared to ask her mother about the details. She still remembered what her grandmother used to say. She approached her aunt for an explanation, who told her that everyone in her family had undergone Sunnat. Her aunt told her that the ritual was performed on her in their house when she was 30 days old, but, that her father had stopped it halfway through since Faiza cried a lot. The Osthā Mami was given her payment and sent off and no one in her family knows whether she was properly cut. Hearing this shocked her and to date she has had no conversation with her parents on this even though she decided to address this issue in her social media postings²⁵.

Anusha was 26 years old when she underwent FGM. She fell in love with a Muslim man who is her best friend's brother and decided to convert to Islam. She was a Hindu by birth and left her family after she married her Muslim boyfriend. A few weeks after their Nikkah (wedding) ceremony her sister-in-law (who is also her best friend) took her to a barber woman (Osthā Mami), saying that she is not fully Muslim until this ritual is performed. Anusha (now called Fathima) was also told by her husband's family that she cannot bear a child without Sunnat being done to her. Fathima knows Muslim men undergo Sunnat but never knew this was done to women as well. She could not resist anything because she had abandoned her family and the only family left is her husband's, thus, she agreed. She still remembers the trauma and how she was held tightly by her sister-in-law and two other women while Osthā Mami slit her clitoris with a blade. She bled and they put some talcum powder on it. She remembers not being able to walk afterwards and feeling faint while her husband's family celebrated it and gifted her with jewellery²⁶.

2. Obstacles in Addressing FGM

a. Lack of Public Awareness Raising Programs

State and non-governmental organizations (NGOs) have not engaged in public awareness campaigns concerning FGM. The only positive measure was the above-mentioned MoH circular issued in May 2018 by the Director General of Health Services, which prohibited medical practitioners within the State health service from carrying out female circumcision. The full impact of this circular has not been studied. Despite submissions made by women, the Human Rights Commission of Sri Lanka and the National Child Protection Authority of Sri Lanka did not take measures or publish recommendations for public awareness and policy and legal reform. State agencies, particularly the National Child Protection Authority, have also not engaged with the key institutional promoters of the practice.

25. Victim was interviewed by the author. Interview on file with the author.

26. Ibid.

b. Lack of Access to Reproductive Health and Rights Information and Services

Another key obstacle is the lack of access to family planning and reproductive and sexual health education. Affected communities are particularly vulnerable to this shortcoming due to women not having access to the limited services available either due to control exerted within families or due to fear of discrimination by State sector service providers. Since most affected women belong to the Muslim minority, there are fears of being further marginalized²⁷. These challenges have not been addressed by government or non-governmental organizations. State agencies have failed to improve accessibility and promote community health services that recognize and address FGM and equip women with relevant information.

c. Limited Responses from the Medical Community

As the practice of FGM has only recently come to light, medical institutions did not recognize, prepare for, or provide services to those affected. As a consequence, medical practitioners are not equipped to identify, respond, and formulate appropriate measures for those seeking services²⁸.

d. Limitations of the Legal Framework

The practice of FGM is not expressly criminalized. However, in accordance with the Penal Code, it is possible for FGM to be treated as an offence under Section 308A relating to cruelty of children and Sections 310 and 311 relating to harm and grievous harm. However, due to women's limited access to justice, their limited trust in the police and judiciary, extreme delays in investigation and adjudication, and low conviction rates²⁹, express provision for the offence is necessary.

Sri Lanka has ratified several international treaties that prohibit FGM. CEDAW issued General Recommendation No. 14, suggesting that "States parties take appropriate and effective measures with a view to eradicating the practice of female circumcision"³⁰. CAT and the Human Rights Committee have found that FGM violates the absolute prohibition of torture³¹. FGM is also prohibited under the Convention on the Rights of the Child. Its monitoring committee has repeatedly urged governments to prohibit this practice and bring perpetrators to justice³². More recently in 2020, the UN Human Rights Council adopted resolution 44/16 on the elimination of FGM. The resolution recognizes that FGM is a form of torture and ill-treatment that necessitates criminalization³³.

Although a group of women made a submission in December 2017 to the Minister of Justice to introduce specific language to criminalize FGM, there has been no response to date. The demand sought to expand the definition of grievous harm in the Penal Code (Section 311) to include practices that "excises, infibulates or otherwise mutilates the whole or any part of the labia majora or labia minora or clitoris of another person", subject to certain medical exceptions³⁴. This

27. Amnesty International, *Increased Marginalization, Discrimination and Targeting of Sri Lanka's Muslim Community*, Public Statement, 2021, <https://www.amnesty.org/en/documents/asa37/3866/2021/en/>.

28. Dawson, Angela & Wijewardene, Kumudu, *Insights into preventing female genital mutilation/cutting in Sri Lanka: a qualitative interpretative study, Reproductive Health*, Vol 18, 51, (2021), <https://reproductive-health-journal.biomedcentral.com/articles/10.1186/s12978-021-01114-x#citeas>.

29. CEDAW, *Concluding observations on Sri Lanka*, UN Doc. CEDAW/C/LKA/CO/8, March 3rd, 2017, para. 22(a).

30. CEDAW, *General Recommendation No. 14: Female circumcision*, UN Doc. A/45/38, February 2nd, 1990, para. (a).

31. CAT, *General Comment No. 2*, UN Doc. CAT/C/GC/2, January 24th, 2008, para. 18.

32. CRC, *Concluding observations on Chad*, UN Doc. CRC/C/TCD/CO/2, February 12th, 2009, paras. 61-62.

33. Human Rights Council, *Resolution on the Elimination of female genital mutilation*, UN Doc. A/HRC/RES/44/16, July 24th, 2020, para. 13.

34. Center for Policy Alternatives, *Legal Reform to Combat Sexual and Gender-Based Violence. Sri Lanka, 2020*, <https://www.cpalanka.org/wp-content/uploads/2020/11/Law-Reform-to-combat-SGBV-PART-3-FGM-Centre-for-Policy-Alternatives.pdf>.

measure would need to keep in mind the secretive nature of the practice and the perceived ties between practice and culture, which may need to be specifically addressed as part of policy on this law reform.

The push for legal reform has not been strong. It is quite possible that the recognition of the practice will fuel institutional discrimination against Muslims – particularly Muslim women. Criminalization has its own limitations which are particularly stark when addressing this issue. Consequently, it is important to base legal reforms on clear understandings of socio-political contexts, to ensure that affected women are not targets of discrimination, hate campaigns or revictimization.

e. Discrimination and Patriarchy from within and Outside Affected Communities

Women who are the victims of FGM confront patriarchal discrimination both from the State and from family and community members³⁵. Muslim women bear the brunt of the discrimination directed at the Muslim community at large, for whom space is shrinking in Sri Lanka³⁶. The most recent of which were government attempts to ban face veils and to attempt to regulate clothing of Muslim women working in State institutions³⁷. Muslim women are also compelled to defend their families and communities against arbitrary and broad allegations of being extremists or terrorists. For a substantial period, Muslim women have faced ostracization, expulsion, threat, and sometimes violence from within their communities for demanding their rights – particularly rights in relation to family law reform and addressing GBVAW, including domestic violence³⁸. All within the broad social and political context that women in Sri Lanka face, including discrimination, failure to respond to the violence they have faced, and failure to secure administrative and legal measures to secure their rights³⁹. As such, FGM is a difficult concern to raise or publicly advocate against within families, communities, and within the current political context.

III. REPRODUCTIVE VIOLENCE

Culturally, socially, and legally, Sri Lanka places women's rights below those of men, reducing women to prescribed roles, such as obedient wife and mother. Women are ordered to not only curtail their sexual rights, their agency, bodily autonomy, and reproductive rights but are also denied any sexual education to be able to make informed decisions. Women are not typically allowed to make decisions regarding the choice of sexual and marital partner, contraceptive methods, consenting to sex, the number of children they have and the time elapsed between births. The negative impacts on physical health, mental health, and interpersonal relationships

35. Ibrahim, Zainab & Tegal, Ermiza, *Towards understanding female genital cutting in Sri Lanka*, Family Planning Association of Sri Lanka, 2019, http://www.fpasrilanka.org/sites/default/files/towards_understanding_female_genital_cutting_in_sri_lanka.pdf. & CEDAW, Concluding observations on Sri Lanka, UN Doc. CEDAW/C/LKA/CO/8, March 3rd, 2017, para. 22.

36. Thames, Knox, *Shrinking Space for Religious Minorities in Sri Lanka*, The Diplomat, October 25th, 2021, <https://thediplomat.com/2021/10/shrinking-space-for-religious-minorities-in-sri-lanka/>.

37. Srinivasan, Meera, *Sri Lanka Cabinet clears proposal for burqa ban*, The Hindu, April 27th, 2021, <https://www.thehindu.com/news/international/sri-lanka-cabinet-clears-proposal-for-burqa-ban/article34423704.ece>.

38. Guruge, Sepali, Ford-Gilboe, Marilyn, Varcoe, Colleen, Jayasuriya-Illesinghe, Vathsala, Ganesan, Mahesan, Sivayogan, Sivagurunathan, Kanthasamy, Parvathy, Shanmugalingam, Pushparani & Vithanarachchi, *Hemamala, Intimate partner violence in the post-war context: Women's experiences and community leaders' perceptions in the Eastern Province of Sri Lanka*, Plos One, 2017, <https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0174801>.

39. Food & Agriculture Organization, *Rural women in Sri Lanka's post-conflict rural economy*, 2006, <https://www.fao.org/3/ag114e/AG114E00.htm#TopOfPage>.

caused by violations of women's sexual and reproductive health rights are worsened by the lack of health care or legal measures to prevent or remedy such crimes. In the context of reproductive violence, forced sterilization, obstetric violence, and child marriage are areas of particular concern.

1. Forced Sterilization and Lack of Control over Contraception

The lack of safe sex education, affordable and accessible contraception, the stigma surrounding sex and sexuality of women, the criminalization of abortions, and the significance given to "virginity" drives women and girls to resort to risky, sometimes fatal, measures in attempts to avoid having children they were not prepared to have or did not consent to having. The lack of agency, knowledge, and literacy to make informed decisions often leads women to be coerced or compelled into sterilization. Forced sterilization affects, for instance, the female Tamil plantation workers. Since the privatization of plantations in 1992, the primary concern of maximizing profit resulted in the exploitation of female plantation workers, particularly their reproductive rights. Field research conducted in Tamil plantation communities found cases of forced sterilizations, with 97 cases reported within a period of 10 years⁴⁰.

In the plantation sector, welfare officers promote family planning proactively due to the acute poverty. Interviews the author carried out with women concerned, community leaders, and a doctor revealed that men are reluctant to undergo vasectomy procedures and instead force their wives to undergo sterilisation treatment. It happens that doctors opt for caesareans when delivering babies from disadvantaged women so that it is possible to perform a sterilisation procedure at the same time, following consent from the child's father. Any medical procedure involving a woman's womb requires her husband's consent. This also means that women who by their own will want to undergo sterilisation procedures are unable to do so without seeking and gaining this consent, a reality confirmed by several interviewees for this chapter.

Sri Lanka does not have comprehensive regulations on informed consent for sterilization, with the only requirement being a consent form signed two weeks prior to the procedure. It was found that most plantation workers would sign the form mere hours before the procedure⁴¹. To the knowledge of the author, none of the victims have received any form of redress for this wrongdoing.



Forced sterilization is a form of torture and the CAT has made it clear that such practices need to be prosecuted and perpetrators punished⁴². Forced sterilization in Sri Lanka has received very little international attention: it has still not been addressed by CEDAW nor by the CAT⁴³.

40. Balasundaram, Sasikumar, *Stealing Wombs: Sterilization Abuses and Women's Reproductive Health in Sri Lanka's Tea Plantations*, Indian Anthropologist, Vol 41,2, (2011), 57-78.

41. Ibid.

42. CAT, *Concluding observations on Peru*, UN Doc. CAT/C/PER/CO/7, December 18th, 2018, paras. 36-37.

43. CEDAW, *Concluding observations on the eighth periodic review of Sri Lanka*, UN Doc. CEDAW/C/LKA/CO/8, March 3rd, 2017 & CAT, *Concluding observations on the fifth periodic report of Sri Lanka*, UN Doc. CAT/C/LKA/CO/5, January 27th, 2017.

2. Obstetric Violence

Misinformation and the prevalence of cultural ideologies also result in a variety of obstetric violence, understood as the mistreatment that occurs during the care provided during pregnancy, childbirth, or the immediate postpartum period⁴⁴. Women reported of experiencing verbal or emotional violence by care providers during childbirth, including being accused of “messing up” the labor room by delivering a baby, being told they could not afford proper clothes but afford to get pregnant⁴⁵. There are also reports of physical violence, such as slapping on a woman’s hand during childbirth for accidentally touching the midwife⁴⁶. Victims of obstetric violence commonly believe that reacting to abuse or lodging a complaint could have negative implications for their babies⁴⁷.

Obstetric violence also occurs in the form of hymenoplasty and episiotomy stitches, otherwise known as “husband stitches”. There are Colombo-based “cosmetic medical clinics”, such as London Antiaging, that advertise hymenoplasty procedures in mainstream media and social media campaigns as sexual enhancement procedures⁴⁸. There are also reputed hospitals, such as Durdens, offering hymenoplasty procedures, citing reasonings ranging from “forgetting the past”, a “gift” for “a special occasion” or the “night of their marriage”, and “cultural beliefs”. The episiotomy stitch or the “husband stitch”, is sometimes performed by doctors without the consent or knowledge of women following vaginal birth. The stitch is intended to create tightness for the increased pleasure of male sexual partners post vaginal birth and/or tearing⁴⁹.

3. Child Marriage

Another form of reproductive violence is child marriage. Child marriage threatens the lives and futures of girls and women and makes them more vulnerable to further violence⁵⁰. Child marriage is often accompanied by early and frequent pregnancies which result in high maternal morbidity and mortality rates⁵¹..

The Muslim Marriage and Divorce Act (MMDA), which regulates marriages, does not contain an absolute minimum age for marriage. Section 23 provides that “a marriage contracted by a Muslim girl who has not attained the age of 12 years shall not be registered under this Act unless the *Quazi* for the area in which the girl resides has [...] authorized the registration of the marriage”. Not only does this law explicitly permit marriage of girls as young as 12, but it also allows that even younger girls can be forced to marry if authorized by a Muslim magistrate (a *Quazi*)⁵². Moreover, the MMDA makes marriage registration optional. Hence many child marriages are unregistered and complete prevalence of the practice is therefore unknown.

It is estimated that about 12% of Sri Lankan women who are between 20 and 24 have been married before the age of 18⁵³. It is further estimated that numbers increased since 2020 as a

44. See d'Oliveira A.F., Diniz, S.G. & Schraiber, L.B., *Violence against women in health-care institutions: an emerging problem*, Lancet, Vol 359, 9318 (2002) 1681–5.

45. Perera, Dinusha, Lund, Ragnhild, Swahnberg, Katarina, Schei, Berit, & Infanti, Jennifer J., *When helpers hurt: women's and midwives' stories of obstetric violence in state health institutions*, Colombo district, Sri Lanka, BMC Pregnancy and Childbirth, Vol 18, 211, (2018), <https://bmcpregnancychildbirth.biomedcentral.com/articles/10.1186/s12884-018-1869-z#citeas>.

46. Ibid.

47. Perera, Dinusha, Lund, Ragnhild, Swahnberg, Katarina, Schei, Berit, & Infanti, Jennifer J., *When helpers hurt: women's and midwives' stories of obstetric violence in state health institutions*, Colombo district, Sri Lanka, BMC Pregnancy and Childbirth, Vol. 18, 211 (2018).

48. London Antiaging, *Sexual Treatments*, <https://www.londonantiaging.lk/sexual-treatments>.

49. Murphy, Carrie, *The Husband Stitch Isn't Just a Horrifying Childbirth Myth*, Healthline, September 27th, 2018, <https://www.healthline.com/health-news/husband-stitch-is-not-just-myth>.

50. Office of the UN High Commissioner for Human Rights, *Child and forced marriage, including in humanitarian settings*, oft he <https://www.ohchr.org/en/issues/women/wrgs/pages/childmarriage.aspx>.

51. Ibid.

52. Muslim Marriage and Divorce At, § 23, August 1st, 1954.

53. UNICEF, *The State of the World's Children 2016*, p. 152,

result of the pandemic. With schools being closed for months, many families decided to take the opportunity to marry their daughters off ⁵⁴.

There has been continued resistance to reform the MMDA. Religious leaders have argued that increasing the age of marriage for girls to over the age of 18 would allow premarital sex and children born out of wedlock. This perspective suggests that Muslim women are sexualized from a very early age and that reproduction is the key reason for marriage⁵⁵. Unsurprisingly, there have been instances in which girls were forced to marry their rapists in order to prevent shame and restore the honor of the girl's family, particularly when the victim was pregnant⁵⁶.

Because of its detrimental effect for girls' mental and physical health and potential threat to life, the CAT has found child marriage amounts to torture or cruel, inhuman, or degrading treatment⁵⁷. Similarly, the Special Rapporteur on Torture states that "child marriage constitutes torture or ill-treatment"⁵⁸.

4. Reasons for Reproductive Violence

The State prioritizing and accommodating outdated laws and policies to honor patriarchal structures and morally out-of-date political and religious philosophy unwittingly permits violent offenses and the violation of bodily integrity. The central lesson most people internalize being that sexual reproductive health and rights are Western concepts that are unnecessary and nonconformist. The notable obstacles to justice include the fact that these laws are predominantly hindered by moral policing, corruption, stigma, a lack of State initiatives to enforce laws, religious fundamentalism, the absence of sexual and reproductive health services, and effective responses. Religious, political, and community leaders, first responders, befrienders, educators, and healthcare (physical and mental) providers are important stakeholders who are prejudicial, greatly affecting the quality of the services they provide.

a. Criminalization of Abortion and Unsafe Termination of Pregnancies

Archaic legislature, such as laws concerning abortion, have prevailed since 1883. The existing abortion law not only restricts women's right to abortions but also criminalizes the act. Section 303 of the Penal Code provides that anyone voluntarily causing a pregnant woman to miscarry is subject to up to three-years imprisonment and/or payment of a fine, unless it was caused in good faith to save the women's life. Under this law, doctors and women who induce their own miscarriage are subject to the same penalties⁵⁹. It has been cited as one of the strictest abortion laws in the world⁶⁰. Given the lack of alternative regulated mechanisms and care, women and girls are forced to resort to means that are unsafe and sometimes fatal⁶¹. In 2016, the MoH reported that 658 unregulated abortions were performed daily, being the second or third top causes for

54. Grant, Harriet, *Why Covid school closures are making girls marry early*, the Guardian, September 7th, 2020, <https://www.theguardian.com/global-development/2020/sep/07/why-covid-school-closures-are-making-girls-marry-early>.

55. Abdul Saroor, Shreen, *Why is the ACJU blocking MMDA reforms?*, Daily FT, August 2nd, 2019, <https://www.ft.lk/opinion/Why-is-the-ACJU-blocking-MMDA-reforms-/14-683174>.

56. Ibid.

57. See e.g. CAT, *Concluding Observations on Sierra Leone*, UN. Doc. CAT/C/SLE/CO/1, June 20th, 2014, para. 16.

58. *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment on Gender Perspectives and Torture and other Cruel, Inhuman and degrading treatment*, UN Doc. A/HRC/31/57, January 5th, 2016, para. 63.

59. *Penal Code 1885*, Section 303, Sri Lanka.

60. Davidson Lady, Meghan, *Sri Lanka's backstreet abortions: hundreds of women take daily risks with illegal terminations*, The Telegraph, August 5th, 2020, <https://www.telegraph.co.uk/global-health/women-and-girls/sri-lankas-backstreet-abortions-hundreds-women-take-daily-risks/>.

61. Kumar, Ramya, *Abortion in Sri Lanka: The Double Standard*, Am J Public Health, Vol. 103,3 (2013) 400-404.

maternal mortality⁶². In an interview with the International Planned Parenthood Federation, Sonali Gunaseka, Director of Advocacy at the Family Planning Association of Sri Lanka, stated that the mortality rates for unregulated abortions stands at approximately 15%, due to complications resulting from unsafe conditions as well as a lack of necessary aftercare⁶³. Another grievance, which poses a challenge when seeking necessary care, is caused by the threat of prosecution for unplanned and/or unwanted pregnancies. All parties involved in the abortion process may face criminal charges, which makes finding safe services particularly difficult, especially for low-income families. Even in cases of medical examination and aftercare for rape cases in Sri Lanka, the procedure can be incredibly invasive, prejudicial, and retraumatizing, as survivors are profiled and often directly or indirectly blamed for the assault.

The CAT has found that conditions currently present in Sri Lanka are violations of the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT Convention). Restrictions to abortion access, especially in cases of rape, incest, fetal unviability and where the health of the woman is at risk, can amount to cruel and inhuman treatment and violations of articles 2 and 16 of the CAT Convention⁶⁴.

b. Flawed Transitional Justice Mechanism

Sri Lanka has a long and complex history of ethnic tensions between the Sinhalese majority and Tamil minority that resulted in a prolonged civil war between the Liberation Tigers of Tamil Ealam (LTTE or the Tamil Tigers) and the Sinhalese dominated Sri Lankan government. The LTTE fought to create an independent Tamil state in the Northeast of Sri Lanka due to continuous discrimination and violence against the Tamils. The conflict has resulted in serious human right violations under international humanitarian law by all parties, including arbitrary arrests, extrajudicial killings, disappearances, displacement, use of child soldiers, torture, ill-treatment of persons in detention, and GBVAW⁶⁵. The impact of the armed conflict on women has been felt in several different ways. Many female heads of households from ethnic and ethnoreligious minority groups in areas affected by the war experience high rates of poverty, unemployment, and are vulnerable to violence⁶⁶.

Under Human Rights Council Resolution 30/1, Sri Lanka committed to 25 key actions across a range of human rights issues⁶⁷. A core commitment was to set up four transitional justice mechanisms to promote “reconciliation, accountability, and human rights” in the country. These included an accountability mechanism involving international judges, prosecutors, investigators, and defense lawyers; a truth and reconciliation mechanism; an office for missing persons; and an office for reparations⁶⁸. While the office for missing persons and the office for reparations were set up, neither of them is fully functioning. Instead of establishing a war crime tribunal with international involvement, the government has made it clear that they will not “hunt down war heroes”⁶⁹. In 2019, the UN High Commissioner for Human Rights presented a report on Sri

62. News First, *Over 650 abortions on a daily basis: Health Ministry elaborates*, May 9th, 2016, <https://www.newsfirst.lk/2016/05/09/650-abortion-daily-basis-health-ministry-elaborates/>.

63. International Planned Parenthood Federation, *Fighting for safe abortion access in Sri Lanka*, 2019, <https://www.ippf.org/blogs/fighting-safe-abortion-access-sri-lanka>.

64. CAT, *Concluding Observations on the Philippines*, U.N. Doc. CAT/C/PHL/CO/3, June 2nd, 2016, paras. 39-40.

65. For background information on the conflict in Sri Lanka, see the comprehensive investigation of the UN, HRC, *Comprehensive report of the Office of the United Nations High Commissioner for Human Rights on Sri Lanka*, UN Doc. A/HRC/30/61, September 28th, 2015.

66. Committee on the Elimination of Racial Discrimination, *Concluding Observations on Sri Lanka*, UN Doc. CERD/C/KLA/CO/10-17, October 6th, 2016, para. 27.

67. HRC, *Promoting reconciliation, accountability and human rights in Sri Lanka*, UN Doc. A/HRC/RES/30/1, October 14th, 2015.

68. Ibid.

69. Colombo Telegraph, *We won't hunt down war heroes, we will ensure there won't be another war in Sri Lanka – Sirisena*, May 19th, 2016, <https://www.colombotelegraph.com/index.php/we-wont-hunt-down-war-heroes-we-will-ensure-there-wont-be-another-war-in-sri-lanka-sirisena/>.

Lanka to the Human Rights Council and regretted the “minimal progress on accountability” and stated that “continuing impunity risks fuelling communal or inter-ethnic violence, and instability. Resolving these cases, and bringing the perpetrators of past crimes to justice, is necessary to restore the confidence of victims from all communities”⁷⁰.

Although the war ended in 2009, the conflict and its remnants are still visible within Sri Lankan society, which remains deeply divided. In March 2021, the Human Rights Council passed resolution 46/1 that highlights continuing atrocities committed against ethnic and religious minorities, systemic impunity, and eroding rule of law and access to justice⁷¹. Resolution 46/1 further strengthens the capacity of the Office of the High Commissioner to “collect, consolidate, analyse and preserve information and evidence and to develop possible strategies for future accountability processes for gross violations of human rights or serious violations of international humanitarian law”⁷².

Many studies conducted on Sri Lankan women’s reproductive concerns in conflict affected areas found higher levels of poverty, higher rates of early marriage, pregnancy, home births, maternal mortality, lower levels of early contraceptive use and depletion of reproductive healthcare services in the North and East of the country⁷³. There has been no accountability as of yet for these grievances, violations, and acts of violence enacted against women and girls despite the countless documented cases, reports, and testimonials brought forward after the war ended. Gross negligence and mistreatment by authorities has rendered victims and survivors with no support, no services, or State mechanisms to address their issues⁷⁴.

c. Lack of Appropriate Mechanisms for Emergency Situations

During the many years of conflict, the situations of displacement, the natural disasters, like the Tsunami, and now the pandemic, the State did not have a response mechanism catering to women and girls’ needs and vulnerabilities⁷⁵. This is despite the increase of sexual assault, forced marriages, unwanted pregnancies, child marriages, spread of sexually transmitted infections, trafficking, sexual slavery, and abuse being overwhelmingly common during crisis situations, such as conflict situations or emergency situations, like the post-tsunami period when many cases of sexual violence were reported⁷⁶.

“Woman to Woman” was a training program requested by the Sri Lankan Women’s Coalition for Assisting Tsunami Affected Women (CATAW) and developed by the UN Population Fund. CATAW identified and documented key issues experienced by women while developing responses to issues. The coalition cited a lack of services, infrastructure, appropriate health and medical services, female healthcare providers, female police officers, resources, such as sanitary products, safe spaces, and security arrangements for women and girl’s specific issues.

70. HRC, *Presentation of the High Commissioner’s report on Promoting accountability and human rights in Sri Lanka (item 2)*, March 20th, 2019, <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=24371&LangID=E>.

71. HRC, *Promoting reconciliation, accountability and human rights in Sri Lanka*, UN Doc. A/HRC/RES/46/1, March 26th, 2021.

72. Ibid para. 6.

73. Kottegoda, Sepali, Kumudini, Samuel & Sarala, Emmanuel, *Reproductive Health Concerns in Six Conflict-Affected Areas of Sri Lanka*, *Reproductive Health Matters*, Vol 16, 31, (2008), 75–82, <https://www.tandfonline.com/doi/pdf/10.1016/S0968-8080%2808%2931359-7?needAccess=true>.

74. Kodikara, Chulani, *Justice and accountability for war related sexual violence in Sri Lanka*, *Open Democracy*, August 15th, 2016, <https://www.opendemocracy.net/en/5050/justice-and-accountability-for-war-related-sexual-violence-in-sri-lanka/>.

75. Kottegoda, Sepali, Kumudini, Samuel & Sarala, Emmanuel, *Reproductive Health Concerns in Six Conflict-Affected Areas of Sri Lanka*, *Reproductive Health Matters*, Vol 16, 31, (2008), 75–82, <https://www.tandfonline.com/doi/pdf/10.1016/S0968-8080%2808%2931359-7?needAccess=true>.

76. Pittaway, Eileen, Bartolomei, Linda & Rees, Susan, *Gendered dimensions of the 2004 tsunami and a potential social work response in post-disaster situations*, *International Social Work*, Vol.50, 3 (2007); Pikul, Corrie, *As Tsunami Recedes, Women’s Risks Appear*, *Women’s eNews*, January 7th, 2005, <https://womensenews.org/2005/01/tsunami-recedes-womens-risks-appear/>.

They also highlighted a lack of healthcare resources and services essential during prenatal and post-natal periods, and for childcare. The heightened vulnerabilities during crisis situations, restricted mobility, and limited access to services further victimizes survivors of violence. Women's needs remain unaccounted for in disaster and crisis situations⁷⁷. In a country that has normalized negative sexist socio-cultural ideologies and practices, Sri Lanka also lacks the necessary State-implemented policies and interventions to ensure that women and girls' specific needs, such as their sexual and reproductive rights, are met. The same can be said for the plight of Sri Lankan women in the post-war context, as well as that of the current Covid-19 pandemic, both of which have marked spikes in a multitude of sexual and reproductive health rights violations⁷⁸.

Exploring gross negligence of women's rights, the lack of accessible sexual and reproductive health rights resources and services, the threats of social ostracization, and incarceration for exercising bodily integrity sheds light on why there is so much internalized shame about sexuality and uncertainty when practicing agency, as well as the major driving forces that dictate the control of women's bodies through law and practice⁷⁹.

d. Lack of Sex Education

The State, as the entity that has sworn to protect its citizens, has a responsibility to rectify mainstream discourse, to take the necessary measures to dissolve rape culture that shifts the blame on survivors rather than the perpetrators, and the notion of girls and women being "responsible" to prevent and resist assault. However, sex education in Sri Lanka is inadequate⁸⁰. Although the solution seems self-evident, measures taken by civil society have been terminated at every juncture. The textbook entitled "*Hathe ape potha*", which details safe sex practices, was banned by the State, while grade 11 health books horrifically state that unwanted pregnancies occur due to women and girls "acting out of their feelings instead of rational thinking"⁸¹. It blames survivors of sexual assault for their experiences and villainizes persons with mental health issues by branding them sexual predators. The provision of safe sex education that is inclusive of important components, such as consent, compliance, coercion, reproductive health and rights, pleasure, exercising bodily autonomy, sexually transmitted infections, and contraception, would make a huge difference in equipping individuals to make informed decisions regarding their bodies.

e. Discrimination

Obstetric violence, forced sterilization, and child marriage intersect with cultural, racial, and religious discrimination⁸². As indicated before, forced sterilization affects mostly tea plantation workers of Tamil ethnicity, a minority historically persecuted and discriminated against. Studies have found that obstetric violence is mostly experienced by Tamil and Muslim women and women of disadvantaged socio-economic backgrounds. Similarly, child marriage mostly affects Muslim girls.

77. Pittaway, Eileen, Bartolomei, Linda & Rees, Susan, *Waves of Violence – Women in Post-Tsunami Sri Lanka*, *The Australasian Journal of Disaster and Trauma Studies*, Vol 2, (2005), 1174-4704, <http://trauma.massey.ac.nz/issues/2005-2/rees.htm>.

78. HRW, *The Right of Everyone to Sexual and Reproductive Health: Challenges and Opportunities During Covid-19, 2021*, <https://www.hrw.org/node/378945/printable/print>.

79. Asha, Abeyasekera; Marecek, Jeanne, *Embodied shame and gendered demeanours in young women in Sri Lanka*, *Feminism & Psychology*, Vol 29, 2, (2019), 157–176.

80. de Silva, Nisali, *Majority of students believe sex education inadequate*, study say, *Economynext*, January 9th, 2020, <https://economynext.com/majority-of-students-believe-sex-education-inadequate-study-says-47410/>.

81. Dissanayake, Methmalie, *Questionable G11 Text Book Causes Furore*, *Ceylon Today*, May 1st, 2021, <https://ceylontoday.lk/news/questionable-g11-text-book-causes-furore>.

82. General Assembly, *A human rights-based approach to mistreatment and violence against women in reproductive health services with a focus on childbirth and obstetric violence*, UN Doc. A/74/137, July 11th, 2019, para. 44.

Continued militarization of the North and East of Sri Lanka, where many Tamils live, combined with rampant impunity, enable GBVAW and recurring human rights abuses against already vulnerable minority women⁸³. In the post-war context, the health system is not only prejudiced against Tamils but also Muslims and there have been reported cases where young Muslim women have been forced to have caesareans in State hospitals instead of natural child birth to ensure that they opt for birth control instead of having more children.

Moreover, the current president, Nandasena Gotabaya Rajapaksa, came to power on a Sinhala nationalist wave that was particularly strong after Islamic extremists attacked churches and luxury hotels in Colombo on Easter Sunday just months before the 2019 elections⁸⁴. Although anti-Muslim sentiment is nothing new, the situation has regressed significantly in recent years. Incidents of violence against Muslims committed with impunity have become more frequent⁸⁵. This also affects Muslim women when in delivery rooms, where they are verbally and physically abused as previously described⁸⁶.

In addition, Sinhala extremist monks have openly called for the need to control Muslim women's ability to have children, while incentivizing Sinhala women's ability to reproduce. Monks have further accused Muslim owned restaurants and retail stores of selling products to Sinhalese women with substances that make them infertile and called to attack and burn down those businesses⁸⁷.

IV. CONCLUSION

Discrimination against Muslim and Tamil women and against disadvantaged women living in rural areas, and religious and patriarchal norms are the leading causes for the prevalence of FGM, forced sterilization, obstetric violence, and child marriage in Sri Lanka.

Relevant laws criminalizing violations of women's reproductive and sexual health rights are missing. There is a clear need to criminalize FGM and forced sterilisation. Both practices should be addressed from a torture perspective, domestically and internationally. At the same time, abortion should be decriminalized since its absolute ban is considered a form of torture⁸⁸. To further advance women's reproductive rights, the government should open abortion clinics for women to undergo safe procedures. In addition, the minimum age to marry should be set at 18 years in all relevant laws including the MMDA. Child marriage is inextricably intertwined with reproductive health and is rightfully considered a form of torture⁸⁹.

Given that FGM and reproductive violence predominantly concerns women from discriminated religious minority communities, for which space is shrinking, socio-cultural context needs to be respected and addressed when criminalizing these practices. There is a risk that criminalization contributes further to stigmatization and discrimination of minority women. It is therefore important

83. Women's Action Network, *Continuing Violations against the Rights of Women, and Sri Lanka's Failures to Implement the right to Remedy and Effective Transitional Justice Mechanisms. Joint Stakeholder Submission to the UN Periodic Review of Sri Lanka*, 2017, <https://uprdoc.ohchr.org/uprweb/downloadfile.aspx?filename=4581&file=EnglishTranslation>.

84. CNN, *Terror in Sri Lanka. A holy day meant for rest and worship turned deadly in Sri Lanka*, April 2019, <https://edition.cnn.com/interactive/2019/04/world/sri-lanka-attacks/>.

85. Amnesty International, *Sri Lanka: Authorities must end violence and discrimination against Muslims*, October 17th, 2021, <https://www.amnesty.org/en/latest/news/2021/10/sri-lanka-authorities-must-end-violence-and-discrimination-against-muslims/>.

86. Perera, Dinusha, Lund, Ragnhild, Swahnberg, Katarina, Schei, Berit, & Infanti, Jennifer J., *When helpers hurt: women's and midwives' stories of obstetric violence in state health institutions*, Colombo district, Sri Lanka, BMC Pregnancy and Childbirth, Vol 18, 211, (2018), <https://bmcpregnancychildbirth.biomedcentral.com/articles/10.1186/s12884-018-1869-z#citeas>.

87. Al Jazeera, *Fear in Sri Lanka as monk calls for stoning of Muslims*, June 22nd, 2019, <https://www.aljazeera.com/news/2019/6/22/fear-in-sri-lanka-as-monk-calls-for-stoning-of-muslims>.

88. CAT, *Concluding Observations on the Philippines*, U.N. Doc. CAT/C/PHL/CO/3, June 2nd, 2016, paras. 39-40.

89. CAT, *Concluding Observations on Sierra Leone*, U.N. Doc. CAT/C/SLE/CO/1, June 20th, 2014, para. 16.

to work with affected and potentially affected communities to create stigma free and permissive environments for conversations on bodily integrity, autonomy, and women's rights. If achieved, it is important that these spaces enable clear distinctions between religious belief, harm, and law.

In addition, reparations for conflict and emergency related GBVAW, whether in the context of the war, the Tsunami, or the Covid-19 pandemic are largely absent. It is therefore important that any emergency policy and disaster response takes reproductive related needs of women into consideration. Without this, women suffering FGM, forced sterilization, obstetric violence, and child marriage do not get redress.

Sri Lanka has not been sufficiently scrutinized by the international community for its shortcomings in these areas. While reviewing Sri Lanka, the CRC has only addressed FGM and child marriage and CEDAW has only referred to child marriage⁹⁰. The CAT, however, remained silent on all reproductive violence despite it being a form of torture⁹¹.

It is upon the State to create a victim-friendly environment in which victims of violence can safely report crimes that lead to investigations and prosecutions. Reproductive health services, including counselling, should be implemented by the State to protect women and girls' specific needs, regardless of their socioeconomic background, sexual orientation, or ethno-religious identities. It is equally important that information related to reproductive health and consent forms for sterilisation procedures are available in all languages and accessible to women who are illiterate and women with visual impairment. The State should further encourage healthcare professionals to learn Tamil and make interpreters available in hospitals and clinics if employees predominantly speak Sinhala. Finally, steps must be taken to change the prevailing mindsets and to make reproductive resources available, enabling women to make informed decisions without requiring consent of their husbands. It is further vital that the banned textbook "*Hathe ape potha*", which details safe sex practices, be reintroduced in schools. Under Covid-19, teenage pregnancies and marriages have increased significantly.

90. CEDAW, *Concluding observations on Sri Lanka*, UN Doc. CEDAW/C/LKA/CO/8, March 3rd, 2017, para. 44.

91. CAT, *Concluding Observation on Sri Lanka*, UN Doc. CAT/C/LKA/CO/5, January 27th, 2017.



02

TRAFFICKING AND SEXUAL EXPLOITATION IN THE PHILIPPINES



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1. This chapter was developed with the support of the Philippine Alliance for Human Rights Advocates (PAHRA). The author wishes to thank two trafficking survivors who shared their stories and the Coalition Against Trafficking in Women – Asia Pacific (CATW-AP) for establishing contact to the two survivors.

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I. INTRODUCTION

18 years since the Anti-Trafficking in Persons Act² was passed, human trafficking remains a significant and salient issue in the Philippines. According to the 2021 US Trafficking in Persons Report (TIP Report), sex trafficking and the forced labor of men, women and children are persistent in-country problems that need to be rectified. Countries in East Asia and the Pacific have a large number of victims who were trafficked for the purpose of sexual exploitation, with a significant amount coming from both domestic and interregional trafficking³. Among the other forms of exploitation reported, victims are trafficked to appear in pornography and for forced marriage⁴.

Traffickers exploit women and girls from rural communities, areas affected by conflict and disaster, and impoverished urban centers for the purposes of sex trafficking, forced domestic work, forced begging, and other forms of forced labor around the country⁵. The most recent data from the Philippine Department of Social Welfare and Development (DSWD), which implements a national Recovery and Reintegration Program of Trafficked Persons (RRPTP), shows that from 2017 to late 2021, sexual exploitation remains the most prevalent type of trafficking reported to the authorities, followed by forced labor. From 2017 to September 2021, the RRPTP assisted a total of 3,109 victims of sex trafficking and a further 2,911 victims of other forms of forced labour. Of the victims of sex trafficking, there were 380 boys and men and 2,729 girls and women. When it came to victims of labor trafficking, there were 1,802 girls and women and 1,109 boys and men⁶. In addition, newer forms of trafficking and sexual abuse have appeared recently in the form of live-stream sexual abuse trade and online recruitment. According to a report by UNICEF, the Philippines has become the global epicenter of the live-stream sexual abuse trade⁷.

Women's equality and empowerment is one of the 17 United Nations (UN) Sustainable Development Goals (SDGs). SDG 5 requires that states eliminate all forms of violence against all women and girls in public and private spheres, including trafficking, sexual abuse, and other types of exploitation⁸. Moreover, the Philippines is obliged to fight trafficking as it has ratified the ASEAN Convention Against Trafficking in Persons, Especially Women and Children (ASEAN Convention)⁹.

2. *Anti-Trafficking in Persons Act of 2003*, Republic Act 9208, Philippines.

3. United Nations Office on Drugs and Crime, *Global Report on Trafficking in Persons*, 2020, https://www.unodc.org/documents/data-and-analysis/tip/2021/GLOTIP_2020_15jan_web.pdf, p. 151.

4. Ibid.

5. United States Department of State, *Philippines*, <https://www.state.gov/reports/2021-trafficking-in-persons-report/philippines/>.

6. Numbers on file with the author.

7. UNICEF, *Safe from harm: Tackling webcam child sexual abuse in the Philippines. Challenges protecting vulnerable children and prosecuting their abusers*, June 3rd, 2016, <https://www.unicef.org/stories/safe-from-harm-tackling-webcam-child-sexual-abuse-philippines>.

8. UN Women, *SDG 5: Achieve gender equality and empower all women and girls*, <https://www.unwomen.org/en/news/in-focus/women-and-the-sdgs/sdg-5-gender-equality>.

9. ASEAN Convention Against Trafficking in Persons, Especially Women and Children, November 27th, 2015, <https://asean.org/asean2020/wp-content/uploads/2021/01/ACTIP.pdf>.

The government has been insufficient in addressing the problem of trafficking and sexual exploitation¹⁰, which was criticized by the UN Committee on the Elimination of Discrimination against Women (CEDAW) when reviewing the Philippines¹¹.

Historically, the Philippines has adopted a law-and-order approach to combatting human trafficking and sexual exploitation with the criminal justice system used as the primary vehicle for change. This means the focus is on prosecution and conviction of not just traffickers but also the women in prostitution¹². At the same time, the prevention measures, rehabilitation and reintegration services that are offered are insufficient. The government has not adopted a comprehensive approach as required by the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment and Punishment (CAT Convention). This Convention provides a comprehensive anti-torture framework, requiring states to prevent, investigate, prosecute, punish, and remedy acts of torture and other forms of ill-treatment, including by non-State officials which can include trafficking and sexual exploitation¹³.

II. WHO ARE THE VICTIMS?

1. Case Study 1: Liza and Mylene's ill-treatment by the Police and Military¹⁴

Liza and Mylene were born in a rural area of the Philippines. After becoming victims of sexual abuse as children, they moved to the urban region Metro Manila. From the mid 1990s to 2011, they were forced into prostitution and both suffered sexual, mental, and physical violence from their customers, many of whom were also their traffickers and torturers.

Mylene and Liza were routinely arrested by police for vagrancy. In exchange for charges being dropped, the police raped them repeatedly. Sometimes they were brought to motels by the police and made to pay the motel bills. Oftentimes, the officers took whatever remaining money they had. From 2003 to 2004, a police officer regularly raped and sexually enslaved Mylene. In 2010, she was kept in an apartment that she could not leave as she knew that her captor would kill her if she made any attempts to escape. She became pregnant and contracted HIV, most likely from the police officer. Her baby was subsequently born HIV positive.

10. Under Philippine Anti-Trafficking Laws, sexual exploitation includes forced participation by a person in prostitution. The term, "sex work" is not found or used in any legal or policy framework in the Philippines.

11. CEDAW, *Concluding Observations on the Philippines*, UN Doc. CEDAW/C/PHL/CO/7-8, July 25th, 2016, paras. 27–30.

12. Republic Act 10158, an Act Decriminalizing Vagrancy, amending for this purpose Article 202 of Act no. 3815, as amended, otherwise known as the Revised Penal Code, was signed into law on 5 April 2012. It provides:

"SECTION 1. Article 202 of the Revised Penal Code is hereby, amended to read as follows:

"Article 202. Prostitutes; Penalty. – For the purposes of this article, women who, for money or profit, habitually indulge in sexual intercourse or lascivious conduct, are deemed to be prostitutes.

"Any person found guilty of any of the offenses covered by this article shall be punished by arresto menor or a fine not exceeding 200 pesos, and in case of recidivism, by arresto mayor in its medium period to prison correctional in its minimum period or a fine ranging from 200 to 2,000 pesos, or both, in the discretion of the court."

13. CAT, *General Comment No. 2*, UN Doc. CAT/C/GC/2, January 24th, 2008, para. 18.

14. Focus Group Discussion with two (2) survivors and Coalition Against Trafficking in Women-Asia Pacific (CATW-AP) on April 23rd, 2021 which the author attended.

Mylene was also repeatedly sexually abused by members of the armed forces. Regularly and against her will, she would be smuggled inside Camp Aguinaldo by army personnel. To hide her when entering, she would either be instructed to disguise in uniform or hide herself when approaching the gate check point. On one occasion, once successfully inside, a member of the army parked his car in a dark alley in Camp Aguinaldo, pointed his gun at Mylene and repeatedly raped her. He threatened that if she reported his attack, he would have her framed for possession of illegal drugs. He also took whatever money she had with her.

Mylene also recalls how one night she escaped totally naked from a white car containing four police officers who, after forcing her to use illegal drugs, had taken turns to rape her inside the moving vehicle. After being submitted to hours of sexual violence, she was able to escape when dawn broke. Mylene estimates that at least 40 police officers were her customers and torturers, while about ten were from the army. All of whom regularly abused and tortured her for years.

Mylene also suffered abuse from customers that were private individuals. She recalls being brought to a motel owned by a police officer. Once in the motel, she tried shouting for help and escaping from the room. However, upon her abuser yelling, “Hindi pa kami tapos” (we are not done yet), the hotel management would force her to go back into the room.

Mylene remembers how she was abused by a customer who was high on drugs for four hours until she experienced excruciating pain and was bleeding from her vagina. She tried to run away but was forced back by the hotel management. In addition to the physical abuse she endured, the same customer had also demeaned her emotionally, telling her, “Ang pangit pangit mo naman! Mukha ka ngang bakla! Nagbabayad naman ako!” (You are very ugly; you even look like a homosexual! I am a paying customer!).

Mylene was also recruited to work in a bar owned by politicians. The customers would usually arrive in cars with government plates. There, she was told to entertain five to ten customers per day. If she did not reach this quota, she was threatened not to receive food and to incur debts for her upkeep. She can no longer count the number of customers that had sex with her.

Liza went through the same abusive and violent situations. She was regularly arrested for vagrancy, at least once or twice a month during her time in prostitution. In exchange for the dropping of her charges, she would be raped by two or three police officers. She experienced being punched and beaten, made to use illegal drugs and having guns pointed at her while being raped. She was sworn at, told that she is an “animal”, and that they can do anything to her because she gets paid for sex. (“tang ina mo, hayop ka, bayaran ka, puedeng gawin lahat ng gusto kasi binayaran ka).

Liza also experienced being kicked by the police while heavily pregnant.

2. Case Study 2: Alice and Diana trafficked to Syria

During a senate hearing in March 2021, Alice, an overseas Filipino worker, revealed the alleged operations of Bureau of Immigration (BI) personnel in trafficking Filipinos to Syria in exchange for 50,000 PHP (850 EUR). Alice disclosed that a recruiter promised her a job in Dubai, United Arab Emirates. However, after her layover in Malaysia, she was taken to Syria. Alice also said that her recruiter paid 50,000 PHP (850 EUR) to BI personnel to fetch her and other women at the immigration counter at the airport.

After she arrived in Syria, their mobile phones were taken, and other personnel from their recruitment agency assisted their passage before they were imprisoned. After 12 days, a Syrian national bought her for 1,000 USD (875 EUR). According to Alice, her employer was a relative of the President of Syria and had an escort of bodyguards. The monthly salary was supposed to be 400 USD (350 EUR), but she only received half. Alice experienced treatment and working conditions akin to slavery, being forced to work from 10AM to 3AM the next day¹⁵.

Diana, also an overseas Filipino worker, revealed during a senate hearing that she was promised a job in Dubai in 2017. What she did not know at the time was that her recruiter, with the help of corrupt BI officials, trafficked her to Syria via Malaysia. Diana said her illegal recruiter, a woman named “Maam Beth”, paid BI officers to let her out of the country, without going through the required predeparture immigration inspection at the Philippine airport.

After arriving in Malaysia, someone from the recruitment agency brought her to a house where she found many other Filipino women also waiting for their visas. During her stay in Malaysia, Diana recalled how she even accompanied one of the recruiters to a money remittance center to wire money as payment to their “contact” at the BI. When her visa arrived, she immediately flew to Syria. However, upon arriving in Syria, she found that she was pregnant. Diana said she begged her recruiters to be allowed to go home but they forced her to abort the baby¹⁶.

15 .GMA News, *OFW na 'ipinuslit' sa Syria, ibinisto ang raket umano ng ilang BI personnel sa airport*, March 16th, 2021, <https://www.gmanetwork.com/news/balitambayan/pinoyabroad/779914/ofw-na-ipinuslit-sa-syria-ibinisto-ang-raket-umano-ng-ilang-bi-personnel-sa-airport/story/?f=>.

16 .Christia Marie Ramos, *'Outbound pastillas' part of a 'larger system' — PH envoy to Syria*, *Philippine Daily Inquirer*, April 26th, 2021, <https://globalnation.inquirer.net/195581/outbound-pastillas-part-of-a-larger-system-ph-envoy-to-syria#ixzz6t9GLS7oc>.

III. PHILIPPINE GOVERNMENT RESPONSE TO COMBATING TRAFFICKING IN PERSONS

In 2003, the Philippines enacted an Anti-Trafficking in Persons Act, which made the country one of the first in Asia to put in force anti-trafficking legislation. The Act criminalizes trafficking, especially of women and children, and establishes the necessary institutional mechanisms to protect and support trafficked persons. It further contains provisions for victims on recovery, rehabilitation, and reintegration into society¹⁷. The Act was amended in 2012 to the Expanded Anti-Trafficking in Persons Act¹⁸. In turn, the definition of trafficking was broadened to also include attempts to traffic and to strengthen convictions and investigations.

The 2003 Anti-Trafficking in Persons Act created the Inter-Agency Council Against Trafficking (IACAT), which is chaired by the Secretary of the Department of Justice. The IACAT is currently in its third National Strategic Action Plan Against Trafficking in Persons, covering the period from 2017 to 2022. The current strategic plan puts emphasis on public information and building technical expertise for improved service delivery, as part of its prevention and advocacy. It also promises economic advancement programs for survivors for their protection, recovery and reintegration; enhanced investigation and prosecution of cases of trafficking; and multi-sectoral partnerships to increase community awareness, such as between local schools, academe, media outlets, local government units, and faith-based organizations¹⁹.

There are different elements in the Anti-Trafficking in Persons Act, the ASEAN Convention, the Multi-Sectoral Work Plan (Bohol TIP work Plan) implementing the ASEAN Convention²⁰, and the National Strategic Action Plan Against Trafficking, such as awareness raising, economic support, capacity building, reparation and more. However, the government has mostly used a law-and-order approach to address trafficking. Over the years, international aid and national resources have been devoted to prosecution and law enforcement related activities. According to the US TIP Report, the Philippine government conducted 248 anti-trafficking coordinated operations in 2020 and investigated 233 cases of alleged illegal recruitment. The report also noted an increase in the prosecution of traffickers to 377 from 266 in the previous year²¹.

While prosecution is an important factor, there needs to be other focuses to combat trafficking, most notably prevention, protection, and redress. Although the Anti-trafficking in Persons Act also sets out the mandatory services to be provided by governmental agencies to ensure victims' recovery, rehabilitation, and reintegration into society, the government spends insufficient resources on these areas²². Challenges remain with respect to victims' recovery and reintegration, as well as

17. Anti-Trafficking in Persons Act contains the following definition of trafficking which is compliant with the Palermo Protocol: "Sec 3. (a) Trafficking in Persons - refers to the recruitment, transportation, transfer or harboring, or receipt of persons with or without the victim's consent or knowledge, within or across national borders by means of threat or use of force, or other forms of coercion, abduction, fraud, deception, abuse of power or of position, taking advantage of the vulnerability of the person, or, the giving or receiving of payments or benefits to achieve the consent of a person having control over another person for the purpose of exploitation which includes at a minimum, the exploitation or the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery, servitude or the removal or sale of organs.

The recruitment, transportation, transfer, harboring or receipt of a child for the purpose of exploitation shall also be considered as "trafficking in persons" even if it does not involve any of the means set forth in the preceding paragraph."

18. *Expanded Anti-Trafficking in Persons Act 2012, Republic Act 10364*, Philippines.

19. Manila Bulletin, *IACAT to strengthen country's fight against trafficking in persons*, January 29th 2020, <https://mb.com.ph/2020/01/29/iacat-to-strengthen-countrys-fight-against-trafficking-in-persons/>.

20. ASEAN, *Bohol Work Plan*, https://asean.org/wp-content/uploads/2012/05/Final-Version-of-Bohol-TIP-Work-Plan-2017-2020_13Nov2017.pdf.

21. "Philippines," *United States Department of State*, <https://www.state.gov/reports/2021-trafficking-in-persons-report/philippines/>.

22. Section 23 of the Anti-Trafficking in Persons Act of 2003, Philippines.

enforcement of court-awarded civil indemnity. There is also the need to ensure that livelihood programs are sufficient to provide support for the recovery and reintegration of victims. As of now, the maximum amount that can be provided for each victim is 200 USD (175 EUR)²³. Shelters are also not readily and easily available and community-based rehabilitation programs are weak and non-existent in many regions. Legal support and other direct services are mostly provided by Civil Society Organisations (CSOs).

Further compounding these deficits, the current anti-trafficking law also does not cover the use of internet technology in the trafficking of human beings. In light of the Covid-19 pandemic and the increase of online exploitation, this is a shortcoming in the current legal framework²⁴. There are discussions to amend the 2012 Expanded Anti-Trafficking in Persons Act 2 to consider the involvement of internet service providers and financial institutions in trafficking. Nowadays, recruitments and payments are often made online and traffickers have found ways to launder their gains with online financial institutions.



However, most importantly, the government's approach does not address the root causes of trafficking and forced prostitution. The following provides an analysis of the underlying reasons as to why trafficking, particularly sex trafficking, of women and girls still prevails and why victims are unable to obtain justice.

IV. CAUSES FOR TRAFFICKING AND SEXUAL EXPLOITATION AND OBSTACLES TO JUSTICE

1. Cultural and Religious Attitudes and Norms

Prostitution is a legacy of colonialism and was introduced to the Philippines by the arrival of the Spanish. During colonial rule, Filipinos, after being made an underclass in their own country, were left socioeconomically disadvantaged. Prostitution offered monetary opportunities to many families, leading to the bodies of girls and women being seen as alternative sources of income and giving birth to a culture where forced prostitution could flourish²⁵.

The US seized the Philippines from Spain in 1898 and ruled until independence in 1946. However, due to the Philippines' militarily strategic positioning in the Pacific, a heavy US presence remained until the largest US overseas military base closed in 1992²⁶. The US military bases in Zambales sustained what was referred to by many as a "sexual Disneyland" for US servicemen, with most women in prostitution coming from poor rural villages. They were drawn by US dollars, and often came thinking they could "get jobs on the military base to help support their families back home"²⁷.

23. Under the Recovery and Reintegration Program of Trafficked Persons (RRTP).

24. CEDAW, *Concluding Observations on the Philippines*, UN Doc. CEDAW/C/PHL/CO/7-8, July 25th, 2016, para. 27(a).

25. Sevilla, Cristina, *Commentary Critiquing Law Reform: Prostitutes in the Philippines under the lens of Victim-ology*, November 2013, Philippine Journal of Child Sexual Abuse, Volume 3, pp. 62-72.

26. Drogin, Bob, *Americans Bid Farewell to Last Philippine Base*, Los Angeles Times, November 25th, 1992, <https://www.latimes.com/archives/la-xpm-1992-11-25-mn-1038-story.html>.

27. Evans, David, *Prostitution; Legacy of U.S. Troops in the Philippines*, Daily Press, May 27th, 1990, <https://www.dailypress.com/news/dp-xpm-19900527-1990-05-27-9005318999-story.html>.

Steps were taken to prevent the spread of venereal disease, but US authorities saw servicemen's access to the women as a benefit to their morale and did nothing to stop them²⁸. Although the US military bases closed more than 30 years ago, the patriarchal and imperialistic hangovers remain and they influence the current systemic discrimination against girls and women, human trafficking and sexual exploitation.

In the context of culture and discrimination as root causes for GBVAW, religion is another important aspect that cannot be ignored. The Philippines is one of five countries in the world with the largest Catholic population. Christian religion is deeply embedded in its culture, and the Catholic Church is influential in policy formulation and remains one of the strongest driving forces in determining the outcome of policy discourses. Conservative Catholic values regarding prostitution have shaped legislation that criminalizes women in prostitution, whereas those accessing their services are seemingly removed from the equation²⁹. This is supported by the criminal code, which defines "prostitution" as a crime that can only be committed by a woman³⁰.

The long history of colonialism in the Philippines has embedded a patriarchal culture among Filipinos, with women perceived as sexual objects that are subordinate to men. Women in prostitution, who are trafficked for sexual exploitation, face systemic oppression that compounds their vulnerability. The situation of powerlessness for women in prostitution illustrates women's lack of agency against in-country institutional and cultural norms and practice.

2. Victim Blaming and Victim Identification

Many victims of trafficking do not report their ordeals to authorities. Mistrust in authorities accounts for a lot of this, such as in Mylene and Liza's case above, where they could not report their abuse as it was committed by state representatives who were supposed to protect them. A study revealed that almost all respondents who were victims of trafficking said that they had not spoken to the authorities about their experiences³¹. Rather than taking this approach, all respondents had recounted their experiences to CSOs instead. Reasons for not reporting their victimization to government authorities vary. In three cases, victims were threatened with further violence, while another respondent reported their family was also threatened with violence. However, for the majority of respondents, threats by traffickers to silence them are not necessary, a lack of trust and a feeling that authorities are powerless to help victims are their primary considerations³².

Because of the reluctance to report, the first time a trafficking victim meets law enforcement authorities is usually when arrested for prostitution or by being directly sexually exploited by police officers, such as in the case of Liza and Mylene. As a result, victims of trafficking are often not identified, despite victim identification being crucial to address trafficking and prevent revictimization. Proper and robust protocol for victim identification would result in appropriate support services and care and prevent further violence against victims.

28. Sevilla, Cristina, *Commentary Critiquing Law Reform: Prostitutes in the Philippines under the lens of Victim-ology*, November 2013, Philippine Journal of Child Sexual Abuse, Volume 3, pp. 62-72.

29. *Revised Penal Code, Republic Act 10158*, Article 202 provides: for the purposes of this article, women who, for money or profit, habitually indulge in sexual intercourse or lascivious conduct, are deemed to be prostitutes.

"Any person found guilty of any of the offenses covered by this article shall be punished by arresto menor or a fine not exceeding 200 pesos, and in case of recidivism, by arresto mayor in its medium period to prison correctional in its minimum period or a fine ranging from 200 to 2,000 pesos, or both, in the discretion of the court."

30. Ibid.

31. Tigno, Jorge, *Trafficking in Human Beings from the Philippines: Examining the Experiences and Perspectives of Victims and Non-Governmental Organisations Executive Summary Institute for Strategic and Development Studies*, 2003, https://www.unodc.org/pdf/crime/human_trafficking/Exec_summary_ISDS.pdf.

32. Ibid.

In addition, most victims of trafficking do not fit the stereotype of an ideal victim who generates sympathy, as many appear complicit or appear to cooperate with their traffickers³³. This impacts how communities, including criminal justice professionals, treat women in need of help, who are not identified as victims. It is then not surprising that there is an entrenched culture of victim blaming in the Philippines. A victim, who was groomed for sexual exploitation from the time she was a minor, revealed to the author, who represented her before court, that when she filed her complaint with the assistance of a CSO, she almost withdrew the case. Initially grateful that a female prosecutor was handling the case, she was shocked when they had remarked, “how can that be a victim, she wanted it”. This remark produced a feeling that she was less of a victim and more a willing participant to her exploitation. In turn, she began to blame herself for her victimization³⁴.

3. Lack of Intersectional Approaches

It is a well-known fact that traffickers target vulnerable and marginalized individuals and communities. Time and time again, reported cases have shown that socioeconomic circumstances coupled with insufficient knowledge and access to information, few viable livelihood opportunities, displacement, family violence, and child sexual abuse, among others, are key driving forces that fuel the trafficking trade³⁵. According to the Asian Development Bank, 17% of the population in the Philippines lives below the national poverty line³⁶. This leaves a large sector of the population vulnerable to trafficking and sexual exploitation. In the above-described case studies, all victims came from extremely impoverished communities and all victims had hardly any other means to survive. These examples show how, in the context of trafficking and sexual exploitation, gender intersects with socioeconomic marginalization³⁷. In order to address the issue of sex trafficking, the government not only has to address discrimination against women, but also extreme in-country economic disparity. This is also reflected in the ASEAN Convention that asks members to strengthen measures that “alleviate the factors that make persons, especially women and children, vulnerable to trafficking, such as poverty, underdevelopment and lack of education and equal opportunity”³⁸.

A strict law-and-order approach at the center of national efforts to combat trafficking may only result in creating a never-ending cycle for victims and traffickers. Understanding and knowing the root causes, addressing them by providing and allocating sufficient resources, rather than treating the symptoms through a law-and-order approach, will prevent victimization and combat trafficking.

An intersectional approach should also be taken when combatting overseas trafficking to other countries. According to UN Women, in 2016, only 40% of Filipino women had been in paid employment during the preceding decade³⁹. The lack of decent job opportunities pushes women to look for opportunities abroad and migrate for work. However, migration laws demand certain

33. Victims of trafficking in the Philippines are commonly labelled as “willing victims”.

34. Case on file with the author.

35. Human Rights Council, *Report of the Special Rapporteur on trafficking in persons, especially women and children*, UN Doc. A/73/171, July, 17th, 2018, para.5; Human Rights Council, *Report of the Special Rapporteur on trafficking in persons, especially women and children*, UN Doc. A/HRC/23/48/Add.3, April 19th, 2013, para. 3.

36. The latest numbers available stem from 2018. Asian Development Bank, *Poverty Data: Philippines*, 2018, <https://www.adb.org/countries/philippines/poverty>.

37. On the intersectionality approach see e.g. UN Women, *The Value of Intersectionality in Understanding Violence against Women and Girls*, July 2019, <https://www2.unwomen.org/-/media/field%20office%20eca/attachments/publications/2019/10/the%20value%20of%20intersectionality%20in%20understanding%20violence%20against%20women%20and%20girls.pdf?la=en&vs=3339>.

38. ASEAN Convention Against Trafficking in Persons, Especially Women and Children, November 27th, 2015, art. 12 b, <https://asean.org/asean2020/wp-content/uploads/2021/01/ACTIP.pdf>.

39. UN Women, *Filipino Women Migrant Workers Fact Sheet*, 2016, <https://www.unwomen.org/en/digital-library/publications/2016/6/filipino-women-migrant-workers-fact-sheet>.

prerequisites, such as a mandatory minimum income to obtain a visa. Given that women are often employed in low-wage and insecure employment, it is difficult for women to satisfy such criteria. Given this immediate barrier, they are then forced to seek alternative ways to migrate, which often leaves women at an increased risk of being trafficked⁴⁰.

4. Covid-19 and the Increase of Online Recruitment and Sexual Abuse

The Covid-19 pandemic exacerbated the financial hardships for many in the Philippines and played into the hands of traffickers. While their operations were hampered by quarantine and lockdown measures, there was a steep increase in online-exploitation and online sex trafficking. This implies that, once people can move more freely again, trafficking and forced prostitution will return to its previous, pre pandemic rates and possibly increase as well⁴¹.

There are indications that the Covid-19 pandemic has further worsened the situations of citizens vulnerable to trafficking and sexual exploitation. In particular, traffickers have kept pace with technology, becoming adept at using the internet for their operations. In the early days of the internet, they used stand-alone sites, before exploiting the potential of classified advertisement sites and then moving into social media. The internet helps traffickers to operate in multiple locations simultaneously while physically exploiting victims in just one location. The first case of online trafficking recorded by UNODC took place in the early 2000s, when a free-standing webpage was used to connect buyers with local agents. Now, internet-based trafficking spans from the basic advertisement of victims online, to advanced combinations of smartphone apps in integrated business models to recruit victims and transfer profits⁴².

Making issues worse, the Covid-19 pandemic is fueling an increase in online sexual abuse of children, mostly girls⁴³. For years, the Philippines has been known as the largest source of online sexual exploitation of children. With lockdown orders and other measures, for many adults in already socioeconomically disadvantaged communities it was difficult to keep or find a job. CSOs and the Commission on Human Rights have raised the alarm on the steep increase of cases in which parents and other family members sell their children to online sexual abuse⁴⁴. The increase of exploitation can also be seen in official statistics.

From March to May 2020, at the start of the community quarantine to curve the spread of the pandemic, the Office of Cybercrime of the Department of Justice recorded a 264% increase in online tips related to child sexual exploitation compared with the same period in 2019⁴⁵. Unfortunately, protective and legal services to ensure that children are safe from online sexual abuse and exploitation are drastically insufficient and lack the tools to fully police digital crime⁴⁶.

40. Katie McQue, *Sold into Syrian servitude, Filipina workers tell of abuse, rape and imprisonment*, The Washington Post, January 24th, 2021 https://www.washingtonpost.com/world/middle_east/trafficking-migrant-workers-syria-uae/2021/01/24/1d79e43c-3f0d-11eb-b58b-1623f6267960_story.html.

41. UNODC, *Global Report on Trafficking in Persons 2020*, January 2021, p. 4, https://reliefweb.int/sites/reliefweb.int/files/resources/GLOTIP_2020_15jan_web_0.pdf.

42. Ibid.

43. Jennings, Ralph, *Philippines Parents Pimp out their Children as COVID Job Losses Mount*, VOA News, December 4th, 2020, https://www.voanews.com/a/east-asia-pacific_philippines-parents-pimp-out-their-children-covid-job-losses-mount/6199166.html.

44. Ibid.

45. Joy Patag, Kristine, *Philippines keeps Tier 1 status but convictions of alleged traffickers lacking*, Philippine Star, July 2nd, 2021, <https://www.philstar.com/headlines/2021/07/02/2109698/philippines-keeps-tier-1-status-convictions-alleged-traffickers-lacking>.

46. Save the Children, *Online sexual abuse of children rising amid COVID-19 Pandemic*, 2020, <https://www.savethechildren.org.ph/our-work/our-stories/story/online-sexual-abuse-of-children-rising-amid-covid-19-pandemic/>.

5. Ignoring the Demand for Trafficking and Sexual Exploitation

Demand for prostitution is a root cause of trafficking and the failure to address it ultimately will lead to a failure to prevent and combat the problem⁴⁷. Therefore, the ASEAN Convention asks to “discourage the demand that fosters all forms of exploitation of persons, especially women and children that lead to trafficking”⁴⁸. Similarly, the Bohol TIP Work Plan provides that signatories should strengthen prevention measures to discourage demand that fosters all forms of exploitation of persons especially women and children⁴⁹. Demand in the context of trafficking is often shaped by desire for financial gain, and discriminatory attitudes, including those stemming from cultural attitudes and beliefs. More women are trafficked for sexual exploitation because they are viewed and perceived as the most vulnerable, the most impoverished, and the least likely to fight back.

Sexual exploitation persists due to a failure to effectively discourage the demand that fosters exploitation and leads to trafficking. Entrenched norms and stereotypes regarding male domination and the need to assert male control or power drive the demand for sexual exploitation of women and girls. A demand that is easily met due to the massive financial gains for traffickers and the widespread impunity for their crimes⁵⁰.

As long as demand for commercial sex is high, trafficking of women and girls from impoverished areas to big urban areas will be high. And as long as women in prostitution are viewed as the problem and not their abusers, trafficking will remain a vicious cycle of revictimization and reoffending. Policies that perpetuate discrimination against women and girls normalize the demand side of exploitation and help communities adopt permissive and dismissive views of the discrimination of women and girls.

Procurers, traffickers, and customers knowingly exploit the vulnerabilities of victims that are created by high rates of poverty, unemployment, discriminatory labor practices, gender inequalities, and male violence against women and children. On a structural level, there must be a recognition that to succeed in campaigning against sexual exploitation, the political, social, and economic conditions under which women and girls live must be ameliorated. This can be done by introducing development policies focusing on poverty reduction, sustainable development, gender equality, and social programs specifically for women. Furthermore, sexual exploitation and sex trafficking must be seen as issues that cannot, and should not, be separated. It is well understood that the purpose of recruitment, transport, sale, and purchase of women and girls by traffickers, procurers, and members of organized crime groups is, in the overwhelming majority of cases, to sell these women into the prostitution industry⁵¹.

6. No Multi-sectoral Engagement and Coordination

Civil society organizations in the Philippines play a major role in the promotion of human rights, public discourse, and the development of human rights policy. The end of the Marcos dictatorship marked the beginning of a resurgence in civil society that built strong relationships between poor and marginalized communities. This was one of the reasons why following governments have

47. Ekberg, Gunilla, *The Swedish Law That Prohibits the Purchase of A Sexual Service: Best Practices for Prevention of Prostitution and Trafficking in Human Beings*, 2004, https://www.womenlobby.org/IMG/pdf/ekberg_articlevaw_updated0504271.pdf

48. ASEAN Convention Against Trafficking in Persons, Especially Women and Children, November 27th, 2015, Art. 12 a, <https://asean.org/asean2020/wp-content/uploads/2021/01/ACTIP.pdf>.

49. ASEAN, Bohol TIP Work Plan 2017-2020, https://asean.org/wp-content/uploads/2012/05/Final-Version-of-Bohol-TIP-Work-Plan-2017-2020_13Nov2017.pdf.

50. CEDAW, *General Recommendation No. 38 on trafficking in women and girls in the context of global migration*, UN Doc. CEDAW/C/GC/38, November 6th, 2020.

51. Ekberg, Gunilla, *The Swedish Law That Prohibits the Purchase of A Sexual Service: Best Practices for Prevention of Prostitution and Trafficking in Human Beings*, 2004, https://www.womenlobby.org/IMG/pdf/ekberg_articlevaw_updated0504271.pdf.

made efforts to coordinate closely with civil society groups in developing and implementing public policy⁵².

Unlike many other forms of GBVAW or other human rights violations, trafficking and forced prostitution involve a variety of actors from different sectors, such as the commercial sex industry and tourism. However, the anti-trafficking movement has been limited to women's and children's rights organizations and religious or faith-based organizations. It has hardly included business actors or other human rights networks, like the anti-torture network, despite trafficking and forced prostitution being recognized as forms of torture or other ill-treatment⁵³. To effectively address trafficking and forced prostitution it is important that all relevant sectors come together and engage in policy development and public education campaigns. Human rights organizations, particularly anti-torture and women's and children's rights organizations, must proactively engage with one another to strengthen understanding of torture in the context of GBVAW, trafficking, and sexual exploitation of women.

7. No Application of the Anti-Torture Framework

Trafficking and forced prostitution is considered a form of torture or ill-treatment as has been confirmed by the UN Committee Against Torture (CAT). States are obliged to address the root causes of trafficking, in particular the close links to sexual exploitation, prosecute and punish perpetrators, and provide redress and reintegration services to victims⁵⁴. A robust and effective anti-torture framework requires a holistic approach that not only requires prosecution and punishment, both responses that the Philippines government currently focuses on. Additionally, the UN Special Rapporteur on trafficking has stressed that the right to remedy for victims includes restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition that should reflect a victim-centered approach⁵⁵. These are exactly the elements the comprehensive anti-torture framework guarantee, and where the Philippines government should look to make inroads⁵⁶.

From a legislative standpoint, trafficking is dealt with under the Anti-trafficking in Persons Act⁵⁷. However, the anti-torture framework approach should extend to the interpretation of this act to reflect the severity of abuse and powerlessness experienced by trafficked and sexually exploited victims. This is especially necessary when military personnel, police officers, immigration officers, or government officials are accused of committing the crimes.

As illustrated by the case study of Liza and Mylene, the relentless and cumulative abuse and discrimination these two women experienced at the hands of the police and military, namely for being engaged in prostitution, amounts to torture. The case study of Liza and Mylene typifies the discriminatory treatment of women in prostitution, who are specifically targeted due to individual,

52. Asian Development Bank, *Overview of NGOs and Civil Society in the Philippines*, 2007, <https://www.adb.org/sites/default/files/publication/28972/csb-phi.pdf>.

53. CAT, *Concluding Observations on Belarus*, UN Doc. CAT/C/BLR/CO/4, December 7th, 2011, para. 23.

54. Ibid.

55. Human Rights Council, *Report of the Special Rapporteur on trafficking in persons, especially women and children*, UN Doc. A/HRC/44/45, April 6th, 2020, para. 47.

56. CAT, *General Comment No. 3. Implementation of article 14 by States parties*, UN Doc. CAT/C/GC/3, December 13th, 2012.

57. RA 9208, Section 6. Qualified Trafficking in Persons. - The following are considered as qualified trafficking:

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(d) When the offender is an ascendant, parent, sibling, guardian or a person who exercises authority over the traf-ficked person or when the offense is committed by a public officer or employee;

(e) When the trafficked person is recruited to engage in prostitution with any member of the military or law en-forcement agencies;

(f) When the offender is a member of the military or law enforcement agencies; and

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structural, and institutional vulnerabilities brought about by a system that adopts and promotes legislation that enables the discrimination of women⁵⁸.

Although the definition of torture is broadly formulated in the Anti-Torture Act of 2009⁵⁹, it was not drafted with the experiences of trafficked and sexually exploited victims in mind. As most domestic anti-torture laws, its purpose was first and foremost to combat torture in the context of interrogation and detention. This means that in practice, public officials complicit in trafficking and forced prostitution are not prosecuted under the Anti-Torture Act of 2009.

Unfortunately, the CAT did not address trafficking and forced prostitution in its 2016 review of the Philippines⁶⁰. In the absence of this scrutiny, it makes it even harder to advocate for trafficking and forced prostitution being prosecuted under the Anti-Torture Act of 2009.

V. CONCLUSION

Most victims of sex trafficking in the Philippines are women and girls. The Philippine government has aggressively prosecuted traffickers, seen by the increased number of police investigations and trafficking convictions over the years. Moreover, the Anti-Trafficking in Persons Acts 2003 and 2012 and the current national strategic plan of action emphasizes public awareness, detection, prosecution, rehabilitation, and reintegration.

However, the focus on law and order through investigation and the prosecution of traffickers fails to address the root causes and allows human trafficking to persist in the Philippines. Many women and girls continue to be victims of human trafficking due to poverty and deeply embedded discriminatory views of women that also seep into policy development. These policies and practices are vestiges of colonial rule and religious influences that continue to permeate the social, economic, and political environment in the country. In turn, they enable crimes amounting to torture to continue being committed against women and girls.

Despite the laudable intentions and objectives of the current national strategic plan of action, the trafficking of women and girls for sexual exploitation will persist if there is a continued failure to understand the factors that make them most vulnerable to these crimes. Finally, understanding these root causes and addressing them through sufficient and effective programs requires more extensive data retrieval to ascertain the prevalence of GBVAW in the Philippines. It is only when we have a clear picture of the true extent of the problem that we can design and implement comprehensive plans to address and eliminate human trafficking.

58. For example, the Revised Penal Code provisions on adultery and concubinage where there is a higher burden put on women/wives than on men/husbands: <https://pcw.gov.ph/assets/files/2019/07/PCW-WPLA-Policy-Brief-3-Adultery-Concubinage.pdf?x27139>; or that prostitution is only illegal if offered by women but not by men as per Article 202 of the Revised Penal Code, Republic Act 10158, Philippines.

59. Section 3 (a) of the *Anti-Torture Act of 2009* defines torture as: (a) "Torture" refers to an act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him/her or a third person information or a confession; punishing him/her for an act he/she or a third person has committed or is suspected of having committed; or intimidating or coercing him/her or a third person; or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a person in authority or agent of a person in authority."

60. CAT, *Concluding Observations on the Philippines*, UN Doc. CAT/C/PHL/CO/3, June 2nd, 2016.



03

THE ORDEALS OF NEPAL'S VICTIMS OF TORTURE AND CONFLICT-ERA SEXUAL VIOLENCE

ROSHANI GIRI ¹

1. This chapter was developed with the support of the Advocacy Forum Nepal.

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INTRODUCTION

Gender-based violence against women (GBVAW) in Nepal is increasing². Women in detention are particularly at high risk of torture, sexual and gender-based violence, as well as other ill-treatment, especially when put in comparison to their male counterparts³. The social stigma of being arrested and the damage this causes to the reputations of individuals and families leads Nepalese women victims of violence to not speak of their experiences or seek legal remedy. Even when victims are willing to come forward, socioeconomic status renders women silent in the fear that people will know about their arrest. Furthermore, financial dependence on male family members creates further barriers for women to hire lawyers and justice defenders. The forced silence of these women produces a vicious cycle of violence, rendering them as continuous victims at the hands of the State and their surrounding communities.

The influences of a society underpinned by patriarchy makes it even more difficult for detained women to speak of their ordeals during imprisonment, how they were treated, and the violation of their personal dignity. These pervasive gender roles in Nepal legitimize GBVAW⁴, and makes it even harder for a victim's reintegration into society⁵.

The trauma stemming from GBVAW that took place during the Nepalese Civil War is just as damaging. Women victims of conflict-era violence are continuously ostracized, and their hopes of closure shattered with the failure of the State to recognize and provide them reparation, even 14 years since the fighting stopped. Whereas other factions of the country have been enabled to start moving past the conflict, these women's lives are frozen in a time where they suffered sexual and gender-based violence from the army and the Maoist rebels. As a result, many live lives shrouded in trauma, dealing with physical and mental illness, while their perpetrators walk free. In fact, the widespread impunity enjoyed by conflict-era perpetrators has further fuelled GBVAW⁶. Until Nepal rectifies these numerous issues, it is difficult to envision that the State intends to fully address on-going GBVAW.

The following sections describe the scope of torture and ill-treatment of women in detention and conflict-era sexual violence.

2. d'Orlando, Giacomo, *Gender-based violence in Nepal: the long road to healing*, Equal Times, 2021, https://www.equaltimes.org/gender-based-violence-in-nepal-the?lang=en#.YYwkOb3MJ_Q.
3. Advocacy Forum-Nepal, *Torture in Nepal in 2019 The Need for New Policies and Legal Reform*, 2020, <http://www.advocacyforum.org/downloads/pdf/publications/torture/26-june-2020.pdf>.
4. Rajbhandari, Retika, *Violence against Women in Nepal: A Complex and Invisible Reality*, WOREC, 2006.
5. Goswami, Roshmi, *UNSCR 1325 and Female Ex-Combatants – Case study of the Maoist Women of Nepal*, UN Women, 2015, <https://wps.unwomen.org/pdf/research/ROSHMI.pdf>.
6. Johnson Sirleaf, Ellen & Rehn, Elisabeth, *Women, War, Peace: The Independent Experts' Assessment on the Impact of Armed Conflict on Women and Women's Role in Peace-Building*, UNIFEM, 2002, <https://www.unwomen.org/en/digital-library/publications/2002/1/women-war-peace-the-independent-experts-assessment-on-the-impact-of-armed-conflict-on-women-and-women-s-role-in-peace-building-progress-of-the-world-s-women-2002-vol-1>.

I. TORTURE AND ILL-TREATMENT OF WOMEN IN DETENTION

Criminal detention in Nepal exposes an individual to various kinds of violence and inhumane treatment. A 2019 study by Advocacy Forum Nepal found that female detainees are at a higher risk of torture and other forms of ill-treatment than male detainees, with 26% of interviewed women and 19% of interviewed men reporting they were subjected to these practices while in detention⁷. Women are at particular risk of harassment, forced undressing, and beating in intimate areas⁸. Women are also subject to verbal abuse, use of derogatory names, harassing gazes, touching of intimate body parts, “catching hands”⁹, and full body searches by policemen¹⁰, all of which are tantamount to sexual harassment under the 2017 National Criminal Code Act (Criminal Code)¹¹.

Gender in Nepal has become a determining factor of exposure to different forms of violence¹². Deep-set gender norms and their expectations contribute to women being coerced into not reporting incidents of abuse. Those who do speak out are met with the threats of false allegations against them, arrest, and prosecution, and are regularly made to fear for their lives¹³. Falsified cases have been reported, with police making detainees sign attestations stating they suffered injuries while fleeing the time of arrest and not during their time in custody¹⁴.

Although the overall situation of prisons and detention facilities is not satisfactory for all Nepalese detainees, women in detention face particular difficulties, especially when pregnant, menstruating, or with children. The detention centres hold male and female detainees separately, but often these buildings are placed facing each other. This creates issues of privacy, for instance, lactating mothers do not feel comfortable to change their clothes and/or breastfeed their children¹⁵. On her visit to Nepal in November 2018, the Special Rapporteur on violence against women, its causes and consequences, visited the women’s section in central prison in Kathmandu and noted that she was deeply concerned about the dire conditions at the facility. She particularly noted the overcrowding; the lack of adequate facilities to receive visitors; the absence of appropriate bedding; the lack of access to nutritious food; the lack of alternatives to custodial sentences, in particular for women with dependent children; and the lack of facilities available to support women in raising their children¹⁶.

Privacy and the prying eyes of male detainees are only two of the problems faced by detained women. Further reports have shown that pregnant women do not receive enough nutritious food¹⁷, that it is difficult for women to maintain good hygiene practices during menstruation, and women are not provided with sanitary products¹⁸.

7. Advocacy Forum-Nepal, *Torture in Nepal in 2019 The Need for New Policies and Legal Reform*, 2020, <http://www.advocacyforum.org/downloads/pdf/publications/torture/26-june-2020.pdf>.

8. Ibid.

9. Ibid.

10. Advocacy Forum-Nepal, *Torture Of Women: Nepal's Duplicity Continues*, 2012, <http://www.advocacyforum.org/downloads/torture-of-women-report-june-26-2012-english.pdf>.

11. *National Criminal (Code) Act 2017*, Section 224, Nepal.

12. Advocacy Forum-Nepal, *Torture in Nepal in 2019 The Need for New Policies and Legal Reform*, 2020, <http://www.advocacyforum.org/downloads/pdf/publications/torture/26-june-2020.pdf>.

13. Advocacy Forum-Nepal, *Continuing Torture in 2015*, 2015, <http://www.advocacyforum.org/publications/June26Report.pdf>.

14. Ibid.

15. Ibid.

16. Human Rights Council, *Special Rapporteur on violence against women its causes and consequences. Visit to Nepal*, UN Doc. A/ HRC/41/42/Add.2, June 20th, 2019, paras. 53 and 55.

17. Ibid.

18. Advocacy Forum-Nepal, *Torture Of Women: Nepal's Duplicity Continues*, 2012, <http://www.advocacyforum.org/downloads/torture-of-women-report-june-26-2012-english.pdf>.

An illustrative case of GBVAW experienced in detention occurred in January 2020, when three women, Shilpa Nepali, Nisha Magar, and Manrupa Bhujel, were allegedly sexually abused in a police station after being arrested. According to them, the policemen groped their breasts, called them “prostitutes”, asked them how many customers they had that day, and did not call in a female police officer despite repeated requests¹⁹.

Unfortunately, this is one of innumerable cases in Nepal, and sadly many include the abuse of detained juvenile girls. Interviews conducted by Advocacy Forum-Nepal revealed cases in which girls as young as 13 were subjected to severe beating with plastic pipes or bamboo sticks, in addition to practices of sleep deprivation²⁰.

II. CONFLICT-ERA SEXUAL VIOLENCE

In addition to contemporary forms of torture inflicted upon women, Nepal is still reeling from conflict that marred the country from 1996 to 2006. During this decade, the country witnessed a civil war between Maoist rebels and the army, causing the deaths of 13,000 people and 1,300 disappearances²¹.

Rape, sexual violence, threats, arbitrary detention, and physical and mental abuse were often utilized by the Royal Nepal Army as a means of punishment for female relatives of Maoist combatants, women accused of providing food and shelter to Maoists²². The Maoist rebels also committed GBVAW against those who refused to join their cause or spoke out against them²³. However, due to limited recording at the time, the true rate of GBVAW instances remains unknown, with this data deficit compounded by the reluctance of victims to come forward²⁴.

When women dared to speak and complain, they faced pressure from the perpetrators and their own communities to withdraw their complaints for the sake of “social harmony”. In addition to this, police have refused to file complaints due to a lack of medical reports and doctors in turn have refused to perform medical checks in the absence of police complaints²⁵. Even when charges are pressed, actions are rarely taken²⁶. Furthermore, complicated and expensive legal processes and a lack of confidentiality prevent women from seeking justice. For some victims it was too late to press charges, due to the 35-day statutory limitation on the offence of rape. In addition to these stigmatic and legal hurdles, political protection of perpetrators and threats also prevented women from accessing justice²⁷. Sometimes, bribes were offered to the victim or her family to silence them, including in the case of a 13-year-old girl allegedly raped by security forces personnel²⁸.

19. Interview conducted with Advocacy-Forum Nepal, 2020.

20. Advocacy Forum-Nepal, *Torture of Juveniles in Nepal A Continuing Challenge*, 2018, <http://www.advocacyforum.org/downloads/pdf/publications/torture/june-26-2018.pdf>.

21. OHCHR, *Nepal Conflict Report*, 2012, https://www.ohchr.org/Documents/Countries/NP/OHCHR_Nepal_Conflict_Report2012.pdf.

22. Human Rights Watch, *Silenced And Forgotten – Survivors of Nepal's Conflict-Era Sexual Violence*, 2014, https://www.hrw.org/sites/default/files/reports/nepal0914_ForUpload_0.pdf.

23. Ibid.

24. OHCHR, *Nepal Conflict Report*, 2012, https://www.ohchr.org/Documents/Countries/NP/OHCHR_Nepal_Conflict_Report2012.pdf.

25. Ibid.

26. Institute of Human Rights Communication, *Nepal, Sexual Violence in the “People’s War”: The Impact of Armed Conflict on Women and Girl in Nepal*, 2006, [https://ihicon.org.np/publications/detail/sexual-violence-in-the-%E2%80%9Cpeople%E2%80%99s-war%E2%80%9D-\(2006\)](https://ihicon.org.np/publications/detail/sexual-violence-in-the-%E2%80%9Cpeople%E2%80%99s-war%E2%80%9D-(2006)).

27. UN Country Team-Nepal, *Report of the Secretary General to the Security Council on the Implementation of SCR 1820 on Women, Peace and Security*, UN Security Council, 2009, <https://www.peacewomen.org/SCR-1820>.

28. Institute of Human Rights Communication, *Nepal, Sexual Violence in the “People’s War”: The Impact of Armed Conflict on Women and Girl in Nepal*, 2006, [https://ihicon.org.np/publications/detail/sexual-violence-in-the-%E2%80%9Cpeople%E2%80%99s-war%E2%80%9D-\(2006\)](https://ihicon.org.np/publications/detail/sexual-violence-in-the-%E2%80%9Cpeople%E2%80%99s-war%E2%80%9D-(2006)).

Rape, attempted rape, threats of rape, gang rape, forced nudity, and rape in front of one's children were the most common forms of sexual violence during the Civil War²⁹. Pregnant women, lactating mothers³⁰, and women with mental disabilities³¹ were also sexually abused during this period. Juvenile girls, some as young as 10 years old, were targeted and subjected to multiple forms of gender-based violence. In fact, research by the United Nations (UN) Office of the High Commissioner for Human Rights (OHCHR) showed that more than one third of the victims were children, with many of those victims under 15 years of age³². The violence victims of conflict-era sexual abuse suffered and the obstacles victims face is well illustrated in the case below.

III. CASE STUDY: PURNA MAYA'S ORDEAL

On 23 November 2004, Purna Maya was taken to Bhawani Baks Army Barracks. Upon reaching the barracks, she was blindfolded, tortured, and raped by a Royal Nepal Army Lieutenant. During the attack, the Lieutenant bit Purna's nose, cheek, and shoulder, leaving permanent scars on her body. After this initial rape, three additional soldiers then took turns in doing the same. Purna finally managed to escape with the help of a soldier not involved in the attack, fleeing the barracks. After seeing her crying in pain and unable to walk, a local shop owner called an ambulance. She was taken to the Dailekh District Hospital; where doctors determined the trauma to her uterus to be so severe that she could not be treated in Nepal. Purna was then referred to Lucknow, India, where she would undergo a hysterectomy the following year, as only then was she able to financially afford the treatment.

In 2010, she sought compensation and legal remedy for the violence committed against her. However, her complaint was rejected due to the (then existing) 35-day statutory limitation for rape. Her writ application to the Supreme Court was also rejected. When her husband was made aware about the rape, he stopped providing her with financial support.

In 2012, with the support of Advocacy-Forum Nepal and Redress Trust, she submitted a communication to the UN Human Rights Committee (HRC). In 2017, Nepal was found responsible for violating enshrined rights under the UN International Covenant on Civil and Political Rights (ICCPR), including prohibition of torture and the right to liberty and security, among others. Upon identifying these violations, the HRC recommended the State to conduct a thorough and effective investigation, prosecute the perpetrators of the crime, compensate adequately, and provide necessary psychological rehabilitation and medical treatment for the victim³³.

Although the attack of Purna Maya is a high-profile case, the HRC recommendations are yet to be implemented³⁴. This case is demonstrative of the prevalence of impunity. It provides just a glimpse of the ordeals of other victims, those whose cases do not receive the same level of media and civil attention.

29. Human Rights Watch, *Silenced And Forgotten – Survivors of Nepal's Conflict-Era Sexual Violence*, 2014, https://www.hrw.org/sites/default/files/reports/nepal0914_ForUpload_0.pdf.

30. Ibid.

31. OHCHR, *Nepal Conflict Report*, 2012, https://www.ohchr.org/Documents/Countries/NP/OHCHR_Nepal_Conflict_Report2012.pdf.

32. Ibid.

33. HRC, *Purna Maya v. Nepal*, UN Doc. CCPR/C/119/D/2245/2013, June 23rd, 2017, para. 14.

34. Real Rights Now, *Purna Maya*, 2021, <https://realrightsnow.org/en/purna-maya/>.

This case demonstrates how illusory justice is for most victims of conflict-era sexual abuse. The section below describes the causes for GBVAW in the context of detention and conflict and explains the obstacles women face when seeking justice.

IV. REASONS FOR VIOLENCE AND IMPUNITY

1. Statutory Limitation Within the Criminal Code

The Criminal Code criminalized torture in 2017, however it has several limitations and is not fully compliant with the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT Convention). For instance, the monetary fine for torture is limited to 50,000 NRS (360 EUR) and compensation is dependent on the judge's discretion and the perpetrators' economic status³⁵.

When it comes to women victims, the statutory limitation of six months is of particular importance, as it poses a formidable barrier for women to lodge cases³⁶. As gender-based violence, particularly rape, is a traumatic experience, exacerbated by stigma, financial barriers, and threats of retaliation, it is difficult for women to access justice in such short period of time. Lack of legal literacy also contributes to women not seeking justice within this period.

Much of this can be attributed to the patriarchal protection of male perpetrators, given that in Nepalese society the perpetrators of rape and other sexual violence are mostly men, and male policy makers draft relevant laws³⁷. With regard to other forms of torture, women again face the social stigma of bringing shame to themselves and their families by informing others of their arrest. Even with counselling offered by Non-governmental Organisations (NGOs), such as Advocacy Forum-Nepal, it is not guaranteed that victims can be convinced to file a case within six months³⁸.

The six-month statutory limitation of the Criminal Code effectively excludes the possibility of prosecution for conflict-era torture cases and endows blanket impunity over historic perpetrators. Furthermore, the lack of security for victims and widespread impunity deters victims from speaking, as they do not have confidence in the justice system³⁹.

A further deterrent for victims against pressing charges is seen with reports of abuse having to be made to the same institutions that the accused belong⁴⁰. While this is a major hindrance to justice

35. *National Criminal (Code) Act 2017*, Section 169, Nepal.

36. The statute of limitations has also been criticized by CEDAW, *Concluding Observations on Nepal*, UN Doc. CEDAW/C/NPL/CO/6, November 14th, 2018, para. 10c.

37. Advocacy Forum-Nepal, *Torture Of Women: Nepal's Duplicity Continues*, 2012, <http://www.advocacyforum.org/downloads/torture-of-women-report-june-26-2012-english.pdf>.

38. Advocacy Forum-Nepal, *Torture in Nepal in 2019 The Need for New Policies and Legal Reform*, 2020, <http://www.advocacyforum.org/downloads/pdf/publications/torture/26-june-2020.pdf>.

39. Advocacy Forum Nepal, *Across the lines: The Impact of Nepal's conflict on Women*, 2010, <http://www.advocacyforum.org/downloads/across-the-lines-the-impact-of-nepal-conflict-on-women.pdf>.

for all torture victims, it is a particular obstacle for women victims of gender-based violence, again due to associated shame and stigma. This is not helped by the reluctance of police officers to register complaints against their colleagues.

2. Gender Bias in Court

While the criminalization of torture is a milestone and instances have decreased since⁴¹, it is still persistently used within the Nepalese criminal justice system. In fact, Nepalese courts are not sensitive to torture and other forms of ill-treatment experienced by detainees, even less so for women and children. When female detainees are presented before court, lack of legal knowledge and literacy, the presence of male policemen and judges, and examinations performed by male doctors prevent women from stating torture and ill-treatment took place, especially if they suffered violence to intimate areas, as was the case with Purna Maya. Talking about a woman's intimate areas is a taboo subject in Nepalese society and women are ashamed of speaking of how they were assaulted, particularly in front of men.

Judges rarely ask detainees whether they have been tortured or otherwise ill-treated in custody. Only when there are visible signs of violence will judges inquire about the wounds. However, with regard to beating in intimate areas, groping, verbal abuse, or sexual abuse, women do not necessarily have physical marks. In Advocacy Forum-Nepal's experience, judges are unlikely to ask about how they were treated in detention and whether they were abused.

Often women find it difficult to recount their ordeals due to the presence of the police during court hearings, with accusers fearing the risk of further torture or ill-treatment once they return to detention⁴².

Courts are not sensitive to the sufferings of women in detention. There have even been instances in which victims were fined for making false allegations against their alleged perpetrator(s) and then further threatened by the accused to not appeal this decision⁴³. This lack of understanding from the court only further deters women from coming forward with their stories.

3. Gaps in the Compensation Relating to Torture Act (TCA)

A parallel legal provision on civil liability for torture and inhumane treatment also exists in relation to torture: the Compensation Relating to Torture Act (TCA). The TCA is limited to compensation of up to 100,000 NRS⁴⁴ (720 EUR) and departmental action against the perpetrator(s)⁴⁵. The statutory limitation is set at 35 days from release from detention, with lodged cases being directly registered to the district court⁴⁶. This statutory limitation again makes it impossible for historical victims of conflict-era gender-based violence to gain justice. Although the TCA was established at the conflict's most intense juncture, there was no possibility for affected women to bring a claim against security personnel within 35 days⁴⁷. Security forces when faced with accusations were documented to have threatened victims and their relatives with violent reprisals, including death

40. *National Criminal (Code) Act 2017*, Section 4, Nepal.

41. Advocacy Forum-Nepal, *Torture in Nepal in 2019 The Need for New Policies and Legal Reform*, 2020, <http://www.advocacyforum.org/downloads/pdf/publications/torture/26-june-2020.pdf>.

42. Ibid.

43. Noorjan Khatun's case was dismissed on the ground of procedural technicalities and was fined for "filing a false complaint" (Advocacy Forum-Nepal. *Torture of Women Report 2012*, 2012, <http://www.advocacyforum.org/downloads/torture-of-women-report-june-26-2012-english.pdf>).

44. *Compensation Relating to Torture Act 1996*, Section 6, Nepal.

45. Ibid, Section 7.

46. Ibid, Section 5.

and further victimization⁴⁸. Unfortunately, the TCA never fulfilled its purpose of providing justice to these women victims of gender-based violence and torture.

4. Legal Illiteracy and Economic Status

Legal illiteracy is rife in Nepal, with victims lacking basic knowledge of legal procedures in place to protect them. The inability to access lawyers, especially women lawyers, prevents victims from speaking of their ordeals and seeking legal support⁴⁹. Women often lack the knowledge of how to access legal aid from the government and other services.

The inability to afford a lawyer is also a common issue for complainants. Women subjected to torture and gender-based violence often belong to financially marginalized groups, greatly restricting their access to legal representation⁵⁰. To ensure that citizens have access to lawyers, the government offers legal aid to people with low incomes⁵¹. In addition to that, a number of NGOs provide legal counselling and legal aid to the victims who cannot afford a lawyer. However, such NGOs are mostly based in cities, and often cannot provide the required legal aid in rural areas.

There is also a lack of necessary human resources under the government-funded legal aid program. The number of lawyers under the Legal Aid Act is minimal, meaning that the services they offer are severely limited. Furthermore, victims require a recommendation letter from their respective ward office, certifying that their yearly income is less than 40,000 NRS⁵² (290 EUR), which is quite difficult to obtain due to procedural complexities. On occasion, when there are no available lawyers, even court officials themselves call NGOs to provide legal aid.

5. Social Stigma and Patriarchal Culture

In Nepalese society, individual and collective cultural identity is woven around women's sexuality. When a woman becomes a victim of gender-based violence she is considered to have lost her honour⁵³. This dishonour not only applies to the victim but can also extend to their entire family and sometimes their entire community⁵⁴. As a result, women who suffered sexual violence during the conflict era choose to keep quiet and hide their ordeals rather than seek justice. Some have even migrated to other areas out of shame⁵⁵. The same stigma is present and pervasive for women victims of torture today.

47. Human Rights Watch, *Silenced And Forgotten – Survivors of Nepal's Conflict-Era Sexual Violence*, 2014, https://www.hrw.org/sites/default/files/reports/nepal0914_ForUpload_0.pdf.

48. OHCHR, *Nepal Conflict Report*, 2012, https://www.ohchr.org/Documents/Countries/NP/OHCHR_Nepal_Conflict_Report2012.pdf.

49. Advocacy Forum-Nepal, *Torture Of Women: Nepal's Duplicity Continues*, 2012, <http://www.advocacyforum.org/downloads/torture-of-women-report-june-26-2012-english.pdf>.

50. Advocacy Forum-Nepal, *Torture in Nepal in 2019 The Need for New Policies and Legal Reform*, 2020, <http://www.advocacyforum.org/downloads/pdf/publications/torture/26-june-2020.pdf>.

51. *Legal Aid Act 1997*, Section 3, Nepal.

52. *Legal Aid Rules 1998*, Rule 6, Nepal.

53. WOREC, *Adolescents and Youth Speak about Violence and its Impact: A Case Study in Eastern Nepal*, 2003.

54. Ibid.

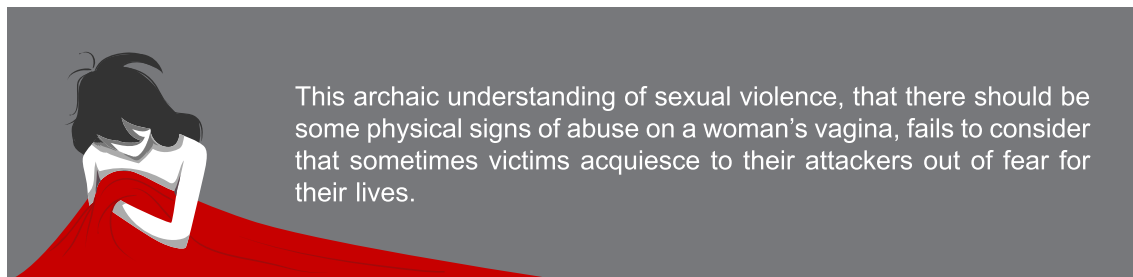
People in Nepal often view women who have been arrested as lacking moral and ethical value and having lost their social standing⁵⁶. For married women, there is the risk of being shunned by their husband and family, while unmarried women become seen as unsuitable for marriage⁵⁷. Social stigma of arrest and gender-based violence also prevents women from seeking medical and psychological counselling.

6. Medical Examinations

Medical examinations provide an important piece of evidence toward proving torture. Under Nepalese law, examinations are to be done twice: at the time of arrest and upon release⁵⁸. However, in practice, this provision has not been implemented in any meaningful way⁵⁹, rather medical examination is only done at the time of arrest. This allows police officials to deny responsibility for the physical state of detainees upon release⁶⁰ and puts perpetrators in an advantageous position to their victims. During medical examinations, doctors do not ask about torture and ill-treatment or prescribe pain relief medication, even if the detainee has visible wounds and complains of discomfort⁶¹. Most importantly, the police are present when a doctor conducts a medical examination, which intimidates detainees from disclosing the true source of their injuries⁶².

Women are deterred to speak of their ordeals before male doctors and the presence of policemen. Women who suffered violence to intimate areas are reluctant to tell doctors because of the fear that they will have to show those wounds. There is currently no legal requirement that a female doctor should examine a woman. These combined circumstances then lead to misleading and incomplete medical documents.

Making matters worse, doctors and medical personnel are not sufficiently trained on the medico-legal aspects of sexual violence⁶³. They are still guided by out-dated notions of medico-legal examination, such as looking for signs of trauma, e.g. a broken hymen, wounds in the vagina, etc.



This archaic understanding of sexual violence, that there should be some physical signs of abuse on a woman's vagina, fails to consider that sometimes victims acquiesce to their attackers out of fear for their lives.

55. Advocacy Forum-Nepal, *Torture in Nepal in 2019 The Need for New Policies and Legal Reform*, 2020, <http://www.advocacyforum.org/downloads/pdf/publications/torture/26-june-2020.pdf>.

56. Advocacy Forum Nepal, *Across the lines: The Impact of Nepal's conflict on Women*, 2010, <http://www.advocacyforum.org/downloads/across-the-lines-the-impact-of-nepal-conflict-on-women.pdf>.

57. Advocacy Forum-Nepal, *Torture Of Women: Nepal's Duplicity Continues*, 2012, <http://www.advocacyforum.org/downloads/torture-of-women-report-june-26-2012-english.pdf>.

58. *Torture Compensation Act 1996*, Article 3(2), Nepal.

59. Advocacy Forum-Nepal, *Torture in Nepal in 2019 The Need for New Policies and Legal Reform*, 2020, <http://www.advocacyforum.org/downloads/pdf/publications/torture/26-june-2020.pdf>.

60. Ibid.

61. Advocacy Forum-Nepal, *Torture of Juveniles in Nepal A Continuing Challenge*, 2018, <http://www.advocacyforum.org/downloads/pdf/publications/torture/june-26-2018.pdf>.

62. Ibid.

63. Human Rights Watch, *Silenced And Forgotten – Survivors of Nepal's Conflict-Era Sexual Violence*, 2014, https://www.hrw.org/sites/default/files/reports/nepal0914_ForUpload_0.pdf.

7. Non-recognition of Victims of Gender-based Violence as Conflict Victims

The signing of the 2006 Comprehensive Peace Accord marked the formal end of the Nepalese Civil War, with both warring parties agreeing to retrospectively establish the truth of events and ensure that victims received both justice and reparations⁶⁴. None of the policy guidelines for the interim relief package enable victims of sexual violence to register their cases or even gain access to these mechanisms⁶⁵. This being down to the onus of the State to take legal action against the army and those in political positions today⁶⁶.

The end of the war saw the monarchy lose power and the rebels take control of the government and country. The rebels have shown little to no appetite for providing justice to conflict victims. Perpetrators, who were mostly men from both factions, have played a role in preventing women from being recognized. It is apparent that the government is unwilling to recognize the victimhood of these conflict-era victims by effectively keeping them out of State reparations.

Despite the government keeping the victims of gender-based violence outside the purview of reparation, the 2014 Enforced Disappearance Enquiry, Truth and Reconciliation Act includes victims of sexual violence within the definition of “victim”⁶⁷. However, up until this point in time, the affiliated commission has not conducted any interviews with alleged perpetrators. Given the failure of this commission and the repeated betrayal by the government, victims no longer have faith in the system. For many victims, this results in long-term emotional damage that is still being felt today⁶⁸.

It is important to stress that the international community has only recently included gender aspects into transitional justice mechanisms. The HRC, for instance, criticized the impunity for conflict-related violence when it reviewed Nepal’s compliance with the ICCPR in 2014. In doing so, the HRC only made a brief reference to rape and sexual violence without gender-specific wording and recommendations⁶⁹. The UN Committee Against Torture (CAT), in its 2007 review, did not include any gender-specific recommendations with regards to crimes committed during the conflict⁷⁰.

However, despite the relatively new inclusion of gender aspects into transitional justice mechanisms, Nepal finds itself far behind in this respect. A recent briefing paper released by the International Commission of Jurists found that there was a severe lack of female staff involved in Nepal’s truth and reconciliation process, which only contributes to victims’ reluctance to come forward. Further deficiencies were observed due to gaps between in-country transitional justice mechanisms and domestic law provisions. For instance, rape, according to Nepalese law, only accounts for attacks that involve penile penetration, which then provides immunity to perpetrators of other forms of sexual violence. This creates de facto amnesty for many conflict-era assailants, as historical victims of sexual violence do not have grounds to initiate court proceedings.

It is quite clear that, having failed to provide justice to conflict-era victims of sexual violence, Nepal has breached its obligations under the CAT Convention. Keeping the victims of gender-based violence outside the reparation packages also reflects a lack of understanding and recognition by

64. *Comprehensive Peace Accord 2006*, Articles 5.2.4, 5.3.5 and 7.1.3, Nepal.

65. Human Rights Council, *Report of the Special Rapporteur on violence against women, its causes and consequences*, UN Doc. A/HRC/41/42/Add.2, June 20th, 2019, para. 60.

66. Advocacy Forum-Nepal, *Torture Of Women: Nepal’s Duplicity Continues*, 2012, <http://www.advocacyforum.org/downloads/torture-of-women-report-june-26-2012-english.pdf>.

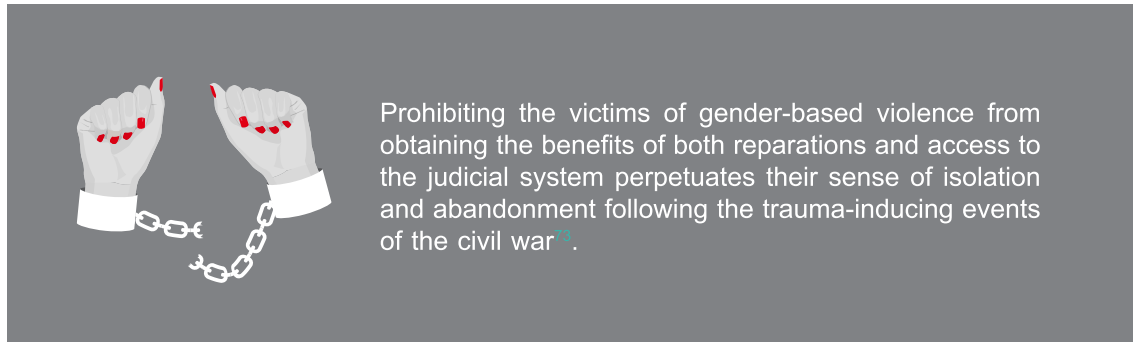
67. The Enforced Disappearance Enquiry, *Truth and Reconciliation Act 2014, Section 2(h)*, Nepal.

68. Human Rights Watch, *Silenced And Forgotten – Survivors of Nepal’s Conflict-Era Sexual Violence*, 2014, https://www.hrw.org/sites/default/files/reports/nepal0914_ForUpload_0.pdf.

69.

70.

the government. Compensation is one of the major and common demands of victims, apart from prosecution of their offenders⁷¹. Although compensation from civil settlements is helpful for basic needs in the short term, they do not provide for the necessary long-term medical support that accompanies the mental and physical injuries of sustained torture and violence⁷².



V. CONCLUSION

The problem of GBVAW in Nepal, be it in detention or during the Civil War, is an issue intentionally overlooked and suppressed for far too long. Female victims of conflict-era sexual violence, as well as torture and ill-treatment in detention, face obstacles in accessing justice because of inadequate and sometimes nonexistent legal and policy frameworks in their favour. In particular, the anti-torture legal framework is weak and lacks gender sensitivity, and reparations and social support by governmental programs are inadequate.

Women continue to be victims of violence and face many obstacles in accessing justice for reasons of social stigma, fear of repercussions, further victimization, lack of access to resources, and the feeling of shame. Regarding conflict-era victims, they are further victimized by the law and the State. Women face additional barriers in accessing justice not only because of legal barriers but also those of a social nature. This two-layered hinderance is what has silenced Nepalese women that were subjected to the horrors of torture in detention or sexual violence during the armed conflict. Women in Nepal continue to be silenced by stigma attached to gender-based violence, both in war and peacetime⁷⁴.

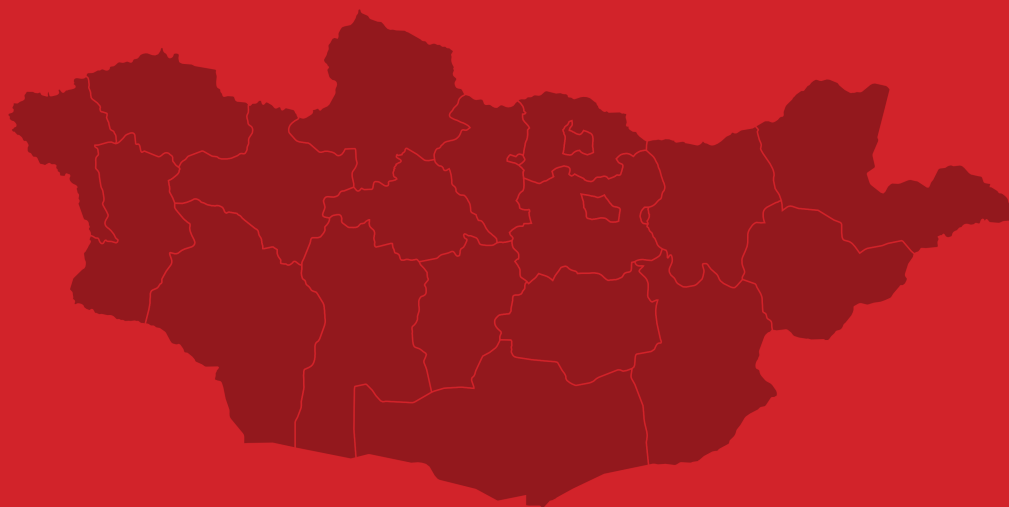
It is now incumbent upon the government of Nepal to provide the long-awaited justice to these women and pull them out of their vicious cycle of pain and stigma-induced victimization. Equally, the rampant culture of impunity that protects both historical and contemporary perpetrators of GBVAW must be rectified as soon as possible. This involves not only creating the necessary legislation to safeguard women from violence and prosecute perpetrators but also educating the members of Nepalese society so that they are sensitive to these issues and that women in Nepal can participate fully in society. Unless these issues are addressed adequately, GBVAW will only continue to thrive.

71. Ibid.

72. Ibid.

73. Jeffrey, Renee, *Nepal's Truth And Reconciliation Commission Limp On*, The Interpreter, February 12th, 2019, <https://www.lowyinstitute.org/the-interpreter/nepal-truth-and-reconciliation-commission-limps>.

74. USAID, *Nepal Rule of Law Assessment*, Final Report, 2009, <http://nepal.usaid.gov/downloads/all-downloads/category/16-evaluation-reports.html>.



04

VIOLENCE AGAINST LESBIAN, BISEXUAL, TRANSGENDER, AND INTERSEX WOMEN IN MENTAL HEALTH FACILITIES IN MONGOLIA

SEMJIDMAA CHOIJIL ¹

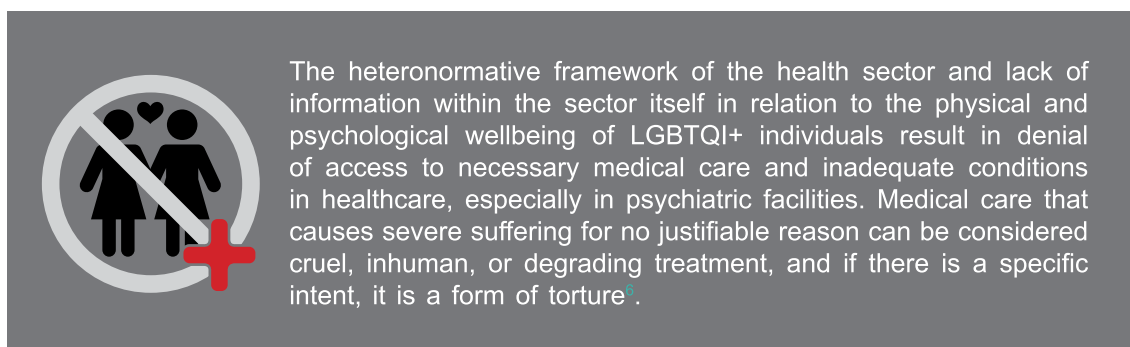
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INTRODUCTION

The level of discrimination and violence against lesbian, gay, bisexual, transgender, queer, or intersex (LGBTQI+) community members, including by the police, was of grave concern to the United Nations (UN) Committee Against Torture (CAT) when it reviewed Mongolia in 2016². Despite provisions on equality in the country's Constitution³ and the prohibition of discrimination in the criminal law, people belonging to the LGBTQI+ community face severe abuse. Torture and other forms of ill-treatment in the healthcare setting is of particular concern. Access to quality healthcare is severely restricted for LGBTQI+ individuals, especially lesbian, bisexual, transgender, and intersex (LBTI) women⁴. There is a lack of understanding of both sexual and gender minorities among healthcare providers and the associated physical and psychological problems that the LGBTQI+ community face as a result of sexuality-related trauma. Often, sexual orientation and gender identity and expression have been misunderstood as a psychiatric disorder or addiction, and community members are treated as psychiatric patients⁵.



This chapter provides information on how LBTI women are treated within Mongolian healthcare, mostly mental health facilities, and analyses the root causes of their ill-treatment, as well as the shortcomings in the government's response.

2. CAT, *Concluding Observations on Mongolia*, UN Doc. CAT/C/MNG/CO/2, September 5th, 2016, paras. 29-30.

3. *Constitution of Mongolia 1992*, Article 14(2), Mongolia.

4. LGBT Centre, *Social Work Association of Teachers and Students, & Theory and Method NGO, LGBTI Human Resources - A Handbook for Human Resource Specialists and Managers*, 2019.

5. The LGBT Centre, *Submission to the Human Rights Council at the 36th Session of the Universal Periodic Review: Mongolia*, 2019, <https://uprdoc.ohchr.org/uprweb/downloadfile.aspx?filename=7822&file=EnglishTranslation>.

6. HRC, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, UN Doc. A/HRC/22/53, February 1st, 2013, para. 39.

II. MONGOLIA'S OBLIGATIONS UNDER THE ANTI-TORTURE FRAMEWORK

The absolute prohibition of torture and other ill-treatment has originally been applied primarily in the context of interrogation, punishment, or intimidation in the detention setting. However, the international community has begun to recognize that torture may also occur in other contexts, including in healthcare settings⁷. CAT has explicitly required State parties to “take measures to prevent all forms of ill-treatment in psychiatric and other institutions”⁸.

As a State party to the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT Convention), Mongolia has an obligation to prevent, investigate, and prosecute acts of torture and to protect victims of torture and other ill-treatment. Moreover, members have a due diligence obligation to prevent, investigate, prosecute, and punish non-State officials or private actors⁹. This is particularly important in cases where hospitals and other healthcare facilities are privately owned.

According to Article 1 of the CAT Convention, torture is defined as the infliction of severe pain or suffering with intent and a specific purpose. One of the purposes listed in Article 1 is discrimination. This is particularly important for the ill-treatment experienced by LBTI women who are abused simply because of their gender identity or sexual orientation. The CAT has emphasized that the protection of certain minorities or marginalized individuals who are especially at risk of torture is part of a signatory's obligations. State parties are obliged to apply their laws to all persons regardless of their gender, sexual orientation, transgender identity, or health status. In order to protect individuals in vulnerable situations, members are also obliged to take positive measures of prevention and protection¹⁰.

In its state review procedure, the CAT has repeatedly addressed situations in healthcare settings. The CAT has found that verbal and physical abuse, substandard living conditions and overcrowding in mental health facilities, the use of mechanical restraints, as well as the lack of proper judicial review in cases of involuntary hospitalization amount to ill-treatment in terms of Article 16 of the Convention¹¹.

Moreover, the UN Special Rapporteur on Torture and other forms of cruel, inhuman, and degrading treatment and punishment published a report in 2013 on the application of the torture and ill-treatment protection framework in health-care settings. With regards to mental health, this report, inter alia, stressed that involuntary treatment and other psychiatric interventions in healthcare facilities can amount to torture and ill-treatment. When it comes to sexual and gender minorities, the Special Rapporteur stated that there is an abundance of accounts and testimonies of persons being denied medical treatment, of persons being subjected to verbal abuse and humiliation, and of psychiatric evaluations involving forced procedures¹².

7. Ibid, para. 15.

8. CAT, *Concluding Observation on Bulgaria*, UN Doc. CAT/C/BGR/CO/6, December 15th, 2017, para.16.

9. CAT, *General Comment No. 2*, UN Doc. CAT/C/GC/2, January 24th, 2008, para. 18.

10. Ibid, para. 21.

11. See CAT, *Concluding Observation on Azerbaijan*, UN Doc. CAT/C/AZE/CO/4, January 27th, 2016, paras. 26-27.

12. HRC, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, UN Doc. A/HRC/22/53, February 1st, 2013, para. 72.

These instances amounting to torture and ill-treatment, criticized by both the CAT and the Special Rapporteur, are unfortunately a reality for many LGBTI women in Mongolia.

III. SCOPE OF THE PROBLEM

In Mongolia, cases of mental and behavioural disorders accounted for 77 per 10,000 citizens in 2000 and went up to 109 in 2016¹³. Most affected are persons aged between 30-54 and form part of the country's active labour force¹⁴. Mongolia ranked seventh in cases of depression and third in other mental disorders among Asia-Pacific countries¹⁵. The situation is particularly grave among members of the LGBTIQ+ community¹⁶. LGBTIQ+ individuals face a high level of mental illness caused by social stigma and associated discrimination¹⁷.

The right to health and access to quality healthcare is severely restricted for Mongolia's LGBTIQ+ communities, especially LGBTI women¹⁸. Most doctors and medical professionals lack accurate knowledge about sexual orientation and gender identity¹⁹. Having said this, there is little information publicly available about the treatment of or the lack thereof of individuals belonging to the LGBTIQ+ community in mental health facilities.

This is why this study collected information through interviews. A total of 45 people were interviewed by structured qualitative questionnaires with closed and open-ended questions. Interviews were conducted with affected individuals, their families and caregivers, NGO workers and management, physicians and nurses, and persons working in hospitals and health centres²⁰. While nine interviews were conducted with affected LGBTIQ+ persons who had undergone treatment in mental health facilities, it was not possible to talk to long-term inpatients in relevant facilities as they were closed due to Covid-19. Unless otherwise indicated, information provided in this report stem from these interviews. The interviews conducted revealed serious ill-treatment of LGBTI women.

1. Verbal Abuse in Mental Health Facilities

Several interviewees reported verbal abuse received from workers at mental health facilities. One caregiver reported about the treatment of a client, a transgender woman, she accompanied to the National Centre for Mental Health (NCMH) for alcoholism. The doctor at the NCMH talked in a commanding voice, used violent vocabulary, and provided unnecessary advice. He further accused and reprimanded the client for her situation, leaving the woman visibly embarrassed.

13. Unlaanbaatar City Governor's Office, World Bank, Swiss Agency for Development and Cooperation SDC, Strategy Academy, MASAM, *An Independent Evaluation Report on Access to Mental Health Care in the Second National Mental Health Program of Mongolia* (2010-2019), April 2018, p. 5.

14. Ibid.

15. Ibid.

16. UNDP & USAID, *Being LGBT in Asia: Mongolia Country Report*, 2014, p. 30, <https://www.refworld.org/pdfid/54ed84be4.pdf>.

17. Kaleidoscope Human Rights Foundation & the LGBT Centre and the Youth for Health Centre, *Shadow Report to the UN Committee on Economic, Social and Cultural Rights regarding Mongolia's Protection of the Rights of LGBTI Persons*, 2015, https://tbinternet.ohchr.org/Treaties/CESCR/Shared%20Documents/MNG/INT_CESCR_CSS_MNG_20023_E.PD.

18. LGBT Centre, Social Work Association of Teachers and Students, & Theory and Method NGO, *LGBTI Human Resources - A Handbook for Human Resource Specialists and Managers*, 2019.

19. Ibid, p. 9.

20. Interviews were conducted with 9 individuals from the LGBTIQ+ community, 4 caregivers for the LGBTIQ+ community, 8 physicians and nurses (from the Narcology Centre, the Psychiatric and addiction cabinet of the District health centre of BGD, and the Psychiatric and addiction cabinet of District health centre of SBD), 9 individuals from the management of relevant hospitals and NGOs (namely NCMH, the Narcology Centre, Psychiatric and addiction cabinet of the District health centre of BGD, and the Psychiatric and addiction cabinet of District health centre of SBD, the LGBT Centre, APPDO, Youth and for Health NGO, NCAV, and EKPAT Mongolia, and 4 specialists from the NCMH, and the Narcology Centre. Questionnaires as well as transcripts of the interviews are on file with the author.

The same caregiver reported another case in which she accompanied a client, a lesbian woman, to a neurologist. The doctor said to the client that her sexual orientation will change if she has a child. The doctor further remarked that, as the client was already over 30, it was already late for her to have a child. These comments were followed by the doctor asking why such a beautiful girl like her did not have a husband. The caregiver stated that the situation amounted to sexual harassment.

Transgender women are exposed to similar treatment by medical professionals. An interviewee reported that it was common for psychologists to advise “to be a man and get a wife”. Similarly, interviews exposed that it was common for doctors to think and advise that giving birth is important for a woman and would improve their mental health. These practices led to affected individuals reporting that they are reluctant to reveal their gender identity or sexual orientation when in medical settings out of fear of verbal abuse.

2. Conditions in Mental Health Institutions

The NCMH in Mongolia’s capital, Ulaanbaatar, is the only institution that offers inpatient treatment. Although district hospitals have psychiatric narcology cabinets, patients who have to be hospitalized for serious mental disorders need to be transported to the NCMH. As there are no ambulances or other means of transportation between district hospitals and the NCMH, it is frequently the psychiatrist who drives a patient in their own car.

The NCMH has a contingent of 45 beds for patients with mental disorders for each of Mongolia’s health districts. According to a 2018 report, instead of 45 patients, some accommodated as many as 70 patients²¹. In some instances, eight to ten patients shared a room and sometimes two patients were forced to share a bed. A mother whose son was hospitalized for eight days in the NCMH reported that her son had to share his bed with another patient and that at night they were tied together. One night he asked to use the toilet, but the nurse said, “don’t you lie, crazy!”

Conditions in the Narcology Hospital are particularly bad as it is overcrowded and lacks adequate facilities. The space available per person is only 2.2 square meters, whereas international bodies suggest between 5.4²² and 6²³ square meters. The premises of the Narcology Hospital were originally designed to be a kindergarten. This means that sizes of toilets, sinks, and other facilities are too small for adult patients. Moreover, the building is very old and the sanitary facilities are outdated, increasing risk of infections²⁴.

It was further reported that some patients in the Narcology Hospital are malnourished and underweight. Interviewees reported that it was difficult for women to get necessary sanitary products, as they were not allowed to leave the premises and there was no shop inside the hospital. Further neglect and ill-treatment were frequently reported by those who were seeking care in the State General Hospital No.1 and No.3.

21. Ulaanbaatar City Governor’s Office, World Bank, Swiss Agency for Development and Cooperation SDC, Strategy Academy, MASAM, *An Independent Evaluation Report on Access to Mental Health Care in the Second National Mental Health Program of Mongolia (2010-2019)*, April 2018, p. 22.

22. Committee of the Red Cross, Water, Sanitation, Hygiene and Habitat in Prisons. *Supplementary Guidance*, 2021, <https://www.icrc.org/en/doc/assets/files/publications/icrc-002-4083.pdf>.

23. European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, *Living space per prisoner in prison establishments: CPT standards*, 2015, Council of Europe, <https://rm.coe.int/16806cc449>.

24. This was reported by an employee of the Narcology Hospital.

Neglect and discrimination are particularly high among transgender women who struggle economically, who live with HIV, or are drug users. There is a particular lack of specialized doctors and institutions catering for these conditions²⁵.

A transgender woman who suffers from mental disorder and is illiterate reported that it was difficult for her to discuss her problems with doctors: “I felt mistreated and bullied and laughed at for my identity”. Her relationship with the doctor improved when she visited the NCMH with her sister and the director of the NGO LGBT Centre.

It is important to note that interviews showed the administration of sedatives and strong medications were common in mental health facilities.

The lockdown measures under the Covid-19 pandemic had further negative consequences for the conditions in hospitals and mental health facilities. For instance, inpatients were not able to receive visits from family members and the number of healthcare staff was reduced, which resulted in a loss of quality medical care.

IV. ROOT CAUSES AND REASONS FOR ILL-TREATMENT OF LGBTI WOMEN

1. Shortcomings in Laws and Safeguards

Several laws and programs regulating mental health are insufficient when it comes to the protection of LGBTI women from torture and other forms of ill-treatment.

The Mental Health Law was adopted in 2000 and revised in 2013. Based on the provisions of this law, the government implemented its First National Mental Health Program from 2002 to 2007²⁶ and its Second National Mental Health Program in 2010 to 2019. The program’s goals were to reduce the spread of mental and behavioural disorders by promoting mental health of the population and expanding the scope of mental health first aid and community-based mental healthcare. Neither the Mental Health Law nor the National Programs to Combat Non-Communicable Diseases mention sexual and gender minorities. Therefore, combating the challenges and, in particular, the abuse that members of the LGBTQI+ community face has never been an aim of Mongolia’s mental health policies. In addition, the National Mental Health Program as such was discontinued after 2019. Some of its goals were integrated into the National Program to Combat Non-Communicable Diseases (2017-2026)²⁷.

While there are Ministerial Orders that regulate involuntary treatment²⁸, there is no judicial review for involuntary placement, and it is for doctors to decide about such placements. As explained above, this is not compliant with the CAT Convention²⁹. According to an interviewee, complaints

25. This was reported by an employee of the Narcology Hospital. Similar to concerns raised by the Committee on Economic, Social and Cultural Rights, *Concluding Observation on Mongolia*, UN Doc. E/C.12/MNG/CO/4, July 7th, 2015, para. 13.

26. *The Government of Mongolia’s Resolution No. 59*, 2002, Mongolia.

27. *The Government of Mongolia’s Resolution No. 24*, 2017, Mongolia.

28. Ministerial Order No.180 on Mental Health Care dated May 30, 2014.

29. See CAT, *Concluding Observation on Azerbaijan*, UN Doc. CAT/C/AZE/CO/4, January 27th, 2016, paras. 26-27.

by persons concerned or family members about abuse or involuntary treatment are resolved through discussions between the care providers and the persons concerned. Although complaints can be filed with the Ministry of Health, the head of the hospital concerned, or the director of the NCMH, there is no information available as how such complaints are handled.

It is important to mention the role of the National Human Rights Commission of Mongolia (NHRCM). While the NHRCM has in the past played a positive role in cases lodged by sexual and gender minorities, including alleged torture, it does typically not recommend redress and investigation. Its conclusions tend to be limited to finding a violation and urging the governmental entity concerned to follow its laws and procedures. It offers only limited protection and redress for LGBTI women. The NHRCM is also Mongolia's National Preventive Mechanism (NPM) under the UN Optional Protocol to the Convention Against Torture (OPCAT). However, due to a lack of funding, the NPM is not functional and has yet to elect a commissioner. Nevertheless, the author was informed by a member of the NHRCM that it visited the NCMH twice in 2021. Although a monitoring report for these visits has not been published yet.

2. Cultural Norms and Stereotypes

Stereotypes surrounding LGBTIQ+ persons are entrenched and pervasive. Discrimination at home and in schools has been identified as a major barrier to the realization of rights for LGBTIQ+ individuals³¹. Information about gender identity and sexual orientation are completely lacking in Mongolia's educational system. When reviewing Mongolia's compliance with the UN International Covenant on Civil and Political Rights (ICCPR), the Human Rights Committee (HRC) raised serious concerns about the prevalence of prejudice and discrimination based on sexual orientation and gender identity. The HRC further noted its concern about violence, harassment, and attacks against LGBTIQ+ communities and about the failure of the government to investigate, prosecute, and punish these attacks. The CAT similarly raised its concern over violence, physical attacks, and other forms of ill-treatment and the reluctance of victims to file complaints³².

Stereotypes and strong cultural norms against the LGBTIQ+ community can also be observed in instances of medical professionals dealing with its members, such as doctors advising lesbian women to get pregnant and to marry in order to improve their mental health and "cure" their sexual orientation.

Further documentation by the NGO LGBT Centre shows consistently high numbers of cases in which torture, ill-treatment, and harassment were inflicted upon gender and sexual minorities just because of their orientation and identity³³. Since being a member of the LGBTIQ+ community is so stigmatized in Mongolia, it was reported that LGBTIQ+ teenagers and adolescents expressed an unwillingness to live and were suicidal. Family members are generally perceived as not being supportive and psychological counselling for LGBTIQ+ persons resultantly suffering is lacking.

30. *National Human Rights Commission of Mongolia Act*, Article 9, Mongolia.

31. The LGBT Centre, *Submission to the Human Rights Council at the 36th Session of the Universal Periodic Review: Mongolia*, 2019, <https://uprdoc.ohchr.org/uprweb/downloadfile.aspx?filename=7822&file=EnglishTranslation>

32. The LGBT Centre that was interviewed for this study, referred to a case decided by the NHRCM in 2017. In this case a transgender woman was tackled, had her arms pinned above her head and was stripped to expose her chest and genitals by police officers at the police station in front of many people. The officers used extremely transphobic speech. The NHRCM concluded that the act amounts to torture and that police station needs to abide by the Mongolian laws and the international treaties. Despite the gravity of this misconduct by the police officers, the NHRCM did not recommend anything to restore the victim's rights and did not assist further with the victim's complaints to the Metropolitan Police Department and the General Police Department that were later dismissed (Ibid.)

33. For some of the cases documented, see LGBT Centre, *Report on the Human Rights Situation of the Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) People in Mongolia for the 118th Session of the UN Human Rights Committee*, 2016, https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal

3. Lack of Accountability

In 2017, the HRC raised concerns about the “failure of the State party to investigate, prosecute and punish” attacks against lesbian, bisexual, transgender and intersex women which contributes to “a culture of impunity”³⁴. Similarly, the CAT criticized Mongolia for not registering or investigating complaints³⁵. This was also reported by an interviewee in this study, who was assaulted for being a transgender woman. When she wanted to submit a complaint and consulted with an NGO, she was told that this would be useless as the police do not care.

Another interviewed transgender woman reported about the case of her friend who during a night out was badly beaten and severely injured with a knife, which resulted in her nose being cut off. The police who arrived at the scene told the victim to calm down and not to worry since the offenders had been sent away. She subsequently went to the hospital to have her wounds treated. The doctor blamed the victim for her situation since she was a man and wore women’s clothes. The interviewee further stated that “reporting about ill-treatment to the police or complaining about ill-treatment is ignored and dismissed as nonsense”. Although the perpetrators were known, there has not been any investigation or prosecution. The victim has never received any information in that regard and has never been summoned to participate in a trial. Adding insult to injury, the victim has never received any compensation. The interviewee stated that the victim has not pursued the matter any further but was just happy to be alive.

4. Lack of Training of Health Care Providers

Doctors and other medical professionals lack accurate knowledge about sexual orientation and gender identity. Currently in Mongolia, access to health care for LGBTQI+ individuals is limited due to the lack of doctors who are properly trained and understand their situation, neither do they provide assistance that meets their needs and amounts to appropriate care. The lack of training of medical personnel with regard to the special needs of LGBTI women was also criticized by the UN Committee on the Elimination of Discrimination Against Women (CEDAW)³⁶.

The NCMH is the only in-country healthcare provider that provides independent mental health support. The NCMH has established a national framework that implements relevant laws and programs with the aim of professional and integrated care. The interviews conducted with managers, physicians, nurses, patients, and caregivers revealed that most were not aware of the developed framework and protocols.

An interviewee from an NGO mentioned that she wished there were specific guidelines and manuals to provide psychological counselling to LGBTI women. There is a need to include specifically developed handbooks and guidelines in the curricula of universities. They also held the view that the quality of the current curricula and education of psychologists and social workers should be evaluated, since their program was developed in the 1970s and 1980s.

Interviews with service providers also revealed that the knowledge about regulations on isolation and restraint methods was poor. Annex 4 to the Order No.180 of the Minister of Health from 2014 provides a list of isolation and restrain method for people with mental health issues who may endanger themselves and others. This regulation further stipulates that the method of mitigation and isolation should be performed only under the strict supervision of a physician and should be recorded. Given the lack of knowledge about these regulations, it is doubtful that they are implemented.

34. HRC, *Concluding Observation on Mongolia*, UN Doc. CCPR/C/MNG/CO/6, August 22nd, 2017, para. 11

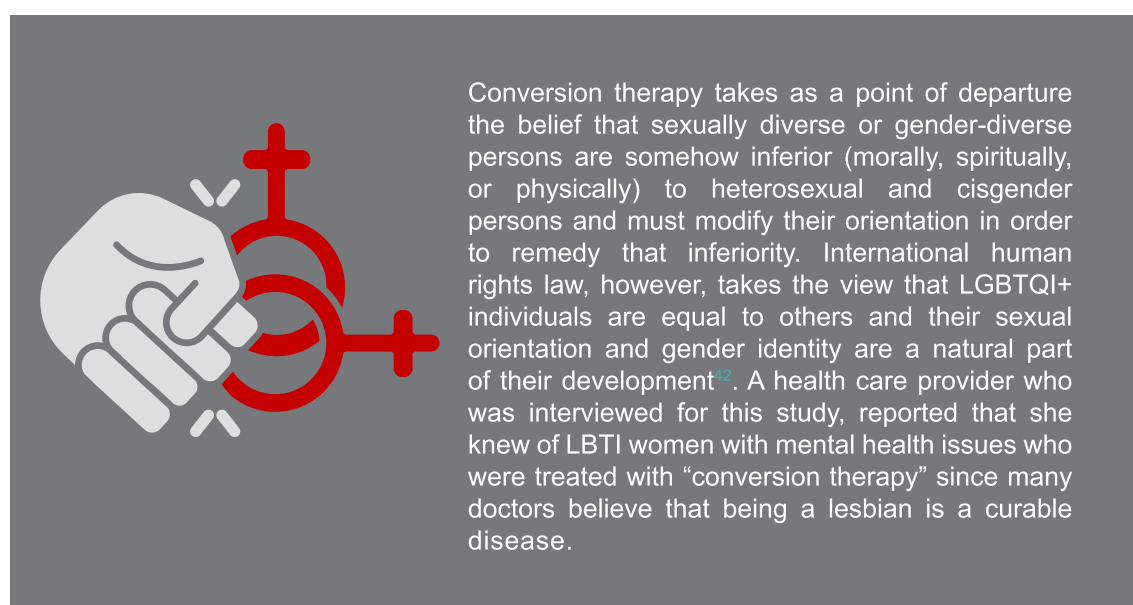
35. CAT, *Concluding Observation on Mongolia*, UN Doc. CAT/MNG/CO/2, September 5th, 2016, para. 29.

36. CEDAW, *Concluding Observations on Mongolia*, UN Doc. CEDAW/C/MNG/CO/8–9, March 10th, 2016, para. 28(c).

Moreover, many LGBTI women who seek mental health services are victims of sexual abuse³⁷. This trauma often remains unaddressed as health professionals lack the relevant education and training. Persons concerned reported that they felt revictimized during their psychological treatment. One interviewed victim of sexual violence explained that she went to see a doctor and was scolded, embarrassed, and requested to talk about what happened in front of several people in addition to the doctor present. When victims are forced to disclose information concerning their ordeals to a large number of people this often leads to re-traumatization.

5. “Conversion Therapy” Primary Method of Treatment

UN entities and human rights mechanisms have expressed concern about practices of so-called “conversion therapy”³⁸. Special procedures, including the Special Rapporteur on torture and other cruel, inhuman, and degrading treatment and punishment, have criticized the practice of conversion therapy intended to “cure” individuals of their same-sex attraction as being unscientific, harmful, and contributing to stigma³⁹. The CAT has concluded that conversion therapy can amount to torture, cruel, inhuman, or degrading treatment⁴⁰. Sentiments echoed in 2020 by the Independent Forensic Expert Group, concluding that “conversion therapy constitutes cruel, inhuman, or degrading treatment when it is conducted forcibly or without an individual’s consent and may amount to torture depending on the circumstances, namely the severity of physical and mental pain and suffering inflicted”⁴¹.



37. The LGBT Centre, *Submission to the Human Rights Council at the 36th Session of the Universal Periodic Review: Mongolia*, 2019, <https://uprdoc.ohchr.org/uprweb/downloadfile.aspx?filename=7822&file=EnglishTranslation>

38. See HRC, *Concluding Observations on Ecuador*, UN Doc. CCPR/C/ECU/CO/6, August 11th, 2016, para. 12, Human Rights Council, Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity. Practices of so-called “conversion therapy”, UN Doc. A/HRC/44/53, May 1st, 2020.

39. UN General Assembly, *Report by Sir Nigel Rodley Special Rapporteur of the Commission on Human Rights on the question of torture and other cruel, inhuman or degrading treatment or punishment*, UN Doc. A/56/156, July 3rd, 2001, para. 24.

40. See CAT, *Concluding Observations on Ecuador*, UN Doc. CAT/C/ECU/CO/7, January 11th, 2017, para. 49.

41. See Independent Forensic Expert Group, *Statement on conversion therapy*, *Journal of Forensic and Legal Medicine*, No.72, (2020).

42. Human Rights Council, *Report of the Independent Expert on the protection against violence and discrimination based on sexual orientation and gender identity, Practices of so-called “conversion therapy”*, UN Doc. A/HRC/44/53, May 1st, 2020, para. 63.

6. Criminalization of Drug Use

Interviews revealed that many LGBTI women in Mongolia struggle with substance abuse, in particular transgender women who are sex workers. Transgender women are often disowned by their families and not accepted by society at large. This makes it difficult for them to find work and sustain a living. As a consequence, many transgender women are forced into sex work, circumstances which make them vulnerable to substance abuse. Interviewees indicated that sex workers get paid more if they use crystal methamphetamine. Drug use in sexual settings, particularly among sexual minorities, has generally increased as it is associated with fostering social and sexual connections, the exploration of sexual desires, riskier sex practices, and because it can provide acceptable excuses for engaging in sexual behaviours that deviate from heteronormativity⁴³.

People who use drugs belong to a highly stigmatized and criminalized population and their experience within the healthcare setting is characterized by humiliation, punishment, and cruelty⁴⁴. Possession and use of any type of drugs is illegal. If found guilty, one could face up to two years in prison. Drug-related crimes have increased substantially in the last years⁴⁵. Although the national program combating illicit trafficking in narcotic drugs and psychotropic substances provides for the establishment of a rehabilitation centre for people with a disorder caused by narcotic drugs or psychotropic substances⁴⁶, there are no rehabilitation centres. There are only limited medical services that provide detoxification treatment and psychological counselling at major hospitals like the NCMH and the Narcology Centre. Since drug use is criminalized, patients who are also drug users and who are ill-treated in health centres and hospitals are afraid to file a complaint. Victims are afraid they will be arrested and detained when contacting law enforcement.

The national program on combating illicit trafficking in narcotic drugs and psychotropic substances has been approved by the Annex of Government Resolution No.77 in 2017. Article 3.3.9 of the program put forward the need for “the establishment of a rehabilitation centre for people with a disorder caused by narcotic drugs or psychotropic substances and intoxicated to provide voluntary and involuntary treatment, including psychological assistance”. However, there is no information about the establishment of rehabilitation centres. In addition, there are limited medical services (only detoxification treatment and psychological counselling) at major hospitals, such as NCMH and the Narcology center. On the other hand, the legal environment for drug addicts and people with drug-induced issues is limited and hidden, so it is not possible to file a complaint if their rights are violated.

43. Bohn, Annette, Deimel Daniel, Köhler, Thorsten, Sander, Dirk, Scherbaum, Norbert, Schecke, Henrike & Lea, Toby, *Crystal Methamphetamine Use in Sexual Settings Among German Men Who Have Sex With Men*, *Frontier Psychiatry*, 2019, <https://www.frontiersin.org/articles/10.3389/fpsy.2019.00886/full>.

44. Human Rights Council, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, UN Doc. A/HRC/22/53, February 1st, 2013, para. 72.

45. Xinhuanet, *Mongolia opens centre for prevention of drug-related crimes*, April 12th, 2019, http://www.xinhuanet.com/english/2019-04/12/c_137971916.htm.

46. Annex of Government Resolution No.77, Article 3.3.9, 2017, Mongolia.

In addition, because drug use is criminalized and stigmatized, drop-in centres for intravenous drug users, like other countries have established, is far from becoming a reality in Mongolia. Drop-in centres are typically set up in order to prevent HIV infection and to reduce the health issues associated with injection drug use⁴⁷. Moreover, drop-in centres are typically staffed with nurses or other healthcare workers. Since many transgender women struggle with drug use, the establishment of these centres could greatly benefit sexual minorities.

V. CONCLUSION

International obligations, foremost under the CAT Convention, requires that individuals belonging to sexual minorities are protected from torture and other ill-treatment in healthcare settings, also when inflicted by private individuals. This requires Mongolia to take positive measures in order to prevent, investigate, and prosecute cases of torture and provide redress to victims. Verbal abuses and harassment of LGBTI women for their gender identity and sexual orientation by medical professionals, as well as inhuman and degrading conditions in hospitals as described by interviewees, are incompatible with international anti-torture standards.

As this chapter demonstrates, there are several reasons as to why verbal and physical abuse directed against LGBTI women in healthcare institutions are prevalent. Relevant laws and programs do not address and safeguard sexual minorities, and judicial reviews of involuntary placements are largely absent. There are also strong social norms and stereotypes against LGBTI women, including from healthcare professionals. The expectations emanating from these societal perspectives render non-heteronormative sexual orientations and gender identities and expressions as a disorder, enabling conversion therapy to continue being practiced.

Conversion therapy and other forms of torture and ill-treatment usually go unpunished in Mongolia. Law enforcement officials are reluctant to register complaints and properly investigate cases, which commonly results in victim blaming. At the same time, members of sexual minorities do not trust the police and often do not file complaints, particularly those who are addicted to drugs. As is evident from this research, gender identity repression intersects with other inequalities and prejudices, such as drug addiction, but also poverty, and higher instances of sexual disease. In the context of illicit drug use, the establishment of drop-in centres for intravenous drug use is recommended. This would positively influence the situation for many transgender women, many of whom suffer from the social, physical, and mental consequences of drug use.

Another important cause for torture and other forms of ill-treatment in the healthcare setting is the lack of training of care providers. The needs of sexual and gender minorities do not form part of the curriculum of medical doctors and psychologists. Consequently, there are only few healthcare centres that provide adequate treatment to LGBTI women and the majority of healthcare professionals were not well trained and lacked knowledge about relevant protocols. There is a great need to review current counselling methods and techniques in line with international human rights standards.

47. See United Nations Office of Drugs and Crime and National Aids Control Organisation India, *Drop-in Centre for Injecting Drug Users*, 2012, <https://www.unodc.org/southasia/en/menu/publications/sop-on-drop-in-centre-for-injecting-drug-users.html>.



05

TORTURE OF WOMEN AT THE INDO-BANGLADESH BORDER

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1. This chapter was developed with the support of the organisation Banglar Manabadhikar Suraksha Mancha (MASUM).

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INTRODUCTION

Citizens of West Bengal experience high levels of violence and mistreatment at the hands of the State, a reality that is rarely highlighted both domestically and internationally. For years, the people living in the Indo-Bangladesh border area have experienced torture, extrajudicial killings, harassment, and trafficking. The way such violence specifically affects women has been particularly overlooked.

This chapter will provide an overview of the violence inflicted on women at the Indo-Bangladesh border, focusing on violence perpetrated by the Border Security Force (BSF). While India is one of the few countries worldwide that has not ratified the United Nations (UN) Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT Convention), it is still a State party to several international human rights instruments, such as the UN International Covenant on Civil and Political Rights (ICCPR) and the UN International Convention on the Elimination of All Forms Discrimination Against Women (CEDAW Convention). Both require India to prevent and punish torture, and to ensure equality, justice, and dignity for women.

This chapter argues that Indian laws consistently fail in fulfilling obligations to prevent in-country torture of women. The harsh realities of life at the border adversely affects women in accessing justice for the violence, torture, and ill-treatment they, their families, and communities receive.

The legislative impunity granted to paramilitary forces, such as the Border Security Force (BSF), particularly impedes victims' quest for justice. To conclude, this chapter suggests that India needs to enact separate legislation to prevent torture, address gender-based violence against women (GBVAW), and to challenge entrenched impunity within its criminal justice system.

I. BACKGROUND OF VIOLENCE AT THE INDO-BANGLADESH BORDER

India shares a border of approximately 4,096 kilometers with Bangladesh. The border was conceived in 1947, decades before Bangladesh was to become an independent state. After the Second World War, the British decided to grant independence to the subcontinent. However, freedom came at a significant cost: the subcontinent was to be divided along religious lines into two separate territories, India and Pakistan. The task of drawing a border through an incredibly diverse region with a population of over 400 million was given to British lawyer Sir Cyril Radcliffe. Radcliffe, who had never previously visited the subcontinent, had no knowledge of its geography, diversity, and communal tensions. The boundary that divided India and Pakistan was drawn in a mere five weeks and cut through rivers, fields, police stations, and, on some occasions, even through people's homes. In August 1947, while festivities were observed for long-awaited freedom, over 12 million people were forced to migrate across the border, in the face of extraordinary

communal violence². Due to the haphazard manner in which the border was drawn between India and Pakistan, many territorial disputes and irregularities emerged on both the Western and Eastern points of the border. When Bangladesh (formerly East Pakistan) became an independent nation state in 1971, it inherited these disputes. The governments of India and Bangladesh have made several attempts to resolve the border disputes. After decades of negotiations, the 1974 Land Boundary Agreement³ was implemented on July 31st, 2015.⁴

In spite of this, the Indo-Bangladesh border continues to face various challenges, such as crossborder smuggling, human trafficking, and other trans-border crimes⁵. The border is heavily militarized and guarded by the BSF, a paramilitary force under the administrative control of India's Ministry of Home Affairs. In order to keep smuggling and illegal immigration in check, the BSF have constructed a border fence several kilometers inland from the recognized boundaries. This means that a stretch of Indian territory, along with the lands and houses of Indian citizens, has been cut off by this demarcation. Since the BSF are placed inside villages, they interfere in the daily affairs of citizens and monitor essential freedoms of movement. This leads to tensions between the BSF and the residents of border areas, in turn, disturbing the peace and tranquility of the region.

It is important to note that the border region in India is primarily populated by people belonging to minority communities, including Muslims, Dalits, and Adivasis. Anti-Muslim sentiment has heightened under Prime Minister Narendra Modi and the ruling Bharatiya Janata Party (BJP), which has pursued a Hindu nationalist agenda since coming to power in 2014⁶.

While trading cattle across the border to Bangladesh has always been illegal, Modi's nationalist government has enacted a series of measures across the country to protect its sacred cows. In 2015, the then home minister asked the BSF to take more consistent actions at the border to stop cattle smuggling⁷. Under the pretext of fighting illegal trade, in particular smuggling of cattle, BSF uses torture, extra-judicial killings, arbitrary arrests, and intimidation. It has been reported that the BSF had received orders to shoot suspected smugglers by higher authorities⁸. The organization Banglar Manabdhikar Suraksha Mancha (MASUM)⁹ has documented 19 incidents of extrajudicial killings from July 2018 to June 2021. The incidents involved 24 Muslim victims, six Dalit victims, and one victim from the Adivasi (Scheduled Tribe) community. MASUM further documented 328 incidents of torture and deaths in custody from 2013 to 2020¹⁰. The cases recorded by MASUM are only the tip of the iceberg, as in many instances victims and their families do not report torture and other forms of violence by the border authorities.

BSF often justify killings by their personnel on the grounds that the accused were evading arrest or that they were acting in self-defense¹¹. In the cases MASUM documented, these claims could not be substantiated as in none of the cases were the victim of extrajudicial executions armed

2. Whitehead, Andrew, *Partition 70 years on: The turmoil, trauma - and legacy*, BBC, July 27th, 2017, <https://www.bbc.com/news/world-asia-40643413>.

3. *Land Boundary Agreement 2015*, India.

4. Lohia, Prachi, *Possibilities of Justice: Torture at the Indo-Bangladesh Border*, 2021, https://law.unimelb.edu.au/_data/assets/pdf_file/0007/3794128/Lohia_Prachi.pdf.

5. A Rather, Zahoor, *India-Bangladesh Border Issues: Challenges and Opportunities*, International Studies, vol. 50, 1-2 (2013) pp. 130-144.

6. Blank, Jonah, *How Hinduism Became a Political Weapon in India*, The Atlantic, May 24th, 2019, <https://www.theatlantic.com/international/archive/2019/05/hindu-nationalism-narendra-modi-india-election/590053/>.

7. Agencia EFE, *India's ban on cow smuggling a boon for Bangladesh farmers*, August 12th, 2019, <https://www.efe.com/efe/english/destacada/india-s-ban-on-cow-smuggling-a-boon-for-bangladesh-farmers/50000261-4041960>.

8. Human Rights Watch, *"Trigger Happy": Excessive Use of Force by Indian Troops at the Bangladesh Border*, 2010, <https://www.hrw.org/report/2010/12/09/trigger-happy/excessive-use-force-indian-troops-bangladesh-border>.

9. An NGO based in West Bengal that has documented incidents of torture, extrajudicial executions, custodial deaths, illegal detention, and arbitrary restrictions at the Indo-Bangladesh border since 1997.

10. The cases are on file with MASUM.

11. Ibid.

with a lethal weapon. The existence of a policy to shoot was further confirmed in an interview with a BSF Company Commander, who said that the deaths of civilians at the border while controlling smuggling were “collateral damage”¹².

The atrocities in West Bengal have received little attention. There is minimal reporting by Indian newspapers, and domestic and international organizations. Furthermore, torture and extrajudicial killings in West Bengal have not gained any traction by relevant UN mechanisms. Neither the Human Rights Council nor the Human Rights Committee have addressed the situation in their reviews¹³. While the Committee in the Elimination of Violence Against Women (CEDAW) dedicated a specific section to violence against women in border areas and conflict zones in 12 states, it did not mention West Bengal¹⁴. Therefore, many stakeholders are not aware of the widespread and systematic ill-treatment, torture, and killings by the BSF. Moreover, there is even less known about the gender aspect of BSF operations.

II. GENDER-BASED VIOLENCE AGAINST WOMEN AT THE HANDS OF THE BSF

Borders are essentially spaces for the display of a state’s power; dense militarization, concerns over the protection of national territory, and the presence of predominantly male guards lends to the argument that border areas have a deeply “masculine” nature. Debdatta Chowdhury, argues that the relations between the BSF and civilians are gendered due to the complex power dynamics inherent in their relationship¹⁵. According to Chowdhury, a nuanced understanding of interactions between border guards and the people living at the border reveals a narrative that is “not just a sovereign-subject discourse, but is heavily gendered in its disposition”¹⁶. The border guards are predominantly men, whereas the civilians they interact with are men, women, and transgender. There is a body of literature establishing a nexus between State and patriarchy and between GBVAW and the boundaries of a state¹⁷. Women’s bodies are often understood to symbolically represent the boundaries of the nation: they are viewed as reproducers and the property of the nation. Mobility of women across borders is often a contested issue, as they are perceived as not only transgressing the political nation, which they seemingly embody, but also social norms and values. Consequently, in the struggle for sovereignty and power, it is seen as legitimate to invade women’s spaces¹⁸.

Furthermore, inhabiting spaces at the border entails a constant negotiation between the civilians and the BSF. While such discourse is helpful in understanding the realities of the border, anecdotal evidence from civilians indicates that men and women experience violence at the border differently.

12. Interview conducted by MASUM in December 2019.

13. HRC, *Concluding Observation on India*, UN Doc. CCPR/C/79/add.81, August 4th, 1997.

14. CEDAW, *Concluding Observation on India*, UN Doc. CEDAW/C/IND/CO/4-5, July 24th, 2014, paras. 12-13.

15. Debdatta Chowdhury, *Identity and Experience at the India-Bangladesh Border: The Crisis of Belonging*, Routledge, 2018.

16. Ibid p. 177.

17. See e.g. Staheli, Lynn A., Kofman, Eleonore & Peake, Linda J. (eds), *Mapping Women, Making Politics. Feminist Perspectives on Political Geography*, Routledge, 2004; Chatterji, Angana, Chaudhry, Lubana, Desai, Manali & Toor, Saadia, *Engendering violence: Boundaries, Histories, and the Everyday*, SAGE Publications, 2004; Mostov, Julie, “Our womens”/“Their womens”: Symbolic boundaries, territorial markers, and violence in the Balkans, *Peace and Change* 20, 1995.

18. Mehta, Rimple, Mobility across borders and continuums of violence: experiences of Bangladeshi women in correctional homes in Kolkata, *Rapporteur Center Human Rights*, 2017, <https://law.utexas.edu/wp-content/uploads/sites/31/2017/07/Mobility-Across-Borders.pdf>.

It is fairly common for BSF personnel to conduct raids in houses of those whom they suspect of smuggling. Police and BSF personnel forcibly enter people's houses, vandalize and seize property, and inflict violence on women, since they are more likely to be present inside homes during raid. Women are often the primary targets of violence.

In a particular incident, Rahila Mondal's¹⁹ residence was broken into by about ten personnel of the BSF, when she was alone with her two-year-old daughter. This resulted in damage to her property, such as furniture, and the general destruction of her apartment. BSF personnel attempted to illegally detain her and forcibly removed her from the premises. When she protested, her daughter was snatched away from her and Rahila was brutally beaten and abused by the personnel. These threats continued to go on for days, including an incident where the perpetrators invaded her house again in the middle of the night. According to research conducted by MASUM, torture occurred because BSF suspected Rahila's father-in-law and husband to be involved in cross-border smuggling. The victim submitted a complaint to the National Human Rights Commission (NHRC). Following directions from the Secretary of Defence, the NHRC cancelled the case without taking any further action²⁰.

Women are also often punished for the suspected illegal activities of their husbands, fathers, or father-in-laws. In an incident from South Dinajpur, BSF personnel barged into the house of Sanjit Hansda. When his family members, including his wife and daughter, tried to intervene, they were attacked. The BSF personnel beat them and attempted to sexually assault them by tearing their clothes. Sanjit Hansda and his father were illegally detained by the BSF and also implicated under false criminal charges. In spite of repeated complaints to various authorities, no action was taken against the officials. NHRC closed this case on the basis of the explanation provided by the Indian Ministry of Home Affairs.

Moreover, in most incidents documented by MASUM, male personnel of the police and BSF were not accompanied by any female personnel when they entered people's homes²¹. This is, however, a requirement under Section 51 (2) of India's Criminal Procedure Code, which provides that "search on a female shall only be conducted by another female, with strict regard to decency".

Certain regulations and sanctions in place controlling cross-border movements also have a detrimental effect on women amounting to ill-treatment. For several years, section 144 of the Criminal Procedure Code has been in effect in many parts of West Bengal. Section 144 provides broad powers to limit human rights in the interest of public order. Under this provision, movement of certain commodities, association of people, and practices, such as fishing and growing certain crops, have been prohibited within a range varying from one to eight kilometers from the border²². The authorities have restricted the movement of essential items that do not seem to be related to maintaining public order, like milk powder, other baby foods, and essential medicine²³. MASUM

19. Names of the victims of torture described in this report have been changed to protect their identities.

20. Information about the case and decision by the NHRC on file with MASUM.

21. Section 51 (2) of India's Criminal Procedure Code provides that search on a female shall only be conducted by another female, with strict regard to decency.

22. See e.g. Vishwanath, Apurva & Dhapola, Shruti, Explained: How Section 144 CrPC works, The Indian Express, 2019, <https://indianexpress.com/article/explained/what-is-section-144-crpc-prohibitory-orders-india-kaa-citizenship-act-6175056/>.

23. The movement of the following commodities near the border has been restricted through Section 144 CrPC. These commodities have been listed under Schedule 'A' of the order: Rice, Wheat products, kerosene, mustard oil, sugar, coconut, textile goods including yarn, cement, iron & steel materials, bidi leaves, tyre, tubes, wax, bleaching powder, baby food, machine parts, stationery articles, grocery, cattle, milk powder, gunny bags, goat-skin, soaps, betelnut, chili, cloves, fruits, electric goods, cycle and parts, cinnamon, glass, tile making materials, motor tyre, rickshaw tyre, cigarettes, flour grinding stone, photo materials, copper, salt, chira, charcoal, cycle-rickshaw, coal tar, glass panel, cardamom, torchlight, iron rail, soybean, tea, medicine, fertilizer, cosmetics, black paper, plastic, utensils, fish, brass, mats, timber, camphor, razor blades, goat, pulses, wrist watch, aluminium, silver, potatoes, gas light, eggs, molasses, gold.

documented cases in which pregnant women were not able to convince BSF officials to allow them to take essential medicines across the border or to open the gates on the border fence when they go into labor outside of permissible crossing hours. Although the Supreme Court has indicated that certain applications of Section 144 CrPC are an abuse of power²⁴, the provision still applies.

Khukuli Khatun was a High School student when she was allegedly involved in an argument with a BSF soldier in the Nadia District of West Bengal in 2008. According to the victim's dying statement, the officer tried to molest her, attempts which she resisted. This resulted in a physical altercation in which the soldier shot and killed her. Upon hearing the gunshot, her family and other villagers rushed to her aid. The killer and two of his fellow soldiers threatened the mob, saying they would fire again if anyone dared to help Khukuli. Subsequently, while pointing their guns at the family and villagers, the killer and his accomplices escaped on their bicycles²⁵.

III. TRAFFICKING AND FORCED MIGRATION

India, together with Bangladesh and Pakistan, has the highest number of human trafficking cases detected worldwide²⁶. West Bengal accounts for 55% of reported cases in India and is one of the most affected regions²⁷. Many women from Bangladesh are trafficked to India for forced labor or are lured by the promise of better economic opportunities. These women, along with their children, are apprehended by BSF personnel and remanded to judicial custody. Many are further victimized and tortured. 20-year-old Reshmi from Bangladesh reported that she was caught by the BSF when crossing the border and kept in their camp for a night. She was raped and kicked in the stomach and fell unconscious and was consequently admitted to hospital. Two years later, Reshmi reported that some parts of her body still ache because of the violence inflicted on her²⁸.

Many women continue to be in detention even after the completion of their sentences, in complete violation of Article 20 (1) of the Constitution of India²⁹. According to Rule 2 (2) of the Bangkok Rules³⁰, "Prior to or on admission, women with caretaking responsibilities for children shall be permitted to make arrangements for those children, including the possibility of a reasonable suspension of detention, taking into account the best interests of the children". However, in violation of this provision, women are separated from their children for indefinite periods during detention.

24. Anuradha Bhasin vs Union of India, 2020, India.

25. Rapoport Center for Human Rights and Justice, *Mobility across Borders and Continuums of Violence: Experiences of Bangladeshi Women in Correctional Homes in Kolkata*, 2017, <https://law.utexas.edu/wp-content/uploads/sites/31/2017/07/Mobility-Across-Borders.pdf>.

26. Global Human Rights Defence, *Shedding light on the depths of human trafficking in Asia*, 2021, <https://ghrd.org/shedding-light-on-the-depths-of-human-trafficking-in-asia/>.

27. The Daily Star, *Future impacts of Covid-19: Human trafficking on India-Bangladesh border*, July 9th, 2021, <https://www.thedailystar.net/views/opinion/news/future-impacts-covid-19-human-trafficking-india-bangladesh-border-2125521>.

28. Mehta, Rimple, *Mobility across borders and continuums of violence: experiences of Bangladeshi women in correctional homes in Kolkata*, Rapoport Center Human Rights, 2017, <https://law.utexas.edu/wp-content/uploads/sites/31/2017/07/Mobility-Across-Borders.pdf>.

29. Article 20 (1) of the Constitution of India provides that no person shall be subjected to a greater penalty than that which might have been inflicted under the law in force at the time of the commission of the offence.

30. United Nations Office on Drugs and Crime, *United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules)*, UN Doc. A/RES/65/229, March 16th, 2010, Rule 2, (2).

While unaware of the number of trafficking victims arrested by the BSF, MASUM documented the detention of 106 women and 30 children in the first five months of 2021³¹.

It is also important to note that many women who arrive in India from Bangladesh are victims of forced migration, that is, they are forced to look for opportunities of employment to escape destitution, hunger, and economic decline. Indian authorities must pay attention to the circumstances behind the migration of Bangladeshi citizens into Indian territory before they are incarcerated.

The exact scope of forced migration and trafficking is unknown. According to a report by the US Department of State on trafficking in persons in India, West Bengal authorities allegedly order police to register trafficking cases as kidnappings or missing persons to reduce the number of trafficking instances in their official statistics³². The same report asserts that government data indicates court delays and a lack of prioritization of trafficking, which led to 93% of trafficking cases pending trial in West Bengal, meaning that fewer than 1% of suspects were charged with human trafficking between 2008 and 2018. The conviction rate for trials that had taken place was 54%.

Covid-19 is also playing a role in worsening the situation. Lockdowns in Bangladesh have resulted in economic hardship for already disadvantaged communities, forcing them to pursue more dangerous or unreliable job offers and to send their children into risky and unsafe work environments. Also the closure of schools for 18 months, one of the world's longest shutdowns, makes many children, in particular girls, more vulnerable to trafficking. While crossing the border is more restricted because of the pandemic, traffickers can easily identify victims to be trafficked when cross-border movement becomes easier again³³.

The case of Halima Begum shows well what trafficking victims face. On 14 July 2021, BSF, Frontier Head Quarter North Bengal, Siliguri released a press statement stating that their troops had apprehended a 35-year old Bangladeshi woman who had tried to cross the international border from India to Bangladesh through the unfenced area of Hili Border Outpost. In their press release, the BSF informed the public that the victim was trafficked 16 years prior to India by a trafficker who sold her to a man named Sarjit Singh for 10,000 Rs. (120 EUR). Sarjit Singh kept Halima Begum and exploited her for 11 years, during which she gave birth to a child. The victim managed to escape from her captivity and reached a bus stop where she met an unknown lady who handed her over to Tota Singh, who also exploited her. The victim managed to escape again and reached Hili in West Bengal, where she intended to cross the international border to meet her family in Bangladesh. She was, however, apprehended by the BSF, who handed her to the Hili Police Station for legal action, claiming that she had illegally entered and stayed in India.

The BSF are ignoring a clear advisory by the Ministry of Home Affairs (Memorandum No. 14051/14/2011-F.VI), according to which foreign victims of human trafficking who are found without a valid passport or visa should not be prosecuted under the Foreigners Act and immediate action must be taken to repatriate the victim. It is clear from the BSF press release that the authorities consider Halima Begum a victim of trafficking. Based on MASUM's complaint, the NHRC had called for an Action Taken Report in the case from the Ministry of Home Affairs of India in September 2021. No further updates have been received for this case³⁴.

31. Counterview, *How BSF, police, court turned Bangladeshi woman slave victim into accused in crime*, July 24th, 2021, <https://www.counterview.net/2021/07/bsf-police-court-turn-bangladeshi-woman.html>. Information on these cases are on file with MASUM.

32. US Department of State, *2020 Trafficking in Persons Report: India*, 2020, <https://www.state.gov/reports/2020-trafficking-in-persons-report/india/>.

33. The Daily Star, *Future impacts of Covid-19: Human trafficking on India-Bangladesh border*, July 9th, 2021, <https://www.thedailystar.net/views/opinion/news/future-impacts-covid-19-human-trafficking-india-bangladesh-border-2125521>.

34. Case documented by MASUM.

IV. FOUR ASPECTS OF REMEDY: INDIA'S OBLIGATION TO VICTIMS OF TORTURE

In a report from the former Special Rapporteur on Violence Against Women Yakin Ertürk, four essential aspects for adequately addressing violence against victims and ensuring redress were identified³⁵: prevention, protection, punishment, and reparation. The aspects also resonate with the spirit of the *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, adopted by the UN General Assembly in 2005³⁶. However, there are numerous shortcomings by the Indian government in remedying violence inflicted by the BSF and violence inflicted against women in the context of trafficking.

1.Prevention Through Relevant Laws

India lacks relevant laws that could prevent and remedy GBVAW by the BSF and could prevent trafficking and provide redress to victims. In particular, India has neither ratified the CAT Convention, nor has it criminalized torture in its domestic legislation, despite promises.

In its National Report to the Universal Periodic Review (UPR) 2017, India stated it remains committed to ratify the CAT Convention and to make comprehensive amendments to its Penal Code, Code of Criminal Procedures, and Indian Evidence Act³⁷. The Law Commission of India published a report entitled *Implementation of 'United Nations Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment' through Legislation* in October 2017³⁸. The report reiterated India's need to enact domestic legislation preventing torture and also provided a proposed draft of anti-torture legislation in India³⁹. However, the Bill has still not been passed by the Parliament of India. Former Union Law minister Ashwani Kumar had filed an application to the Supreme Court of India seeking directions to the government for enacting domestic legislation against torture without delay. In response, the Indian government stated that due deliberation was required to act upon the legislation. Ultimately, the Supreme Court refused to issue directions to the government and the application was dismissed⁴⁰.

The Human Rights Committee (HRC) in its General Comment No. 20 on Article 7 of the ICCPR emphasized that states need to take legislative, administrative, judicial, and other measures to prevent and punish acts of torture and cruel, inhuman, and degrading treatment in any territory under their jurisdiction⁴¹. Merely pronouncing that torture is forbidden, as done by the Indian government, is not enough to fulfill this obligations to eradicate torture from Indian society.

35. UN Economic and Social Council, *The Due Diligence Standard as a tool for the Elimination of Violence against Women*, UN Doc. E/CN.4/2006/61, January 20th, 2006.

36. UN General Assembly, *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, UN Doc. 60/147, December 16th, 2005.

37. UN General Assembly, *Working Group on the Universal Periodic Review, National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21: India*, UN. Doc. A/HRC/WG.6/27/IND/1, February 23rd, 2017.

38. Law Commission of India, *Report No. 273, Implementation of 'United Nations Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment' through Legislation*, 2017, www.lawcommissionofindia.nic.in/reports/Report273.pdf.

39. Ibid.

40. The Wire, *SC Refuses to Direct Parliament To Enact Stand-Alone Law Against Custodial Torture*, September 5th, 2019, <https://thewire.in/law/sc-refuses-to-direct-parliament-to-enact-stand-alone-law-against-custodial-torture>.

41. HRC, *General Comment No. 20, Article 7 Prohibition of torture, or other cruel, inhuman or degrading treatment or punishment*, UN Doc. A/44/40, March 10th, 1992.

In 2013, the Indian government introduced legal reforms to address violence (especially sexual violence) against women under the Criminal Law Amendment Act⁴². The reforms include a broader definition of rape; recognize certain crimes, such as stalking and voyeurism; and increase the punishment for crimes. However, the reforms lack provisions for an adequate witness protection scheme, legal aid services, psychological support, counselling, and a victim compensation scheme. Criminalizing violence against women without providing for other aspects of redress, like medical and psychological support, and without enabling victims through legal aid to lodge complaints before the police and in court does not bring justice. It is therefore not a comprehensive piece of legislation and has hardly been applied. It has also been observed that the Criminal Law Amendment Act and other provisions of the Indian Penal Code and Criminal Procedure Code rarely come to the aid of civilians at the border, due to the complex nature of the area.

Due to the close proximity to the border and abject poverty, West Bengal is both a transit point and a source of human trafficking. The Trafficking in Persons (Prevention, Care and Rehabilitation) Bill, 2021, proposes to prevent and counter trafficking, especially for women and children, and provide the victims with adequate care and protection. It introduces strict punishment for all crimes related to trafficking, including the death penalty. The Bill gives the authority of investigation and coordination in cases of trafficking to the National Investigation Agency (NIA). However, it has been criticised on various grounds, including a lack of clear procedure through which the NIA will gather information from Anti-Human Trafficking Units at State and district levels to respond to cases of trafficking. There is also a lack of clear rescue protocols in the draft legislation. Civil society organizations have also claimed that the Bill does not make a clear distinction between trafficking and sex work and does not take the consent of victims into account. There is also a need in the draft legislation for better community reintegration for victims of trafficking and clear guidelines about rehabilitation and care⁴³.

2. Protection of Victims

Many victims of GBVAW, their families, and human rights defenders who dare to complain, face repeated threats from the perpetrators and are forced to withdraw their complaints. In March 2021, Sharmila Khatun, an 18-year-old girl and resident of Murshidabad District was found murdered in agricultural fields. The condition in which her body was found led her family to believe that she had been raped before being killed. They filed a complaint with the police against a man who had made sexual advances on Sharmila on numerous occasions. After this, Sharmila's mother and sister faced repeated threats from the accused to withdraw their complaint. The police refused to register a complaint regarding these threats and, instead, started to aid the accused in intimidating the victim's family. The police pressured them to withdraw their complaint by using force, offering money for a settlement, and threatening to lodge false complaints against them. The case is still pending before the NHRC.

This incident showcases the imperative need for adequate protection for victims. The government introduced a Witness Protection Scheme in 2018⁴⁴, which was approved by the Supreme Court in *Mahendra Chawla vs. Union of India*⁴⁵. However, there remains little to no information on the proper implementation of the scheme. According to the scheme, the witness needs to apply for protection detailing the threats they are facing before the competent authority in the district.

42. *Criminal Law Amendment Act*, 2013, India.

43. Singh, Shiv Sahay, *Concerns remain over anti-trafficking bill*, The Hindu, July 18th, 2021, <https://www.thehindu.com/news/national/concerns-remain-over-anti-trafficking-bill/article35388874.ece>.

44. *Witness Protection Scheme*, 2018, India.

45. *Mahendra Chawla vs. Union of India*, 2018, India.

Subsequently, the authority would pass on the application to the police and ask for a threat analysis report. While the scheme allows for interim protection during the conduction of threat analysis in urgent matters, it does not specifically describe what constitutes urgent matters. It does not make any special provisions for incidents involving GBVAW, sexual or otherwise, or torture. It can only be hoped that domestic legislation on torture shall provide adequate protection to victims and their families.

3. Assuring Accountability and Punishment

One of the main obstacles women face when wanting to lodge a complaint is the ignorance by the police and the refusal to register a First Information Report (FIR). A FIR is a short report written by the police based on the victims' account that sets the criminal procedure in motion. There are many instances in which the police did not register a FIR report in cases of torture and extrajudicial killings. For instance, out of the 328 incidents of torture documented by MASUM during the past seven years, including many cases of women, a First Information Report (FIR) was not registered by the police in 247 incidents, i.e. 75% of all cases⁴⁶.

Even if cases are registered, Section 197 of the Criminal Procedure Code protects all public officials from prosecution under criminal charges, unless it is authorized by the government. This is another major obstacle to obtaining justice since this authorization is rarely granted⁴⁷. A statement recently issued by Human Rights Watch on the human rights violations committed by the BSF on the Indo-Bangladesh border stated that the organization was not aware of any cases in which Indian authorities have held BSF soldiers accountable for abuses they have committed⁴⁸.

There is an exception to this prosecution sanction in cases of sexual offences. The Criminal Law Amendment Act from 2013 has amended Section 197 of Criminal Procedure Code and has removed the requirement of obtaining sanction for the prosecution of public officials accused of committing sexual offences against women or for not registering complaints registered against sexual offences. This means that incidents of brutal assault and other non-sexual gender-based violations do not fall under the amendment.

Under Section 80 of the 1968 Border Security Force Act, if any member of the BSF is accused of committing a criminal offence, their commanding officer has the authority to decide whether the official would be tried through a criminal court or through court martial proceedings. Court martial proceedings are generally never open to the public and there are few ways to ensure that the trial is conducted in a fair and impartial manner.

The NHRC does not have the authority to investigate allegations of human rights violations by members of armed forces, including the BSF, under the 1993 Protection of Human Rights Act. It can only request for reports on the incident from the government and give its recommendations on the basis of the report. This is in violation of the Principles relating to the Status of the National Institutions, which state a national institution should be given as broad a mandate as possible⁴⁹.

46. The First Information Report or FIR is the first step towards prosecution in India. On the basis of the FIR, the police are required to conduct investigations and submit chargesheets. In incidents where even the FIR is not filed, the question of obtaining sanction does not even arise.

47. E.g. an application under the Right to Information Act (RTI) was filed to know the number of instances where the government has granted sanction for prosecution of security forces operating in Jammu and Kashmir between 1989 to 2011. The response to the RTI revealed that out of the 44 applications made during this period, sanction was granted to none of them. See Working Group on Human Rights, Factsheet - UPR 2017 - India 3rd Cycle Universal Periodic Review, 2017, p. 9.

48. Human Rights Watch, *India: Investigate Alleged Border Force Killings*, February 9th, 2021, <https://www.hrw.org/news/2021/02/09/india-investigate-alleged-border-force-killings>.

49. UN General Assembly, *Principles relating to the Status of the National Institutions (The Paris Principles)*, UN Doc. 48/134, December 20th, 1993.

Even in cases involving police and other public officials, the NHRC has been found to not initiate proceedings for prosecution. In the incidents of torture that MASUM has reported to the NHRC, it has not recommended prosecution of officials in any incident and has only recommended departmental action against erring officers and monetary compensation for victims in a few select cases. Recently, Justice Arun Mishra, who sympathizes with Prime Minister Modi's BJP, has been appointed as the chairperson of the NHRC⁵⁰. This raises issues of independence with the commission's proceedings.

The Constitution provides provisions enabling access to legal aid services. Article 39A promises the right to free legal aid for the more disadvantaged sections of society. However, neither the Penal Code, the Criminal Procedure Code, nor the Criminal Law Amendment Act guarantee such safeguards. Therefore in practice, a system of legal aid has not been established. Since many women in India lack financial independence and many victims of gender-based violence belong to marginalized sectors of society, they cannot afford to fight prolonged legal battles without adequate legal aid services.

The Scheduled Castes (SC) and Scheduled Tribes (ST) Prevention of Atrocities Act⁵¹ provides for a special prosecutor, in addition to the institution of special courts, to assist people of the SC and ST communities. However, the lack of establishment of separate special courts in many states, including in West Bengal, makes the availability of this provision illusory.

In 1994, the Supreme Court ruled that victims of rape should be provided legal assistance at police stations. It also made clear that police stations should have a list of lawyers willing to provide free legal aid⁵². But since not many lawyers are willing to take up pro-bono cases, free legal aid services are rarely provided. MASUM provides some legal assistance to the survivors of torture, including women, due to a lack of advocates willing to do so.

Gender stereotypes and persistent derogatory legal language present challenges to women achieving justice. Domestic laws in India still use language riddled with gender stereotypes, such as "outraging the modesty of a woman"⁵³. Additionally, this persistent use of problematic language propagates regressive beliefs that judge a survivor of sexual violence based on their character. If the attack is on the "modesty of a woman", then this modesty is brought under scrutiny in judicial trials. In defense of the accused, a woman's sexual past is explored in order to prove how "sacrosanct" her "modesty" was in the first place.

Stereotyping and gender bias in court procedures are common and far reaching. Judges often apply standards about what they consider appropriate behavior of women. This results in decisions based on preconceived beliefs rather than fact. For instance, in March 2021, while hearing the case against a government employee accused under several provisions of the Protection of Children from Sexual Offences Act, the Supreme Court asked the accused to marry the underage victim. It stayed the arrest of the accused for four weeks, allowing him time to contemplate his decision for marrying the victim who had accused him of rape⁵⁴. In another verdict by the Karnataka High Court, a judge granted anticipatory bail to an accused perpetrator of rape and questioned the genuineness of the complainant. The Court stated, "[it is] unbecoming of an Indian woman to sleep after she is ravished, that is not the way our women react"⁵⁵.

50. Venkatesan, V., *How Justice Arun Mishra rose to become the most influential judge in the Supreme Court*, The Wire, September 1st, 2020, <https://thewire.in/law/justice-arun-mishra-judgments-analysis>.

51. *The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act*, 1989, India.

52. Supreme Court of India, *Delhi Domestic Working Women's Forum vs. Union of India and Ors.*, 1994-1995, India.

53. Section 354 of the Penal Code reads: "Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both."

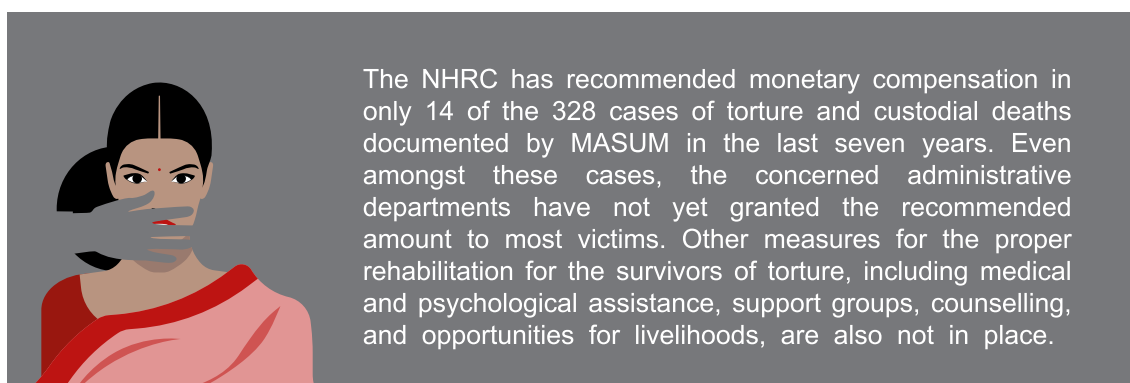
54. The Wire, *'Will You Marry Her?': SC Asks Man Accused of Raping a Woman When She Was Minor*, March 1st, 2021, <https://thewire.in/law/supreme-court-rape-accused-marry-pocso-government-employee>.

55. Nair, Amrita, *Unmasking the misogyny in Indian Courts*, The Leaflet, August 6th, 2020, <https://www.theleaflet.in/unmasking-the-misogyny-of-indian-courts/>.

The “two-finger test”, which was banned by the Supreme Court of India in 2013 for violating a woman’s privacy and shaming her for her sexual history, is still widely used to gather evidence of rape and is presented in courts. It is an unscientific means to test whether the vagina muscles are accustomed to sexual activity to determine whether rape has taken place. The perception that women belong to men also feeds into Indian legislation and is the reason why marital rape has still not been criminalized in India.

4. Reparation: Enabling Victims to Move on

The case of Felani Khatun, a 15-year-old girl whose body was found hanging from the barbed wire fences between India and Bangladesh, after being allegedly shot by the BSF personnel in 2011, was met with widespread criticism. Felani together with her father wanted to return to Bangladesh, and attempted to climb over a barbed wire fence when her clothes got stuck. Hearing her screams, BSF arrived and shot her. Her dead body was left hung over the barbed wire, symbolically representing State victory over the alleged transgression⁵⁶. Two trials were conducted in special BSF courts in 2013 and 2015 that acquitted the BSF constable accused of shooting the girl. A plea for a new investigation is still pending before the Supreme Court⁵⁷. The NHRC recommended a monetary compensation of 500,000 rupees (6,000 EUR) for Felani’s family, but the government of India refused to grant the amount.



Section 357 A of the Criminal Procedure Code provides for a Victim Compensation Scheme (CPCVCS). Under this scheme, victims who have suffered loss or injury due to a crime committed against them can file an application with the State or District Legal Services Authority for compensation. The State or District Legal Services Authority are required to complete inquiries within two months of an application being filed. However, it is often difficult to conduct inquiries into incidents where human rights abuses are alleged to have been committed by public officials, due to lack of evidence and witnesses. While there have been many incidents in which the courts and Human Rights Institutions (HRIs) have recommended compensation for a female survivor of violence, there are no clear conditions listed under the scheme in which granting compensation is mandatory. Courts and HRIs make these decisions according to their own discretion. The CLAA provides that each state has to come up with its own scheme on providing compensation, however, only New Delhi has formulated a comprehensive mechanism to this effect. Even when compensation is awarded under the CPCVCS, it amounts to interim relief without any assurance of punishment for the perpetrators.

56. Rapoport Center for Human Rights and Justice, *Mobility across Borders and Continuums of Violence: Experiences of Bangladeshi Women in Correctional Homes in Kolkata*, 2017, <https://law.utexas.edu/wp-content/uploads/sites/31/2017/07/Mobility-Across-Borders.pdf>.

57. Human Rights Watch, *India: Investigate Alleged Border Force Killings*, February 9th, 2021, <https://www.hrw.org/news/2021/02/09/india-investigate-alleged-border-force-killings>.

V. CONCLUSION

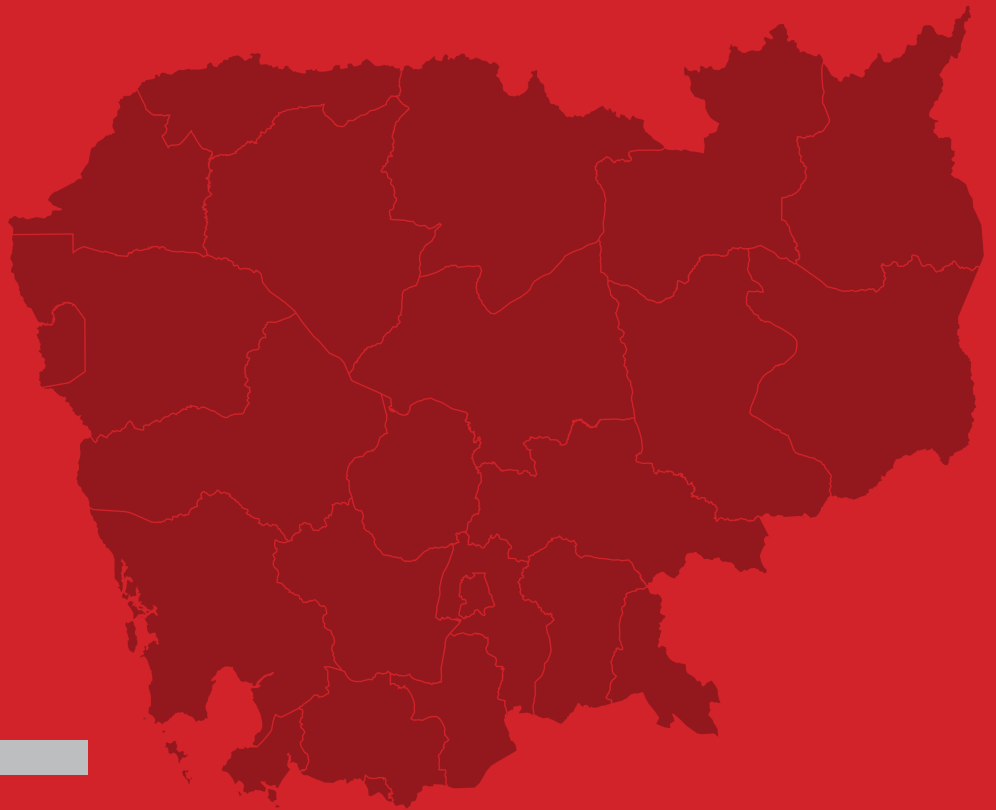
India's reluctance to acknowledge the magnitude of torture inflicted on its women citizens by its public officials has led to a grave crisis of law and order in the country. The most disadvantaged populations of India face harsh struggles in accessing their rights to legal remedy and justice; this is particularly true in West Bengal as described in this chapter.

The lack of specific legislation against torture in the country, the existence of legal immunity for public officials, and the lack of proper implementation of existing domestic laws make it difficult to adequately address GBVAW and offer proper redress and rehabilitation to victims. While the Supreme Court of India has set a good precedent of condemning torture in any form, it has failed to direct the government to undertake legal, administrative, and other reforms to prevent torture. The Indian judiciary, however, continues to be plagued by patriarchal and misogynistic beliefs, which set a dangerous precedent for law, perpetuates the culture of misogyny, and enables the lack of accountability from perpetrators of violence. The existence of domestic laws that offer protection to public officials from prosecution and the limited independence granted to the National Human Rights Commission in investigating complaints against armed forces in India further contributes to difficulties in obtaining justice for victims. Indian laws are lacking in provisions to ensure medical care, rehabilitation, community reintegration for victims, and policies for spreading awareness of violence against women.

In international law, sexual violence committed against a population has been recognized as a crime against humanity, which is used to instill fear and assert domination over a group. The domestic legislation in India needs to be aligned with the spirit of international law to recognize women foremost as modern citizens of a free world. It is important to recognize GBVAW as a specific form of torture committed against women that leads to the violation of fundamental civil and political liberties.

Given that the widespread practices of patriarchy and misogyny are both inextricable from Indian society, recognition of this needs to emerge through legislative reforms. The first step toward this would be to ratify the CAT Convention and to acknowledge the rampant prevalence of in-country torture. It is further necessary to recognize GBVAW as a specific form of torture and to hold the State accountable for the violence faced by women, which public officials are fully knowledgeable.

Ensuring accountability is the first step towards reform. To that end, all persons in positions of authority must work together, open their offices up for scrutiny, and provide survivors of violence with an opportunity to actively participate in challenging impunity.



06

SEXUAL AND GENDER- BASED VIOLENCE AGAINST WOMEN IN THE WORKPLACE IN CAMBODIA

SOPHEAP CHAK¹

1. This chapter was developed with the support of the Cambodian Center for Human Rights (CCHR).

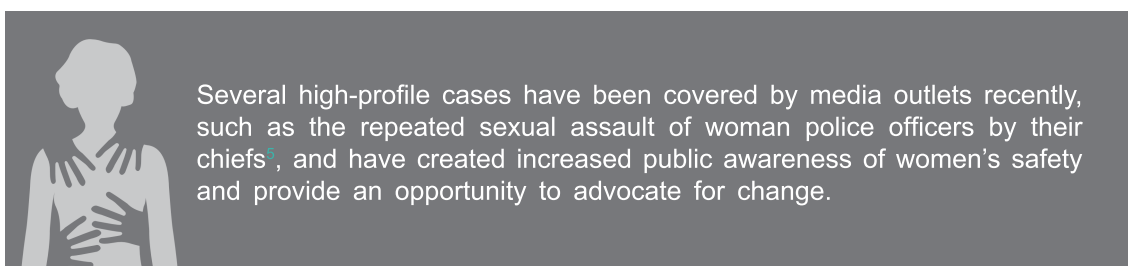
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I. INTRODUCTION

The Kingdom of Cambodia has a dark history of torture and sexual violence perpetrated by the infamous and brutal Khmer Rouge regime. Sadly, torture against women and girls continues to manifest through high rates of sexual and other gender-based violence against women (GBVAW) occurring in both public and private spaces, such as rape, sexual assault, verbal abuse, threats of violence, psychological abuse and intimidation, sexual harassment, stalking, forced labor, forced sex work, and human trafficking².

GBVAW is pervasive across the country, particularly in the workplace. It is estimated that one in three women have been sexually harassed at work³. Violence and exploitation in garment and textile factories, a sector which is vital to the country's economy and employs more than 80% of Cambodia's women, are exceptionally high⁴. Asymmetrical power relationships between Western brands and Cambodian suppliers, and ever-changing fashion trends that emphasize cost reduction in production, make women garment workers particularly vulnerable to abuse and exploitation. However, the garment industry is not the only in-country sector where GBVAW is prevalent. For instance, incidents of GBVAW committed by Cambodia's police force have increasingly emerged in recent months. As this report will show, legislation, policies, and institutions insufficiently protect women from violence. Strong patriarchal values, gender stereotypes, and entrenched power imbalances have typically prevented victims to speak out and complain and are major obstacles in obtaining justice.



Several high-profile cases have been covered by media outlets recently, such as the repeated sexual assault of woman police officers by their chiefs⁵, and have created increased public awareness of women's safety and provide an opportunity to advocate for change.

2. Solidarity Center, *In Our Words: Women Worker Address Gender-Based Violence in Garment Factories in Cambodia*, 2018, <https://www.solidaritycenter.org/wp-content/uploads/2019/06/Gender.Cambodia-report.6.19.pdf>.
3. CARE International, *Sexual Harassment and Garment Manufacturing in the Mekong: Legal Frameworks*, 2018, https://www.care.org.au/wp-content/uploads/20184/11/STOP_Regional-legal-frameworks_Nov2018.pdf.
4. CARE International, *Women in Cambodia's Garment Industry: Their Work, Their Safety*, 2017, https://www.care.org.au/wp-content/uploads/2017/04/SHCS_Brief-Women-Cambodia-Garment-Industry-March-2017_CA.pdf.
5. Ee e.g. Chanvirak, Khann, *Provincial police chief accused of sexual harassment*, Khmer Times, August 11th, 2020, <https://www.khmertimeskh.com/50753554/provincial-police-chief-accused-of-sexual-harassment/>; or also the case of attempted rape of a young model by a business tycoon: Kongkea, Buth Reaksmeay, *TV presenter sues tycoon after alleging attempted rape*, Khmer Times, May 13th, 2021, <https://www.khmertimeskh.com/50855874/tv-presenter-sues-tycoon-after-alleging-attempted-rape/>

II. GENDER DIMENSIONS OF THE CAMBODIAN LABOR MARKET

Cambodia's economy consists of three major sectors: agriculture, industry, and services. All three rely heavily on the country's women workforce. The industrial and service sectors, which have the highest labor force participation rate throughout the Southeast Asia and Pacific region⁶, stand to gain the most from accessing this part of the labor market.

According to CARE International, from 2017, up to 85% of the workers in Cambodia's garment sector consist of women⁷. Whereas for the entertainment sector, an Oxfam Information Sheet from 2019 reveals that up to 75% of the workers employed are women⁸. These numbers suggest that there is a high concentration of female workforce in low-wage and "feminized" areas of work. Chances for career advancement and a higher salary are rare and the chances of experiencing violence are high⁹.

Risks of violence and ill-treatment are primarily due to gender power imbalances in Cambodian workplaces, which disproportionately affects women workers. While women make up the vast majority of employees in the three main sectors¹⁰, the higher positions are nearly always occupied by men. A survey conducted by the Better Factories Cambodia program in 2017 disclosed that around 75% to 95% of female garment sector employees worked in low-ranked positions¹¹. This finding was backed up by the most recent publication of the Cambodian Socio-Economic Survey, showing that less than 1% of the female workforce in Cambodia held management positions between 2019 and 2020¹².

The gender gap in leadership positions fosters a power imbalance that makes many women reluctant to jeopardize their livelihoods and report or openly address fears and incidents of violence.

6. Asian Development Bank. *Country Partnership Strategy: Cambodia, 2014-2018. Gender Analysis (Summary)*, 2014, <https://www.adb.org/sites/default/files/linked-documents/cps-cam-2014-2018-ga.pdf>.

7. CARE International, *Women in Cambodia's Garment Industry: Their Work, Their Safety*, 2017, https://www.care.org.au/wp-content/uploads/2017/04/SHCS_Brief-Women-Cambodia-Garment-Industry-March-2017_CA.pdf.

8. Oxfam, *Entertainment Workers. Social Protection for the Most Marginalised Informal Workers*, 2019, https://oi-files-cng-prod.s3.amazonaws.com/cambodia.oxfam.org/s3fs-public/file_attachments/Entertainment%20Workers.pdf.

9. Cunningham, Wendy & Gavalyugova, Dimitria, *Gender Analysis of the Cambodian Labor Market*, World Bank, 2020. <https://openknowledge.worldbank.org/bitstream/handle/10986/34201/Gender-Analysis-of-the-Cambodian-Labor-Market.pdf?sequence=4&isAllowed=y>.

10. These sectors are agriculture, retail trade/services and services and manufacturing. Other sectors including law enforcement/justice, government, media, technology and construction are dominated by men.

11. Better Factories Cambodia, *Towards Gender Equality. Lessons from factory compliance assessments*. 2016-2017, International Labour Organization (ILO), 2018, <https://betterwork.org/wp-content/uploads/2018/03/Towards-Gender-Equality.pdf>.

12. National Institute of Statistics; Ministry of Planning, *Report of Cambodia Socio-Economic Survey 2019/20*, Cambodian Government, 2020, https://www.nis.gov.kh/nis/CSES/Final%20Report%20of%20Cambodia%20Socio-Economic%20Survey%202019-20_EN.pdf

1. Prevalence of Sexual and other Gender-Based Violence in Cambodian Workplaces

Due to deeply ingrained patriarchal attitudes, GBVAW is pervasive throughout Cambodian society and women experience sexual and other GBVAW in nearly every aspect of their daily lives. GBVAW occurs in various ways and in many places. The concept of male dominance and the subservience of women is prevalent in Cambodia, especially when men are in positions of power, rendering women vulnerable to abuse and exploitation. Women of rural communities are especially at risk, where opportunities for economic and educational mobilization are scarce.

Studies indicate that one in three women have been sexually harassed at work¹³. Sexual harassment is disproportionately perpetrated against women by men and can vary in severity and in types of behavior, ranging from rape or sexual assault to verbal harassment, including insults, sexually offensive graphic comments, gestures, or exposure to pornographic or sexual materials¹⁴. It is within these hostile environments that women must work in order to simply survive and provide for themselves and their families.

2. Prevalence of Violence in Garment Factories

Many women employed in Cambodian garment factories endure pervasive forms of violence, most often at the hands of their male co-workers or superiors¹⁵. A survey conducted in 2018 with nine women trade union leaders and 83 women garment workers found startling statistics about the prevalence and frequency of GBVAW. No less than 48% of women self-identified as targets of gender-based violence at work, 87% experienced verbal harassment or unwanted touching, 46% had a supervisor or manager force them to become their mistress under the guise of improved working conditions, and 28% stated that someone at work forced them to have sex to either extend their work contract, to fix their workstation, or to obtain a bonus¹⁶.

A report conducted by CARE International found that sexual harassment within garment factories was rampant and widespread¹⁷. The types of sexual harassment recorded ranged from being whistled at, exposed to pornographic pictures or jokes, touched inappropriately, receiving unwanted embraces or kisses by coworkers to invitations on dates with the promise of hiring or promotion or upon the threat of demotion, loss of income, firing, or sexual assault¹⁸. In some cases, sexual harassment or assault experienced by women garment workers was so extreme that victims chose to leave their positions¹⁹.

Further reports conducted by the International Labour Organization (ILO) found that one in every five women workers felt they had been subjected to some form of gender-based violence in the workplace²⁰. Examples included rape when working overtime, men hiding to look at women while

13. CARE International, *Sexual Harassment and Garment Manufacturing in the Mekong: Legal Frameworks*, 2018, https://www.care.org.au/wp-content/uploads/2018/11/STOP_Regional-Legal-frameworks_Nov2018.pdf.

14. CARE International, 'I know I cannot quit' *The Prevalence and Productivity Cost of Sexual Harassment to the Cambodian Garment Industry*, April 2017, https://www.care.org.au/wp-content/uploads/2017/04/SHCS_Full_Technical_Report_March_2017.pdf.

15. Ibid.

16. Solidarity Center, *In Our Words: Women Worker Address Gender-Based Violence in Garment Factories in Cambodia*, 2018, <https://www.solidaritycenter.org/wp-content/uploads/2019/06/Gender.Cambodia-report.6.19.pdf>.

17. CARE International, 'I know I cannot quit' *The Prevalence and Productivity Cost of Sexual Harassment to the Cambodian Garment Industry*, https://www.care.org.au/wp-content/uploads/2017/04/SHCS_Full_Technical_Report_March_2017.pdf.

18. Ibid.

19. Ibid.

20. ILO, *Action-oriented research on gender equality and the working and living conditions of garment factory workers in Cambodia*, 2012, https://ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---sro-bangkok/documents/publication/wcms_204166.pdf.

they used the toilet, lewd jokes, items of clothing being forcibly removed in front of co-workers, and women who purportedly wear “sexy clothing” being ridiculed and forced to stand on a table for other co-workers to see²¹. Women are regrettably not free from violence once they leave the workplace. Many women garment workers often face sexual harassment when traveling to and from work, mainly in the form of staring, leering, verbal insults, or sexually inappropriate comments²². In some horrifying cases, women have reported being chased by men and having to flee from attempted rape²³.

Moreover, the prevalence of violence in garment factories is compounded by widespread job insecurity in the sector. Fixed-term contracts are increasingly used by factories, with an estimated 80% of the workforce of Cambodia’s garment factories employed under these conditions²⁴. These contracts contribute to the precariousness of employment for garment workers, adding to the imbalance of power between employers and employees. Threats of being fired or not renewing a contract are a constant risk for workers, creating fear of job loss and undermining the ability to report issues faced in the workplace, including GBVAW. As women garment workers are often the primary provider for their families and considering the lack of available employment opportunities, many cannot afford to lose their employment. Consequently, when confronted with gender-based violence in their workplaces, many decide to remain silent, allowing this violence to persist and thrive²⁵. Job insecurity does not only silence workers exposed to GBVAW, but also those who are witnesses, due to fear of retribution or retaliation if they speak up against the crimes they have seen²⁶.

The situation has worsened during the Covid-19 pandemic. Employers took advantage of circumstances to lay off or suspend workers, leaving them unable to support themselves. Workers who did retain their jobs were not provided with adequate personal protective equipment or health measures to protect against the virus²⁷.

3. Sexual and other GBVAW in the Police Force

Sexual and other GBVAW is not only prevalent within the garment industry, different sectors have also been plagued with violent incidents. One State institution that has had numerous allegations of sexual and other GBVAW is the police force. In a recent case, Ouk Kosal, a Kampong Thom police chief, was accused of sexually assaulting and harassing four of his female subordinates for several years. In an unprecedented move, the four women submitted a complaint of sexual misconduct to the Interior Ministry in August 2020, alleging that Kosal forced them into sex acts, such as masturbating him in his office and touching their breasts and genitals under threat of their careers²⁸. The women reported they had previously submitted complaints about his conduct but had received ridicule and threats in return²⁹. It was not until their complaint reached the media that the Interior Ministry launched an investigation and found that wrongdoing did occur.

21. Ibid.

22. CARE International, ‘I know I cannot quit’ *The Prevalence and Productivity Cost of Sexual Harassment to the Cambodian Garment Industry*, https://www.care.org.au/wp-content/uploads/2017/04/SHCS_Full_Technical_Report_March_2017.pdf.

23. Ibid.

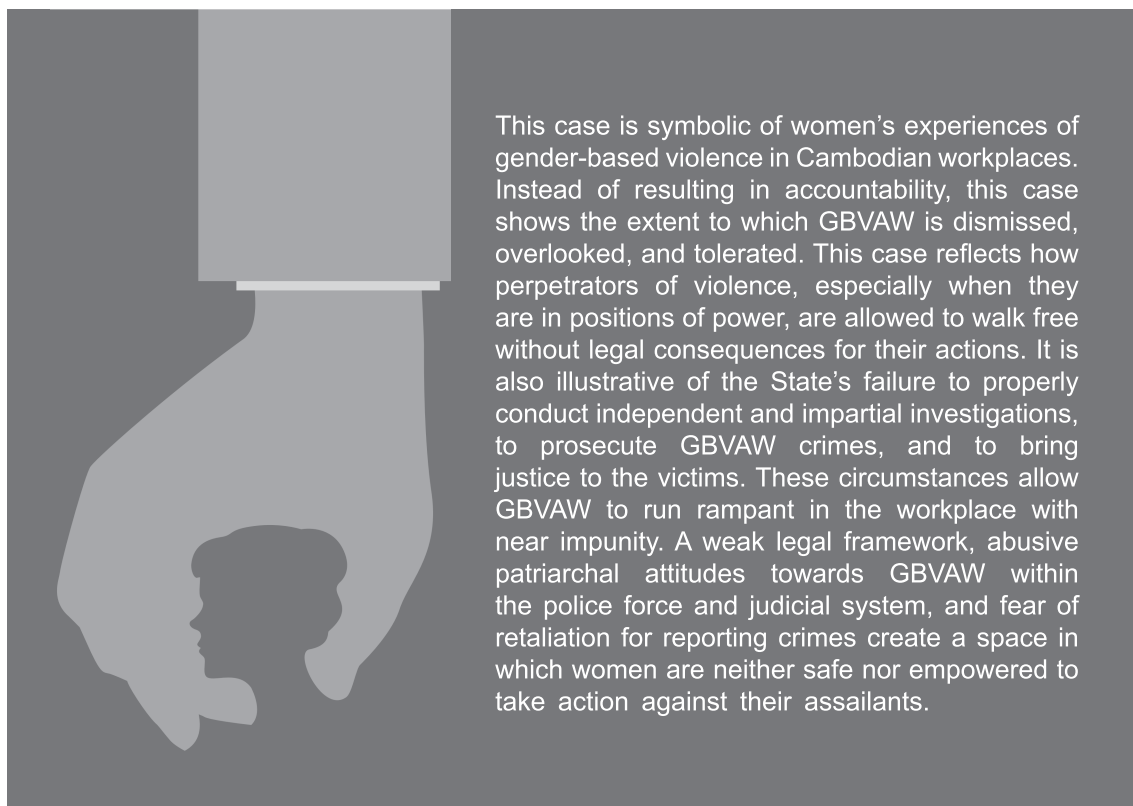
24. Granum, Charlotte Ruud & Leffler, Carin, *Overworked and exposed: Short term contracts and gender issues in the Myanmar and Cambodian garment industries*, Future in Our Hands, 2019, <https://www.central-cambodia.org/wp-content/uploads/2019/06/Report.pdf>.

25. CARE International, ‘I know I cannot quit’ *The Prevalence and Productivity Cost of Sexual Harassment to the Cambodian Garment Industry*, https://www.care.org.au/wp-content/uploads/2017/04/SHCS_Full_Technical_Report_March_2017.pdf.

26. Solidarity Center, *In Our Words: Women Worker Address Gender-Based Violence in Garment Factories in Cambodia*, 2018, <https://www.solidaritycenter.org/wp-content/uploads/2019/06/Gender.Cambodia-report.6.19.pdf>.

27. Solidarity Center, *Survey: Cambodian Workers Struggle to Survive in Covid-19*, 2021, <https://www.solidaritycenter.org/survey-cambodian-workers-struggle-to-survive-in-covid-19/>.

Despite this finding, no substantial action was taken against Kosal. The police chief was merely removed from his post and demoted to the rank of colonel³⁰. The Interior Ministry stated that they would not press charges or prosecute to “protect the dignity” of the women, while a police spokesperson later said it was “embarrassing enough” for the women that the abuse had happened³¹. In the meantime, the Interior Ministry failed to lodge official charges against Kosal. It appears that they conducted some investigations into the case up until March 2021, when the investigation was officially dropped. In a further blow to the female victims who came forward, after being demoted to colonel, Kosal was later transferred to work for the Interior Ministry, seemingly rewarding his sexually abusive conduct³².



28. Lo, Clifford, *Cambodian police chief accused of sexually abusing women officers*, South China Morning Post, August 14th, 2020, <https://www.scmp.com/news/asia/southeast-asia/article/3097459/cambodian-police-chief-accused-sexually-abusing-women>.
29. Blomberg, Matt, *Cambodia police chief sacked over sexual misconduct in landmark case*, Reuters, September 9th, 2020, <https://www.reuters.com/article/us-cambodia-women-rape-idUSKBN2601TY>.
30. Chanvirak, Khann, *Police chief demoted over sexual harassment claims*, Khmer Times, September 22nd, 2020, <https://www.khmertimeskh.com/50765107/police-chief-demoted-over-sexual-harassment-claims/>.
31. Blomberg, Matt, *Cambodia police chief sacked over sexual misconduct in landmark case*, Reuters, September 9th, 2020, <https://www.reuters.com/article/us-cambodia-women-rape-idUSKBN2601TY>.
32. Sokhorn, Nhim & Mech, Dara, *Interior Ministry Defends Closing Police Chief’s Sexual Assault Case*, VOD English, May 25th, 2021, <https://vodenglish.news/interior-ministry-defends-closing-police-chiefs-sexual-assault-case/>.

III. OBSTACLES TO WOMEN VICTIMS OF VIOLENCE IN THE WORKPLACE

Patriarchal attitudes permeate throughout Cambodian society. As a result, entrenched gender norms and the stigmatization of victims of sexual and gender-based violence remain major obstacles toward legal remedy. Paved with legal, procedural, institutional, economic, social, and governmental hurdles, the path to justice for victims of gender-based violence is challenging.

1. Weak National Legal Framework

Cambodia's domestic legal framework is weak regarding violence in the workplace and fails to provide adequate protection to female workers. The 1997 Labor Law criminalizes and prohibits sexual harassment by stating that all employers and managers of establishments in which women work must “maintain their decency” and that all forms of sexual harassment are “strictly forbidden”³³. However, this legislation offers no definition of what constitutes sexual harassment and what punishment the law holds for perpetrators.

The Criminal Code contains a general definition of sexual harassment in Article 250, stating that “sexual harassment shall mean the abuse by one person of the authority conferred by his or her functions against another person for the purpose of applying pressure repeatedly in order to obtain sexual favors”³⁴. This provision seemingly restricts sexual harassment to situations in which there is a power imbalance between the parties and excludes instances of sexual harassment by co-workers³⁵.

The vagueness of this provision renders it challenging for the relevant authorities to set up appropriate protection measures and for victims to seek help. In a 2015 study conducted by CARE Cambodia, the Ministry of Women's Affairs, the Ministry of Labor and Vocational Training, and the judicial police all reported that the lack of a clear and practical definition of sexual harassment caused challenges in adequately addressing the issue in the workplace. All agreed that the existing legal framework should be amended to clarify the existing definition and provided examples of specific cases considered as sexual harassment to aid policy implementation³⁶.

The need for a framework overhaul has also been suggested by the United Nations (UN) Committee on the Elimination of Discrimination Against Women (CEDAW), stating that there was an “absence of a comprehensive law that defines and effectively prohibits violence and

33. *Labor Law 1997*, Article 172, Cambodia.

34. *Criminal Code 2009*, Article 250, Cambodia.

35. CARE International, ‘I know I cannot quit’ *The Prevalence and Productivity Cost of Sexual Harassment to the Cambodian Garment Industry*, April 2017, https://www.care.org.au/wp-content/uploads/2017/04/SHCS_Full_Technical_Report_March_2017.pdf.

36. Ibid.

harassment” in the workplace, emphasizing the garment industry’s lack of oversight and the risks of commuting to and from work³⁷. CEDAW recommended that Cambodia “adopt and implement comprehensive legislation to prevent and respond to violence and harassment, including sexual harassment, in the workplace”³⁸.

2. Lack of Complaint Mechanisms

Article 2 of UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW Convention) imposes an obligation of due diligence on State parties to notably take all appropriate measures to eliminate discrimination against women by any person, organization, or enterprise. This includes having effective laws, institutions, and systems in place to address GBVAW committed by non-State actors, as well as using regulatory means or incentives, including economic incentives, to prevent them from committing GBVAW³⁹. CEDAW recommends that State parties encourage the engagement of the private sector in efforts to eradicate GBVAW, including the use of incentives and corporate responsibility models, and to enhance responsibility for such violence in the scope of their action, including through protocols and procedures addressing all forms of GBVAW that may occur in the workplace. These protocols and procedures must include effective and accessible internal complaint procedures that do not exclude recourse to law enforcement and address workplace entitlements for women victims of gender-based violence in the workplace⁴⁰.

Despite these obligations and the need to address GBVAW in the workplace, the Cambodian government has failed to introduce workplace complaint mechanisms to prevent and respond to sexual harassment and violence. This violates Cambodia’s international obligations under the CEDAW Convention and the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT Convention) to take all necessary and effective measures to combat and prevent all forms of GBVAW⁴¹.

This failure is particularly felt in factories, as women workers do not have access to independent complaint mechanisms to safely seek redress⁴². While the 1997 Labor Law prohibits all forms of sexual violations and harassment in the workplace, it does not mandate that employers create independent complaint mechanisms to adjudicate workplace violations. The only mechanisms available to women are judicial processes, by prosecuting perpetrators under the provisions of the Criminal Code that criminalize sexual harassment⁴³, rape⁴⁴, indecent assault⁴⁵, and indecent exposure⁴⁶.

Aware of these shortcomings, the government has indicated that it aims to address the lack of protection mechanisms in the upcoming years. The National Action Plan 2019-2023 seeks to strengthen the domestic legal framework on GBVAW through various proposed actions, including the development and implementation of guidelines on sexual harassment prevention, the review of international standards to develop definitions of sexual harassment, the establishment of a

37. CEDAW, *Concluding Observations on Cambodia*, UN Doc. CEDAW/C/KHM/CO/6, November 12th, 2019, para. 37.

38. Ibid.

39. CEDAW, *General Recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19*, UN Doc. CEDAW/C/GC/35, July 14th, 2017, para. 24(b).

40. Ibid, para.39.

41. For the due diligence obligations under the CAT see: CAT, *General Comment No. 2*, UN Doc. CAT/C/GC/2, January 24th, 2008, para. 18.

42. Human Rights Watch, *Work Faster or get out – Labor rights abuses in Cambodia’s garment industry*, 2015, https://www.hrw.org/sites/default/files/reports/cambodia0315_ForUpload.pdf.

43. *Criminal Code 2009*, Article 250, Cambodia.

44. Ibid, Article 239.

45. Ibid, Article 246.

46. CARE International, *‘I know I cannot quit’ The Prevalence and Productivity Cost of Sexual Harassment to the Cambodian Garment Industry*, April 2017, https://www.care.org.au/wp-content/uploads/2017/04/SHCS_Full_Technical_Report_March_2017.pdf.

policy on sexual harassment in the workplace, and the development of independent grievance mechanisms to file complaints and actions for redress in cases of GBVAW⁴⁷. Having said this, there is little indication as to how such mechanisms would look like and what institution would be tasked to adjudicate. The government does not yet seem to have taken concrete measures to implement any policies related to the plan.

In June 2021, this lack of tangible action prompted over 42 Cambodian civil society organizations (CSOs) to release a joint statement urging the Government to reaffirm its commitment to ending GBVAW and sexual harassment in the workplace and to ratify the ILO Convention No. 190 on Violence and Harassment. Adopted in 2019, the Convention specifically targets GBVAW at the workplace and notably requires ratifying States to implement policies that address violence and harassment, to establish enforcement and monitoring mechanisms, to ensure access to remedies and support for victims, to implement effective means of inspection and investigation of cases of violence and harassment, and to adopt comprehensive strategies to address these problems. In their statement, the CSOs also urged the government to adopt and implement comprehensive legislation to prevent and respond to workplace violence and sexual harassment, and to establish an independent complaints mechanism to ensure that victims have effective access to redress and perpetrators are held accountable. In response to the statement, the Ministry of Labor and Vocational Training commented that it would consider the CSOs' suggestions but claimed that Cambodia's laws and regulations already address the concerned issues⁴⁸.

3. Lack of Investigation and Legal Action

Vague legal provisions regarding sexual harassment and other forms of violence, along with patriarchal attitudes, prevent authorities from adequately conducting investigations into these crimes⁴⁹. Without clear, unambiguous definitions of what constitutes sexual harassment or gender-based violence, authorities are unsure of what evidence to gather from the accused or accuser. These issues are compounded by the absence of specialized courts to adjudicate cases of GBVAW, the lack of specially trained police units to address these crimes, and severely limited gender-sensitivity training for the police⁵⁰. This has led to victims of violence not filing complaints due to a lack of trust in authorities and of their willingness or ability to adequately pursue their case.

The case of Kosal, the police chief accused of sexual assault, illustrates well how ignorance and gender bias presents serious obstacles for women seeking justice for violence in Cambodia. While investigations were initiated, prosecution was halted and the charges were ultimately dropped, not because the police chief was found not guilty, but due to how “embarrassing” it was for the women⁵¹. In response to the inadequacies of the investigatory process, including in this case, and the prominence of GBVAW in all aspects of Cambodian society, in May 2021, 36 CSOs published an open letter to the Deputy Prime Minister, the Minister of Interior, the Minister of Women's Affairs, and the Minister of Justice. They called on these leaders to take a firm stance against impunity for crimes of violence against women and to pursue immediate legal action against powerful perpetrators.

47. *National Action Plan 2019-2023*, Cambodia.

48. Bunthoeurn, Orm, CSOs urge labour standards, *The Phnom Penh Post*, June 22nd, 2021, <https://www.phnompenhpost.com/national/csos-urge-labour-standards>.

49. CARE International, 'I know I cannot quit' *The Prevalence and Productivity Cost of Sexual Harassment to the Cambodian Garment Industry*, https://www.care.org.au/wp-content/uploads/2017/04/SHCS_Full_Technical_Report_March_2017.pdf.

50. UNICEF, *Ending violence against women and children in Cambodia: Opportunities and challenges for collaborative and integrative approaches*, 2020, <https://www.unicef.org/eap/media/7346/file/Ending%20Violence%20against%20Women%20and%20Children%20in%20Cambodia.pdf>.

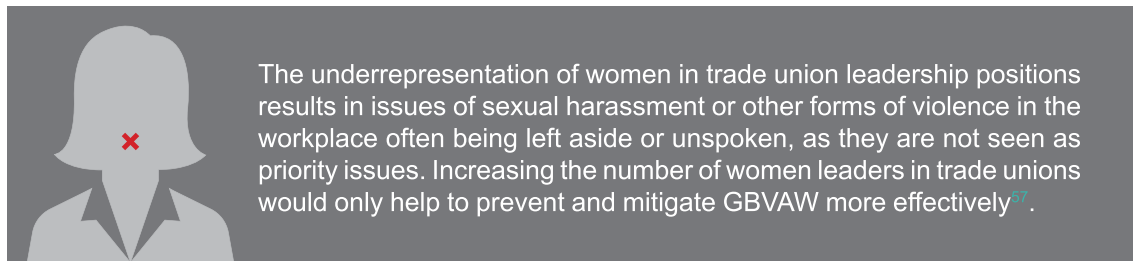
51. *The Straits Times*, *Cambodia police chief sacked over sexual misconduct in landmark case but faces no prosecution*, September 9th, 2020, <https://www.straitstimes.com/asia/se-asia/cambodia-police-chief-sacked-over-sexual-misconduct-in-landmark-case>

4. Underrepresentation in Trade Union Leadership, Law Enforcement, and the Judiciary

The tremendous underrepresentation of women in leadership and decision-making positions affects all sectors of Cambodian society, including trade unions, law enforcement, and the judiciary. This produces serious barriers to the protection of women workers within their workplaces, to justice for survivors of sexual and gender-based violence, and to the advancement of women's rights in the country.

a. Trade Unions

Trade unions are a powerful tool for workers to advocate for the respect of their rights and for improved work conditions. Unfortunately, women are widely underrepresented in trade union leadership in Cambodia. While official statistics and data on trade unions in Cambodia are scarce, a 2012 survey conducted by the Ministry of Planning and the ILO found that the garment sector had the largest number of trade union members, with a total of 38% of workers having a union membership⁵². According to the same survey, women comprised 82% of all trade union members in the garment sector⁵³. However, a study conducted in 2011 showed that leadership positions were mainly held by men⁵⁴. Women held less than 33% of union officer and bargaining positions, making the integration of gender-related issues in collective bargaining a big challenge to unions⁵⁵. Unfortunately, in 2021, gender equity in Cambodian trade union participation and leadership remains an issue. Numerous international trade union organizations maintain their presence within the country, such as Union Aid Abroad, with the aim of improving Cambodian women's working rights by countering their low union participation and putting more women in leadership roles⁵⁶.



b. Law Enforcement

In 2016, the National Police estimated that less than 6% of police officers were women⁵⁸. This low number of women in law enforcement deters victims from reporting cases of violence, as many fear being dismissed or not taken seriously by male police officers. At the time, the National

52. National Institute of Statistics of the Cambodian Ministry of Planning and ILO, *Cambodia Labour Force and Child Labour Survey 2012: Labour Force Report*, ILO, 2013, https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---sro-bangkok/documents/publication/wcms_230721.pdf.

53. Ibid.

54. Nuon, Veasna, Serrano, Melisa & Xhafa, Edlira, *Women and Gender Issues in Trade Unions in the Cambodian Garment Industry*, ILO, 2011, http://www.ticambodia.org/library/wp-content/files_mf/1452224201CambodianWomenandTradeUnions.pdf.

55. Ibid.

56. Australian People for Health, Education and Development Abroad, *Women Worker's Rights through Stronger Trade Unions in Cambodia*, 2021, <https://www.apheda.org.au/women-workers-rights-cambodia/>.

57. Human Rights Watch, *Work Faster or get out – Labor rights abuses in Cambodia's garment industry*, 2015, https://www.hrw.org/sites/default/files/reports/cambodia0315_ForUpload.pdf.

58. Mech, Dara, *Sceptics question police push for female recruits*, The Phnom Penh Post, March 7th, 2016. <https://www.phnompenhpost.com/national/sceptics-question-police-push-female-recruits>.

Police stated their intention to increase the number of women in law enforcement⁵⁹. While the government has made efforts to increase representation of women in public service⁶⁰, including in the security forces⁶¹, women remain largely underrepresented in law enforcement and tend to be given administrative work rather than frontline police work⁶². Women police officers also endure violence themselves and come up against the same barriers as other women victims in seeking justice.

c. Judiciary

Women have minimal representation in the justice system, resulting in a prejudicial imbalance throughout the courts. Women only make up 14% of judges, 12% of prosecutors, and 20% of lawyers⁶³. The higher up the proceedings go, the less represented women are in the system, with only two out of 29 Appeal Court judges and three out of 22 Supreme Court justices being women⁶⁴.

Due to the lack of gender balance within the judicial system, women prosecutors are often not respected and valued as lawyers. Judges have been accused of being insensitive towards women victims of sexual and gender-based violence, often not taking them seriously or treating abuse reported by them too lightly⁶⁵. In this male-dominated environment, women victims of violence often face hostile proceedings, are retraumatized, and blamed for the crimes committed against them⁶⁶.

Similar findings were reported by CEDAW in its 2019 review of Cambodia. It raised concerns about the “lack of gender sensitivity in the justice system” and the “negative attitudes on the part of judges, prosecutors, law enforcement officials, and lawyers towards women reporting violations of their rights”⁶⁷. It consequently recommended that the government “strengthen the gender responsiveness and gender sensitivity of the justice system”, with emphasis on increasing the number of women in the judiciary and providing systematic capacity-building to judicial and law institutions⁶⁸.

5. Limited Access to Legal Aid and Essential Services to Support Survivors

Victims of sexual and gender-based violence face significant barriers in accessing legal aid and remedy. With a lack of a comprehensive legal aid policy, limited legal aid lawyers, and an insufficient legal aid budget, the current State-sponsored legal aid system is unable to adequately cope with

59. Ibid.

60. Khmer Times, *Women's proportion in public sector increases at all levels*, March 9th, 2021,

<https://www.khmertimeskh.com/50822302/womens-proportion-in-public-sector-increases-at-all-levels/>.

61. Kijewski, Leonie, *Cambodia's progress on gender equality questioned*, The Phnom Penh Post, February 13th, 2018,

<https://www.phnompenhpost.com/national/cambodias-progress-gender-equality-questioned>.

62. Johnson, Elizabeth, *Corruption, Violence and Gender: A critical look at police behaviour and a path to reform in Cambodia*, Henrich Boll Stiftung Cambodia, 2014, https://kh.boell.org/sites/default/files/hbs_broschure_cvg_a5_rz-klein.pdf.

63. General Secretariat of the National Assembly (Cambodia), *The challenges of women in leadership: Key findings from gender statistics analysis*, 2020, http://nac.org.kh/Images/Women%20in%20leadership-Eng-Final.pdf?fbclid=IwAR3cd1-pB470oO2T9SDMSnqxDtxXd-SajMPKr0_qISph0vnmMm-DHJmZxJlg.

64. Kijewski, Leonie & Sineat, Yon, *In Cambodia's courts, it's a man's world – with the effects felt by female employees and victims alike*, The Phnom Penh Post, February 23rd, 2018, <https://www.phnompenhpost.com/national-post-depth/cambodias-courts-its-mans-world-effects-felt-female-employees-and-victims-alike>.

65. Ibid.

66. Ibid.

67. CEDAW, *Concluding Observations on Cambodia*, UN Doc. CEDAW/C/KHM/CO/6, November 12th, 2019, para. 10 (c).

68. Ibid.

all legal representation needs. In turn, this disproportionately affects and further marginalizes impoverished women.

In February 2019, Prime Minister Hun Sen tasked the government lawyer's council with the creation of a voluntary legal aid team under his direct supervision⁶⁹, with the allocation of \$500,000 from his own budget to provide free legal representation to financially marginalized women across the country, including garment workers⁷⁰. This initiative led to the signature of a memorandum of understanding between the senate and the government lawyer's council in February 2021, with the aim to increase cooperation between both institutions in helping vulnerable citizens, especially women, with legal support⁷¹. While the creation of a team of over 130 government lawyers, with a presence both in the capital and provinces, is commendable, the influence that the prime minister may have in selecting which vulnerable women receive assistance, as well as in the adjudication of the cases represented by its lawyers in court, raises concerns. The fact that a voluntary legal aid team is also tasked with monitoring whether judges have made the right decision in these cases only adds to these reservations⁷².

In a similar fashion, essential services and support, such as health care or social services, for victims of violence are lacking. Many services for victims in Cambodia are provided through international organizations or local Non-governmental Organisations (NGOs), whose programs rely solely on inconsistent donor funding. These services tend to provide a decentralized approach to care, which can lead to inconsistent support and widespread prevention to access in rural areas⁷³.

Aware of such gaps, increasing the provision of accessible, appropriate, and coordinated quality services and responses to the various needs of all women affected by violence is a priority objective of the Ministry of Women's Affairs (MoWA). Under its National Action Plan 2019-2023, MoWA notably aims to strengthen the systematic response to GBVAW in the health system and improve access to justice and quality coordinated social services for victims of sexual and gender-based violence by the end of 2023. It intends to do this through the implementation of social services or increased access to free legal aid for survivors, among other suggestions.

However, the government's lack of gender-responsive budgeting raises questions as to whether these objectives can realistically be met. Despite the commitment to address in-country GBVAW, little of the national and local budgets are dedicated to achieving this goal. Most of the responsibility of any gender-related action at the national level is assigned to MoWA, which does not receive the financial and technical resources necessary to fully implement actions. In its previous National Action Plan 2014-2018, MoWA highlighted challenges to incorporating gender into policy, such as the limited budget for implementing its plans and activities and the limited capacity in ministries and institutions for in-depth gender analysis, advocacy, and gender mainstreaming⁷⁴. In 2019, CEDAW expressed concerns over the inadequacy of the human, technical, and financial resources allocated to promote gender equality, and recommended that sufficient resources and funding be allocated from the national budget⁷⁵.

69. Vida, Taing, *PM tasks lawyer's council to form special team for women*, Khmer Times, February 20th, 2019, <https://www.khmertimeskh.com/50579742/pm-tasks-lawyers-council-to-form-special-team-for-women>.

70. Savi, Khorn, *Prime Minister Hun Sen announces free legal aid for garment workers*, The Phnom Penh Post, February 21st, 2019, <https://www.phnompenhpost.com/national/prime-minister-hun-sen-announces-free-legal-aid-garment-workers>.

71. David, Sen, *Lawyers council and Senate sign MoU for vulnerable*, Khmer Times, February 16th, 2021, <https://www.khmertimeskh.com/50814406/lawyers-council-and-senate-sign-mou-for-vulnerable/>.

72. Ibid.

73. US Department of State, *2020 Trafficking in Persons Report: Cambodia*, 2020, <https://www.state.gov/reports/2020-trafficking-in-persons-report/cambodia/>.

74. MoWA, Neary Rattanak IV, *Five-year strategic plan for gender equality and women's empowerment 2014 -2018*, 2014, https://www.kh.undp.org/content/cambodia/en/home/library/democratic_governance/cambodian-gender-strategic-plan---neary-rattanak-4.html.

75. CEDAW, *Concluding Observations on Cambodia*, UN Doc. CEDAW/C/KHM/CO/6, November 12th, 2019, para. 10 (c).

6. Patriarchy and Victim Blaming

A primary factor disrupting justice is the general lack of awareness concerning GBVAW, including within authorities tasked with investigating and prosecuting cases of GBVAW and protecting victims. Considering the insufficient in-country gender-responsive budgeting and entrenched patriarchal attitudes, authorities, employers, and victims have trouble understanding what constitutes GBVAW⁷⁶.

The lack of understanding of GBVAW in Cambodia stems from patriarchal attitudes on sexuality which empower men to believe that they are entitled to women's bodies. As boys grow up, they are frequently taught that they have power over girls and that women's sexual choices are inferior to their own. As a result, men view women as objects and believe they are entitled to demand sexual favors in exchange for job opportunities or promotions, to whistle at women on the street, or to use offensive or unwelcome language toward women⁷⁷. As such, it is unsurprising that when sexual harassment and other forms of GBVAW occur in the workplace, authorities, employers, and victims may not believe any wrongdoing has taken place, as sexual harassment is too often dismissed as nothing more than attempts at "humor" or "teasing"⁷⁸.

Women must also endure a pervasive culture of victim blaming while seeking to obtain justice. Cambodian society places a high value on women's sexual modesty. Loss of virginity, even when through rape, may make girls "unmarriageable" or "ruined" in the eyes of those around them⁷⁹. Speaking about GBVAW is therefore highly taboo and prevents women from speaking due to fear of ruining their reputation and future. Despite no longer formally being taught in schools, the well-known traditional code of conduct for women, the *Chbab Srey*, which embodies principles of female submissiveness, weak femininity, and the "ideal" Cambodian woman, still influences young girls. Women are prescribed gender roles and are often expected to be the primary domestic caregiver and protector of the household, while men are viewed as the decision makers.

An illustrative example of how cultural concepts of women's behavior influence governmental action is the case of Sithong Sokha. In March 2021, police officer Sithong Sokha was photographed breastfeeding her baby while on duty. The photo was posted on social media and went viral. She was subsequently forced to publicly apologize for breastfeeding her child at work and posting a picture of it on Facebook. The authorities' reactions caused public outcry and lead the MoWA to write an open letter in support of Sokha. However, the last paragraph of its letter disparagingly stated that breastfeeding in public could be seen as "affecting the values and the dignity of Khmer women"⁸⁰.

From these deeply rooted gender norms and stereotypes stem a victim-blaming mentality in Cambodia, even amongst the highest levels of government⁸¹. In 2020, the prime minister made very problematic comments, when addressing the Cambodian National Council for Women. Commenting on women who promote goods online in allegedly "revealing" clothing, he stated that these women are eroding Cambodian cultural values and that this type of behavior is to blame for sexual violence. The prime minister went on to add, "you sell products, not your breasts", ordering

76. Blomberg, Matt, *Men enlisted to fight 'tradition' of gender violence in Cambodia*, Reuters, January 25th, 2021, <https://www.reuters.com/article/us-cambodia-women-abuse-feature-trfn-idUSKBN29U07L>.

77. Dalin, Chin, *How young people can help to stop sexual harassment: 4 quick tips!*, Klahan, 2020, <https://www.klahan.org/post/how-young-people-can-help-to-stop-sexual-harassment-4-quick-tips>.

78. CARE International, *'I know I cannot quit' The Prevalence and Productivity Cost of Sexual Harassment to the Cambodian Garment Industry*, April 2017, https://www.care.org.au/wp-content/uploads/2017/04/SHCS_Full_Technical_Report_March_2017.pdf.

79. Cambodian League for the Promotion and Defense of Human Rights, *Getting Away with it: The Treatment of Rape in Cambodia's Justice System*, 2015, <https://www.licadho-cambodia.org/reports/files/210LICADHOREport-GettingAwayWithRape2015English.pdf>.

80. Blomberg, Matt, *Viral breastfeeding photo fuels calls in Cambodia on women's rights*, Reuters, May 12th, 2021, <https://www.reuters.com/article/us-cambodia-women-children/viral-breastfeeding-photo-fuels-calls-in-cambodia-on-womens-rights-idUSKBN2B41AP>.

81. Chak, Sopheap, *Cambodia's culture of victim-blaming can be ignored no longer*, South East Asia Globe, March 8th, 2020, <https://southeastasiaglobe.com/womens-day-cambodia-2020/>

government authorities to find these women and “educate” them⁸². Upon this recommendation, MoWA later established a working group to examine purported problems relating to excessively “sexy” and revealing pictures online, with the aim to “monitor anything similar that affects our society, culture, traditions, customs and especially women’s values”. MoWA also requested the police to work on educating women who displayed cleavage online⁸³.



Authorities often find excuses to absolve the perpetrator of personal liability for their actions and instead blame victims’ behavior, such as how they dress or how late they were out. Police have also reportedly demanded bribes in some cases from victims before taking action, signaling that they do not take gender-based violence allegations against women seriously⁸⁴. This insidious culture of victim blaming deters survivors from seeking assistance or justice for fear of being dismissed or blamed for their perpetrator’s actions⁸⁵.

IV. CONCLUSION

Women in Cambodia encounter a pervasive culture that enables sexual and other forms of gender-based violence as well as ill-treatment on a daily basis. When at home and in the workplace, women cannot escape harmful gender norms which lead to numerous forms of violence, in addition to creating structural barriers to obtaining justice. Legal obstacles, combined with faulty institutions, patriarchal expectations, and a lack of representation of women in the judicial system and trade unions, severely limit women’s rights in Cambodia. It is on the RGC, employers, trade unions, international actors, both private and public, and citizens to work together in developing policy to protect Cambodian women from sexual and other gender-based violence and enable their full participation in society.

82. Amnesty International, *Cambodia: PM’s threats against women Facebook users irresponsible and dangerous*, 2020, <https://www.amnesty.org/en/latest/news/2020/02/cambodia-pms-threats-against-women-facebook-users-irresponsible-and-dangerous/>.

83. Koemsoeun, Soth, *Ministry supports ‘sexy’ ban*, *The Phnom Penh Post*, 25th February 2020, <https://www.phnompenhpost.com/national/ministry-supports-sexy-ban>.

84. UNICEF, *Ending violence against women and children in Cambodia: Opportunities and challenges for collaborative and integrative approaches*, 2020, <https://www.unicef.org/eap/media/7346/file/Ending%20Violence%20against%20Women%20and%20Children%20in%20Cambodia.pdf>.

85. Chak, Sopheap, *Blaming Rape Victims in Cambodia*, *Cambodian Center for Human Rights*, 2013, https://cchrcambodia.org/index_old.php?title=Blaming-Rape-Victims-in-Cambodia&url=media/media.php&p=news_detail.php&nid=868&id=5.

To achieve this objective, it should be upon lawmakers to reform the domestic legal policy framework on GBVAW, including amending the Labor Law and Criminal Code to provide a clear definition of sexual harassment and other forms of GBVAW in the workplace. This should be accompanied by legislation protecting victims of gender-based violence, in line with international standards. However, focus should also be afforded to preventative measures, not just prosecution. Policies that combat GBVAW and introduce impartial and fast-responding grievance mechanisms to prevent and respond to sexual harassment are necessary.

Shifts in policy focus would require allocating State budgets to meet these ends. Funds should be put toward training relevant officials in gender-sensitive approaches, ensuring that victims have access to legal aid, increasing other essential services for victims, and guaranteeing representation of women in all steps of the judicial and legal processes, and in positions of leadership, such as in trade unions.

The incorporation of GBVAW into legislation by officials and authorities is of no use if the public is not able to meet the expectations of new policies. Shifts in legislative focus necessitate public education programs, equipping Cambodian citizens with the tools to understand, prevent, and protect women from gender-based violence and fully enact their rights when confronted with any form of violence.



07

RAPE IN BANGLADESH: SOCIO-LEGAL ISSUES AND BARRIERS TO JUSTICE

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1. This chapter was developed with the support of the organisation Odhikar.

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I. INTRODUCTION

The prevalence of rape has always been particularly high in Bangladesh, despite relevant policies and laws having been in place for the past 20 years². In the context of torture, the United Nations (UN) Committee Against Torture (CAT), has identified violence against women, particularly rape, as one of the most serious problems in Bangladesh when reviewing the country's compliance with the UN Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (CAT Convention) in 2019. In its concluding observations, the CAT specifically raised concerns about the low prosecution and conviction rates of rape cases. It recommended that Bangladesh thoroughly and effectively investigate rape cases, that alleged perpetrators are prosecuted and, if convicted, are punished appropriately, and that victims receive redress, including adequate compensation³.

A dysfunctional criminal justice system, poor investigation protocols, the inability of victims to access justice, and social and political norms that protect perpetrators are all contributing factors in Bangladesh that allow impunity and contribute to rape prevalence. Rape is not only a criminal offense. It can also be a form of torture if perpetrated by public officials or by non-State officials and when the State fails to exercise due diligence to prevent, investigate, prosecute, or punish perpetrators⁴.

This chapter seeks to explain the legal, social, and political aspects of rape and other gender-based violence against women (GBVAW) in Bangladesh and highlights several substantial prevention and legal remedy deficits. It will also highlight barriers victims of rape face, including a lack of relevant criminal laws, lack of investigations and prosecution, threats by perpetrators, and revictimization during investigation and in court.

1. Rape Prevalence in Bangladesh

There is no uniform statistics of incidents of rape or victims. According to police statistics, 20,835 cases of rape have been filed between 2014 and April 2019. 1,538 were filed between January and April in 2019 alone. The number of filed rape cases was 3,949 in 2018, 3,995 in 2017, 3,728 in 2016, 3,930 in 2015, and 3,695 in 2014⁵. The actual number of rape incidents is most likely much higher than the number of cases filed, due to widespread underreporting⁶. Various human rights organisations documented rape cases that made it to headlines in national newspapers. Cases of rape reported in the news increased during the Covid-19 pandemic. Ain o Salish Kendra (ASK), for instance documented a total of 1,627 incidents of rape in 2020 and showed that in

2. Rashid, Mukhtadir, *Bangladesh sees nearly 13 rapes every day*, New Age, May 18th, 2019, <https://www.newagebd.net/article/72764/bangladesh-sees-nearly-13-rapes-every-day>.

3. CAT, *Concluding Observation on Bangladesh*, UN Doc. CAT/C/BGD/CO/1, August 26th, 2019, para. 38.

4. CAT, *General Comment No. 2*, UN Doc. CAT/C/GC/2, January 29th, 2008, para. 1; CEDAW, General Recommendation No. 35 on gender-based violence against women, UN Doc. CEDAW/C/GC/35, July 14th, 2017, paras. 24–26.

5. Rashid, Mukhtadir, *Bangladesh sees nearly 13 rapes every day*, New Age, May 18th, 2019, <https://www.newagebd.net/article/72764/bangladesh-sees-nearly-13-rapes-every-day>.

6. BBC, *Bangladesh to introduce death penalty for rape*, October 12th, 2020, <https://www.bbc.com/news/world-asia-54480233>.

previous years the numbers were much less, with 732 in 2018 and a sudden rise to 1,413 in 2019⁷. Numbers got so alarming since the start of the Covid-19 pandemic that organisations, newspapers, and journals have talked about a rape epidemic⁸.

It is not just rape that plagues the citizens of Bangladesh. Torture, corruption, extortion, and enforced disappearances have also become more prolific in recent times. To explain why the prevalence of these crimes has increased it is necessary to briefly recall the recent political issues that have impeded Bangladesh and its justice system.

The current government is held by the Bangladesh Awami League who won the national elections in 2008. Later, just before the next elections, the parliament amended the Constitution and repealed elections under a caretaker system. In 2014 and 2018, controversial national elections were held, riddled with violence, fraud, and other unlawful activities, with the Awami League again coming to power. All opposition and dissenting factions were – and still are – met with violence, torture, disappearance, harassment, and persecution under controversial new laws. Violent offenders and criminals have received shelter and patronage from political leaders. Judiciary and law enforcement personnel are politically appointed, worsening an already dysfunctional criminal justice system⁹. In this climate, women are reluctant to seek justice for violent offences, including rape.

For instance, in August 2019, a woman came to Khulna from Jashore by train to visit her ill mother. Upon arriving at her station, the woman was detained inside the train by railway police. She was then forced to disembark and was taken to nearby Khulna Railway Station. Once there, the Officer in Charge (OC) Osman Gani Pathan, as well as other policemen present, raped her. The next day, the alleged rapists filed a case against the victim for possessing five bottles of Phensedyl¹⁰, after which a court sent her to prison. Two days later, the victim filed a bail petition with the district's additional chief judicial magistrate's court and a complaint against the policemen. The court then sent her to undertake medical assessments. The victim's sister alleged that OC Pathan offered a large sum of money to cover up the incident. After the family refused to take the money, they were warned not to take any further steps against the police officers. Pathan denied the allegations and claimed he was not present at the police station that night¹¹. Despite this intimidation, the victim filed a case against five policemen under the 2013 Custody Torture and Death Prevention Act¹². Although in the past three years, no further action appears to have been taken.

7. Reza Shovon, Fahim, ASK: *Rise in gender-based violence, despite Covid-19*, Dhaka Tribune, December 31st, 2020, <https://www.dhakatribune.com/bangladesh/2020/12/31/ask-2020-saw-a-rise-in-gender-based-violence-raises-increased-despite-covid-19>.

8. Khan, Umayama, "I am alive but not living": *Survivors of Bangladesh's rape crisis*, Al Jazeera, October 26th, 2020, <https://www.aljazeera.com/features/2020/10/26/survivors-of-bangladeshs-rape-epidemic>;

Das, Shuva, *Rape in Bangladesh, An Epidemic Turn of Sexual Violence*, Harvard International Review, January 11th, 2021, <https://hir.harvard.edu/rape-in-bangladesh-an-epidemic-turn-of-sexual-violence/>.

9. Odhikar and OMCT, *Cycle of Fear. Combating Impunity and Strengthening the Rule of Law in Bangladesh*, 2019, https://www.omct.org/site-resources/legacy/cycleoffear_bangladesh_report_omct_2020-12-11-144514.pdf; Human Rights Watch, *Where No Sun Can Enter: A Decade of Enforced Disappearances in Bangladesh*, 2021, <https://www.hrw.org/report/2021/08/16/where-no-sun-can-enter/decade-enforced-disappearances-bangladesh>.

10. A cough syrup containing codeine, which is banned in Bangladesh due to its use as an alternative to alcohol.

11. The Daily Star, OC, *other cop rapes a woman*, August 6th, 2019, <https://www.thedailystar.net/frontpage/news/police-probe-rape-allegation-against-cops-1782217>.

12. Bangla News 24, *5 cops sued over Khulna Thana gang rape*, August 10th, 2019, <https://www.banglanews24.com/english/national/news/bd/78936.details>.

In July 2020, another distressing case took place in Cox's Bazaar, where a woman claimed a constable of Ukhiya Police Station raped her at Khuniapalong Checkpost. After the incident, she complained to the additional superintendent of the police in Ukhiya who advised her to file a complaint with the police station. However, when she reached the station, OC Morjina allegedly confined her in a room and brutally tortured her with other policemen. A former OC of the police station, Nurul Islam, claimed the allegations to be untrue and said: "We promptly prepared an investigative report and sent it to the superintendent of police", stating that the woman was constantly "trying to force the constable to marry her at the station"¹³.

In May 2021, a police officer was arrested after a 22-year-old woman alleged he raped her while she was under institutional quarantine for Covid-19 in Sadar Upazila, Khulna, after returning from India. She lodged a written complaint with Sadar Police Station accusing Assistant Sub-inspector Mokleshur Rahman of raping her at the quarantine facility¹⁴. He was detained via a court order soon after the metropolitan police arrested him.

The sections below analyse some of the root causes for rape and highlight the barriers victims face.

II. LAWS AND LOOPHOLES

1. The 1860 Penal Code

The main domestic law defining the offense of rape is Section 375 of the 1860 Penal Code.

A man is said to have committed rape under any of the following five circumstances:

1. "Against her will".
2. "Without her consent".
3. "With her consent when her consent has been obtained by putting her in fear of death, or of hurt".
4. "With her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married".

13. Aziz, Abdul, Ukhiya OC, 3 Others Sued for Torturing Woman, Dhaka Tribune, August 25th, 2020, <https://www.dhakatribune.com/bangladesh/nation/2020/08/25/ukhiya-oc-3-others-sued-for-torturing-woman>.

14. Molla, Hedait Hossain, Khulna cop arrested for raping woman in quarantine, Dhaka Tribune, May 17th, 2021, <https://www.dhakatribune.com/bangladesh/nation/2021/05/17/cop-arrested-for-raping-woman-at-quarantine-centre-in-khulna>.

5. "With or without her consent, when she is under 14 years of age".

"Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape".

"Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape".

"Sexual intercourse by a man with his own wife, the wife not being under 13 years of age, is not rape".

The definition of rape provided by the Penal Code is not consistent with the internationally accepted definition in Article 7 (1) (g)-1 of the Elements of Crime Annex to the Rome Statute of the International Criminal Court (ICC):

1. "The perpetrator invaded the body of a person by conduct resulting in penetration, however slight, of any part of the body of the victim or of the perpetrator with a sexual organ, or of the anal or genital opening of the victim with any object or any other part of the body".
2. "The invasion was committed by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or another person, or by taking advantage of a coercive environment, or the invasion was committed against a person incapable of giving genuine consent".

When the Bangladeshi Penal Code's definition of rape is compared to the ICC's, several elements are problematic. The following issues are cause for concern:

- The existing definitions of rape are far too narrow and assume that only women can be victims. Men, boys, and those of the LGBTQ+ community are entirely excluded.
- The issue of "consent" is vague. The definition does not define when consent is given and when it is not, e.g. influences of intoxication, etc.
- Other forms SGBV amounting to rape are not included.
- The fifth condition states that if a man has sexual intercourse with a child (i.e. girls under the age of 14), with or without her consent, it will be considered rape. This rules out the majority of rape victims and encourages child marriages where the bride is between the ages of 14 and 17.
- The issue of marital rape is absent. It is only indirectly mentioned if the wife is below the age of 14 years.
- There is no law or legal provision defining, preventing, and prosecuting acts of incest.
- There is no law or legal provision defining, preventing, and prosecuting rape in custody.

2. Suppression of Repression against Women and Children Act 2000

The Suppression of Repression against Women and Children Act 2000 (SRWCA) was designed to focus on crimes against two of the most vulnerable groups in Bangladesh, women and children. The SRWCA also provides a definition of “rape”. The law, originally in Bangla, can be translated to: “If a man has sexual intercourse with a woman (under or over the age of sixteen), outside of marriage, with or without her consent, and, if consent was given, it was under threat or connivance, then he is said to have committed the offense of rape”¹⁵.

Although the age has been changed to 16 from 14, for all purposes, the conditions of rape contained in the Penal Code are followed. Both the definitions rely on proof of resistance by the victim. However, the SRWCA, unlike the Penal Code, does provide for some witness protection, stating that the name and address of rape victims must not be disclosed and permits video link testimonies from victims in court¹⁶. In 2021, Bangladesh is yet to enact a victim and witness protection law and compensation to the victim is within the discretion of the judge, and rarely ordered¹⁷.

The Act also contains a provision against the filing of false cases or complaints against a person for the purpose of causing harm to the accused. In a case of rape, this provision acts as a deterrent to lodging genuine cases, as survivors genuinely fear not being believed in court and then having charges levied against them¹⁸.

Gang rape and rape are acknowledged by the Act to occur during custodial care – although only police custody is mentioned. Clause 5 of section 9 states that if any woman is raped while in police custody, then those who were responsible for her custody will be held liable. The definition’s scope fails to include other “places of custody”, such as prisons, prison wards in hospitals, mental asylums, and other facilities administered by the State.

It is important to note that the SRWCA was amended in 2020 to include the death penalty as the maximum punishment for rape. Previously, Section 9 laid down life imprisonment as the penalty. Due to the death penalty not curbing the prevalence of rape, this decision was met with serious criticism from women’s groups and civil society organizations¹⁹. Furthermore, imposing an absolute punishment is no substitute to changing social norms that normalize GBVAW. The severity of the death penalty may also encourage more extreme forms of witness intimidation from defendants.

Under the Act, rape by a police officer is an aggravating factor. Section 9 (5) specifies the following: *“If a woman is raped in police custody, each and every person under whose custody the rape was committed are all directly responsible for the safety of the women and shall be punished for the failure to provide safety with imprisonment of at least five to ten years, in addition to a fine”*²⁰.

According to Taqbir Huda of the Bangladesh Legal Aid and Services Trust, *“Case law under section 9 (5) is extremely rare to find, and therefore suggests that it is underutilized”*.

15. *Suppression of Repression against Women and Children Act 2000*, Section 9, Bangladesh.

16. *Ibid*, Sections 14 & 20.

17. The Daily Star, *Compensation for Rape Victims: Crippled Law Cares Little*, February 6th, 2021, <https://www.thedailystar.net/frontpage/news/compensation-rape-victims-crippled-law-cares-little-2039961>.

18. Human Rights Watch, *I Sleep in My Own Deathbed* “Violence against Women and Girls in Bangladesh: Barriers to Legal Recourse and Support”, 2020, <https://www.hrw.org/report/2020/10/29/i-sleep-my-own-deathbed/violence-against-women-and-girls-bangladesh-barriers>.

19. Islam, Arafatul, *Bangladesh: Death penalty for rape stokes heated debate*, Deutsche Welle, October 14th, 2020, <https://www.dw.com/en/bangladesh-death-penalty-for-rape/a-55274731>.

20. *The Prevention of Oppression Against Women and Children Act 2000*, Bangladesh.

3. Torture and Custodial Death (Prevention) Act 2013

In 2013, Bangladesh enacted the Torture and Custodial Death (Prevention) Act. Although this law has been in force for eight years, there has been only one conviction for custodial death as a result of torture.

In addition, this Act has several flaws – one of them being that it does not mention GBVAW or rape as potential forms of torture. It is commonly understood that when it comes to rape by the police or in custody the SRWCA is more specific, meaning that this Act is applied instead of the Torture and Custodial Death (Prevention) Act. In other words, rape, including rape in custody, is a separate and distinct offense under the former and the latter is inapplicable in cases committed against women and children.

From this it follows that rape, even if committed by a public official and in custody, is not understood as a form of torture, contrary to Bangladesh's international obligations²¹. The crime of rape does therefore not carry the associated stigma of torture. The Act clearly discriminates against women and does not reflect women's experiences, especially the impact rape has on women's physical integrity, mental health, and human dignity.

4. 1872 Evidence Act

The 1872 Evidence Act also has a major flaw when it comes to rape cases. Section 155 contains provisions dealing with "impeaching the credit of the witness". Clause 4 of this section states: "When a man is prosecuted for rape or an attempt to rape, it may be shown that the victim was of generally immoral character". This clause allows the defence to undermine a victim's credibility during a trial, by claiming or attempting to claim proof that they are of "generally immoral character". In June 2021, it was reported that the Law Minister was considering the removal of Section 155 of the EA and that this amendment would be put before Parliament²².

Witnesses to an offense are not just an important source of evidence. They are a source of empowerment for the victim and their family and can help to ensure justice is served. In Bangladesh there have been incidents where witnesses for the prosecution have been threatened or are fearful of coming to court.



This is more common where the perpetrator wields social influence or is protected by powerful politicians. With no specific victim or witness protection laws, absence of key witnesses to an offense regularly occurs and damages prosecution efforts.

21. CAT, *Concluding Observation on Bangladesh*, UN Doc. CAT/C/BGD/CO/1, August 26th, 2019, para. 38.

22. The Daily Star, *Provision to question rape victim's character will be removed from Evidence Act: Law minister*, June 30th, 2021, <https://www.thedailystar.net/news/bangladesh/crime-justice/news/provision-question-rape-victims-character-will-be-removed-evidence-act-law-minister-2121129>.

III. PATRIARCHY, MISOGYNY, AND SOCIAL FACTORS

Given the social stigma relating to rape, it is obvious that it is difficult, if not impossible, for rape survivors to seek justice. If justice is sought, the victim and her family have pre-trial hurdles to cross before going to court. Bangladesh has a mere 3% conviction rate for the offence of rape²³.

Other more traditional factors that have always deterred victim's families from seeking justice for rape include social and economic barriers, such as the "shame" associated, the effect this "shame" has on their families, and the fear that the victim will be perceived as "immoral". There are often knock-on social effects for the victim's relatives. For instance, if the survivor is considered "immoral" her other sisters may also be regarded as unsuitable for marriage by their surrounding community. In addition, there can be threats to family members by the perpetrator and his supporters to either stop a complaint being filed or to withdraw a case. Socio-economic factors also act as formidable barriers to justice. The costs of litigation, medical expenses, and travel to court are not feasible for all families.

According to the Bangladesh Legal Aid and Services Trust, there is an observed reluctance among families and communities to take legal action in cases of GBVAW due to the "misplaced social stigma surrounding victims of sexual violence"²⁴. All forms of GBVAW are taboo subjects in Bangladesh and instances are often seen as an "insult" to the male figures of a victim's family. Commonly victims are blamed for "shaming" their families and ancestors. Influential members of the local community may try to influence the judicial process – especially if they want to protect the perpetrator.

These are just some of the social reasons rape cases do not make it to court in Bangladesh. Even when victims do wish to start an investigation, they must first lodge a first information report (FIR) with the police. This poses a daunting task, as it means victims will have to recall their traumatic experiences in a public place to male strangers, with no psychological support systems to help.

Preventative social barriers for victims seeking justice encourage the perpetration of SGBV. First and foremost, Bangladesh is a patriarchal society, underpinned by a culture of misogyny²⁵. Victim-blaming is rife – especially in cases of rape, stalking, harassment, and violence. Then there is the fact that sex and related topics are taboo and are not discussed within family or public life. Bangladeshi culture dictates that a woman or girl's "virtue" is intertwined with their father's reputation (izzat) within the local community. Many women do not speak of incidents due to fear of the repercussions that may fall upon their families. As a result of these factors, victims prefer to stay invisible and silent. With few Bangladeshi women willing to share their experiences of gender-based violence, these issues remain unaddressed and there is little hope of meaningful cultural reform taking place anytime soon.

As crimes of GBVAW and rape continue at alarming rates, in-country focus needs to be widened to identify and mediate the social causes of this, and not just concentrate on convictions and punishment. A continued lack of preventive measures for rape is tantamount to a breakdown of Bangladeshi's "moral fabric" and is representative of an "unwelcoming criminal justice system"²⁶.

23. Dignity Alliance International and Equality Now, *Sexual Violence in South Asia: Legal and Other Barriers to Justice for Survivors*, 2021, <https://www.equalitynow.org/sexualviolencesouthasia>.

24. Huda, Taqbir & Titir, Abdullah, *Why Rape Survivors Stay Out of Court: Lessons from Paralegal Interventions*. Bangladesh Legal Aid and Services Trust, 2018, <https://www.blast.org.bd/content/publications/Why-Rape-Survivors-Stay-Out-of-Court-2018.pdf>.

25. Jawad, R.S., *Bangladesh Stands Against Rape: Protests against Misogyny are growing*, The Financial Express, October 9th, 2020, <https://thefinancialexpress.com.bd/views/bangladesh-stands-against-rape-protests-against-misogyny-are-growing-1602217441>.

26. Khan, Saira, *Prevention is better than rape*, New Age Bangladesh, May 13th, 2020. <https://www.newagebd.net/article/106289/prevention-is-better-than-rape>.

However, in a society that normalizes misogyny, stalking, and rape, making these changes is easier said than done. Due to a lack of proper social and moral education, many young men are not equipped with the tools to realize that they perpetrate offenses, such as stalking or harassment. Their families are either unaware of such behaviour or, if they are, it is ignored or unrecognized as problematic and dangerous. In the digital sphere, cyber stalking and harassment creates a new set of challenges, giving perpetrators direct access to their victims and, with the protection of anonymity, prevention is even more elusive. Harassment online, if left to proliferate, may potentially evolve into physical crimes of SGBV and rape.

Sometimes, if families do seek justice, they do so through informal village arbitration, headed by local influential members of the area. In this setting, rape is transformed from a criminal to moral offense. Unfortunately, victim shaming often guides the proceedings and the victim's family are taken advantage of while the rapist receives light punishment. Sometimes both the victim and the rapist are punished. It is unfortunate that these informal bodies act as the first choice for victims and their families, when they should have access to legitimate legal processes. Little justice is ever found for victims, and with family honour and bribery clouding the judgement of the heads of their families, monetary compensation is commonly received from a rapist and the matter is dropped.

The case of Bithee is illustrative of these circumstances. Bithee was gang raped by her boyfriend and his friends, who also video recorded the violation. Following the attack, Bithee experienced severe emotional and physical trauma. Her family brought the matter to the notice of the community elders, who decided that mediation should be organized. At the mediation, the perpetrators offered Bithee's family 150,000 TK (1,500 EUR) in lieu of legal action against them. The family accepted the money. However, upon hearing the family had accepted the bribe, a paralegal approached Bithee's father with advice. Still fearful of social stigma, Bithee's father refused to press legal charges. He was reported to have commented, "My daughter's honour is saved, and I have also received some money for her out of all this. We can now use this money to marry her off"²⁷.

The case of Rani also shows how out of court settlements prevent victims from obtaining justice. Rani, a cook in a restaurant, was raped by Farid, who, prior to the attack, had been stalking and harassing her for a substantial period. Rani informed no one of the incident but became extremely ill. A doctor called in to exam Rani noticed the injuries on her body and only then did she disclose that she had been raped. Rani's father sought the help of the Union Parishad Chairman and a local salish (mediation) was organized, attended by both Rani and Farid's fathers, the latter being a local influential leader. Rani's father threatened to file a case against Farid, but community leaders intervened and decided that Farid should pay 40,000 TK (405 EUR) to Rani's father as compensation and dissuaded him from going to court. The money was transferred to the community leaders, who gave only 14,000 TK (140 EUR) to Rani's father. He never received the remainder. A legal aid organization approached Rani's father and tried to explain to him the importance of justice for Rani. Unfortunately, he was reluctant to press further and, fearing for his daughter's safety, he refused to file a formal case against Farid²⁸.

27. Huda, Taqbir & Titir, Abdullah, *Why Rape Survivors Stay Out of Court: Lessons from Paralegal Interventions*. Bangladesh Legal Aid and Services Trust, 2018, <https://www.blast.org.bd/content/publications/Why-Rape-Survivors-Stay-Out-of-Court-2018.pdf>.

28. Ibid.

IV. FLAWED CRIMINAL INVESTIGATIONS AND LACK OF CONVICTIONS

Evidently, several social and legal factors contribute to the unabated perpetration of the crime of rape. Added to that are weak investigations by law enforcement and medical personnel. Furthermore, if the perpetrator is himself a member of law enforcement, the chances of a weak investigation are even greater. As seen from cases cited earlier in this report, Bangladeshi police are not only perpetrators of the crime of rape, but they also enable the crime to occur due to poor investigation measures.

Often, police refuse or are reluctant to file FIR for incidents of rape, which act as the basis of police investigation. A recent publication disclosed a rape case in which the police initially refused to file the case and only did so a week later, after public protests forced them²⁹. Police investigations are far more common when there is a huge public outcry regarding the incident or where the rape victim has also been killed. Aggravating the problem, the Tribunal for Prevention of Women and Children, Dhaka, recently asked the police to refrain from registering rape cases that were reported more than 72 hours after the incident because semen could not be traced after this time³⁰.

Even before this court order, interest in investigating rape cases has been low, so much so that in 2016 the women's rights organization Naripokkho and other Non-Governmental Organisations (NGO) filed a writ petition to the High Court Division in Dhaka demanding intervention³¹. This writ petition was based on the gang rape of a Garo tribal woman by five men in a micro-bus in May 2015. Protests by women's rights activists and Adivasi rights and human rights organizations demanded urgent action. There were also several reports stating that there had been a delay in recording the FIR and in sending the woman for medical examination. The petition was filed by five human rights organizations, Naripokkho, Bangladesh Mahila Parishad, Jatiyo Adivasi Parishad, Bangladesh Legal Aid and Services Trust, and Ain O Salish Kendro.

The petitioners argued that the police delay in responding to the complainant amounted to a breach of the victim's fundamental rights of equality, non-discrimination, and equal protection with respect to obtaining a prompt and effective remedy against violence. They cited provisions of the SRWCA regarding the holding of medical examinations, and the rights to equality before the law, non-discrimination on grounds of race, religion, sex, caste and place of birth, and equal protection of the law under Articles 27, 28, and 31 of the Constitution. Additionally, they argued the State had failed its obligations under the UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW Convention)³².

29. Dignity Alliance International and Equality Now, *Sexual Violence in South Asia: Legal and Other Barriers to Justice for Survivors*, 2021, <https://www.equalitynow.org/sexualviolencesouthasia>.

30. The Daily Star, *Don't record case if rape victim comes after 72 hours, Dhaka judge tells police*, November 11th, 2021.

31. *Naripokkho and Others vs. Bangladesh and Others*, 2016, Bangladesh.

32. Ibid.

The High Court issued a rule nisi upon concerned authorities to explain the delay by the police in recording an FIR, as well as the delay in sending the woman to the Victim Support Centre for medical examination. The Court also asked for explanation as to why compensation had not been offered to the victim and stated that disciplinary action should be taken against those responsible for delaying procedures³³. There was also a direction issued as a circular to all police stations to ensure that they respond to victims promptly and without any discrimination based on race, religion, gender, caste, or place of birth, and to submit reports identifying those who do not³⁴. After that, the respondent government authorities filed affidavits indicating the steps they had taken to comply, and the Inspector General of Police issued guidelines to police officers dealing with cases of violence against women and children. The guidelines set up a three-member committee to inquire into allegations regarding delays in recording the FIR and conducting a medical examination, as well as disciplinary proceedings against two police officers for their inefficiency and injudiciousness while performing their duties. A division bench of the High Court heard the matter in 2016, where the petitioners made further arguments in response to the submissions of the respondents. Despite the directives of the High Court and the Inspector General's guidelines, there is still a general reluctance in recording FIRs and carrying out investigations by the police. This is mainly due to the social and economic factors of the victim's family and the "status" of the perpetrator, lack of rule of law, and other factors, and the fact that the crime of rape is on the rise³⁵.

Rani³⁶, 19, echoes these concerns about coming forward with her experiences of gender-based violence. She says she believes reporting rape is ineffective because the police will always choose to believe the perpetrator and will dismiss the case. She refuses to "fight a battle she has already lost". "I already know the outcome", she says. "There never is any justice for people like us, why would there be? What are we even worth?" She is concerned that coming forward may also put her at risk of revenge attacks by her perpetrator. "It is impossible to report him, he won't go anywhere because he is very powerful. But what about me? I have to live in constant fear of being raped again". Rani describes her situation as "impossible to escape"³⁷.

The reluctance to record a FIR for rape and carry out an investigation are indicative of how the police view the crime. It also reflects how Bangladeshi society perceives women's issues and their security. It is not only cases of rape that are not investigated properly. The same situation is faced by survivors of dowry violence, acid attacks, and other gender-based crimes.

Even if rape cases are recorded, the conviction rate is alarmingly low. According to case data collected from 71 police stations by Justice Audit Bangladesh, a joint program between the Bangladesh government and the German development agency *Deutsche Gesellschaft für Internationale Zusammenarbeit* in 2016, of the over 16,000 cases of violence against women

33. Ibid.

34. Ibid.

35. Several organisations documenting cases of rape reported in domestic newspapers indicated an increase: Ain o Salish Kendra (ASK), documented a total of 1,627 incidents of rape in 2020 whereas in previous years the numbers were much less, with 732 in 2018 and a sudden rise to 1,413 in 2019, see Reza Shovon, Fahim, *ASK: Rise in gender-based violence, despite Covid-19*, Dhaka Tribune, December 31st, 2020, <https://www.dhakatribune.com/bangladesh/2020/12/31/ask-2020-saw-a-rise-in-gender-based-violence-rapes-increased-despite-covid-19>.

36. Names of the victims of torture have been changed to protect their identities.

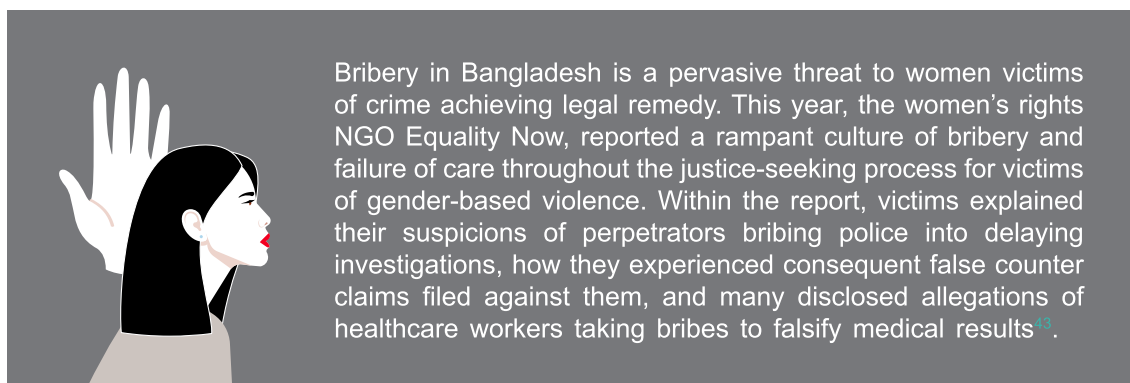
37. Khan, Umayma. *I'm alive but not living: Survivors of Bangladesh's rape crisis*, Al Jazeera, October 26th, 2020, <https://www.aljazeera.com/features/2020/10/26/survivors-of-bangladeshs-rape-epidemic>.

under investigation, about 3% resulted in a conviction, as compared to a 7.5 % conviction rate for other kinds of criminal cases during that same period. While a 7.5% conviction rate is also low, it shows that the barriers faced by all Bangladeshis in seeking legal recourse through the criminal justice system are further compounded for women and girls. A 2015 BRAC University study³⁸, seeking to explain the low conviction rate of cases filed under the SRWCA, compiled case records from the special Nari-o-Shishu tribunals in three districts from 2009 to 2014. They found that conviction rates have steadily dropped from about 2% to 0.4%. According to the Justice Audit, in 2016, courts annulled just over 20% of the over 170,000 open Nari-o-Shishu cases that year, convicting only 0.5% of those accused³⁹.

V. CORRUPTION

Corruption is another major reason why women victims of gender-based violence are hindered in seeking justice. If the perpetrator is an influential member of the locality, belongs to the political party in power or has their patronage, the police are reluctant to register an FIR and investigate. Bangladesh is known for partisan law enforcement and the police serves the government to stay in power. An influence that is reflected in investigations of rape cases.

Corruption within the police, judiciary, and governmental service providers is prevalent in South Asia, including in Bangladesh⁴⁰. Corruption within the police force is an open secret. In 2018, at a police conference, the Deputy Commissioner of Police laid down some figures. According to the DC, prospective Officers in Charge of police stations must pay amounts as high as 3,000,000 TK (about 30,000 EUR) to 15,000,000 TK (about 151,000 EUR) for their postings⁴¹. As entry into the police force comes at a high price, many new recruits are reportedly open to bribery to “earn back that money”⁴².



38. Atia Naznin, S.M. & Sharmin, Tanjina, *Reasons for the low rate of conviction in the VAW cases and inconsistencies in the legislative framework*, BRAC University, 2015, <https://researchers.mq.edu.au/en/publications/reasons-for-the-low-rate-of-conviction-in-the-va-w-cases-and-incon>.

39. Human Rights Watch, *I Sleep in My Own Deathbed" Violence against Women and Girls in Bangladesh: Barriers to Legal Recourse and Support*, 2020, <https://www.hrw.org/report/2020/10/29/i-sleep-my-own-deathbed/violence-against-women-and-girls-bangladesh-barriers>.

40. Dignity Alliance International and Equality Now, *Sexual Violence in South Asia: Legal and Other Barriers to Justice for Survivors*, 2021, <https://www.equalitynow.org/sexualviolencesouthasia>.

41. The Daily Star, *Corruption in Police*, February 20th, 2018, <https://www.thedailystar.net/editorial/corruption-police-1537174>.

42. Ibid.

43. Dignity Alliance International and Equality Now, *Sexual Violence in South Asia: Legal and Other Barriers to Justice for Survivors*, 2021, <https://www.equalitynow.org/sexualviolencesouthasia>.

VI. MEDICAL EXAMINATIONS

Given the social stigma and taboo that surrounds rape, medical investigations are also uncomfortable procedures for survivors. There have been incidents where local hospitals are unable or unwilling to fulfil their duty of care. Several victims' accounts have spoken of substantial barriers in accessing medical services after being raped, with some physically turned away from hospitals due to overwhelmed facilities⁴⁴. In turn, these barriers delay vital medical examinations which should be conducted as soon as possible following rape. A 2020 study on medical examination for victims showed that, out of 140 rape cases, 95% of examinations were conducted up to a month after the incident⁴⁵.

In order to determine whether a woman has been raped, vaginal penetration and rupture of the hymen is still the prevalent method of medical examination. A test, commonly known as the “two-finger test” is carried out to determine virginity. It allows doctors to inspect the hymen of women who have been raped. This is also supposed to test vaginal laxity and decide whether the victim is frequently engaging in sexual activity. The test is extremely humiliating and lacks any scientific merit⁴⁶.

In 2013, Bangladesh Legal Aid and Services Trust (BLAST) challenged the test before the High Court. In response, the Court questioned the legality and authenticity of the test. It also issued a rule asking the government to explain why the test will not be declared illegal. The Court also asked the Health Ministry to form a committee of experts to develop detailed guidelines to provide support to rape victims during examination and treatment, and to submit these guidelines to the Court within three months. The Ministry has submitted its draft guidelines, which proposed the abolishment of the two-finger test and recognizing that it is both “horrendous” and “unscientific”⁴⁷. Unfortunately, the guidelines remain a draft and the two-finger test still remains as a major component to prove rape, along with DNA testing and other evidence.

Not all incidents of rape leave bruises or evidence of struggle on victims' bodies. Not all rapes result in a ruptured hymen. Unfortunately, the lack of these “signs of rape” often results in inconclusive medical reports or reports that state no evidence of rape⁴⁸. This contributes to low prosecution rates and casts doubts on the validity of the victim's claim. Improper investigation and a disregard of impacts on mental health add to the injustice. Currently, there is little to no psycho-social counselling for the victim or her family. This kind of attention is however extremely important and plays a vital role in empowering the victim and assisting her to seek justice.

44. Ibid.

45. Ferdous, N.F. and Jabin, N., *Distribution and Determinants of Rape Victims: A Retrospective Analysis*. Anwer Khan Modern Medical College Journal, No.11.1 (2020), 41-45.

46. World Health Organisation, *UN Human Rights Office of the High Commissioner, UN Women, Eliminating Virginity Testing: An Interagency Statement*, 2018, <https://www.who.int/publications/i/item/WHO-RHR-18.15>.

47. The Daily Star, *HC bans degrading 'two-finger test' for rape victims*, April 12th, 2018, <https://www.thedailystar.net/country/hc-bans-controversial-two-finger-test-1561813>.

48. Ferdous, N.F. and Jabin, N., *Distribution and Determinants of Rape Victims: A Retrospective Analysis*. Anwer Khan Modern Medical College Journal, No.11.1 (2020), 41-45.

VII. GOVERNANCE AND GENDER-BASED VIOLENCE AGAINST WOMEN

Autocratic governments stay in power through encouraging violence, manipulation, repression, and corruption – among other strategies. There seems to be a connection between repressive governments and GBVAW. The ruling political party, Awami League, has been in power since 2009 and has gradually become more repressive, as seen with the controversial laws it has passed to gag freedom of speech and expression and an escalating rate of violence in the country⁴⁹. It was also in 2009, when the Awami League came into power, that rape cases started to rise⁵⁰. After the December 2018 national elections, between the months of January and April 2019 there were an average of 13 rapes each day⁵¹.

All branches of the Bangladesh government have become subservient to the party in power; and appointments are politically motivated. Such important national institutions like the Anti-corruption Commission, the National Human Rights Commission, and the Election Commission fall in this category too. As a result, women and children have become more vulnerable.

In February 2019, a woman in Shubarnachar, was gang raped by ten men belonging to the ruling party. She said this was in retaliation for casting her vote for the opposition in the 2018 general elections, after the same men had tried to force her to do otherwise. Due to the controversy of the elections, this created public outcry and the ensuing pressure in the press led to the arrest of the perpetrators⁵².

Members of the ruling political party are also brazenly taking the law into their own hands and “adjudicating” rape cases in exchange for money. In July 2020, an informal arbitration, led by a local ruling party leader called Mostafa Siddiq Liton, fined a girl and her family a large sum of money. He took away several valuable items from the family of the girl as they were unable to pay the “fine”. The reason for the fine? The girl had become pregnant after being raped by a young man. Her family had sought justice through this arbitration. The victim’s family later filed a case in court accusing Liton and others involved with the arbitration of extortion. Liton began to threaten the family with retaliation if they did not withdraw the accusation. The police have yet to investigate the allegations against Liton⁵³.

These are just a few recent cases of the political influences of rape in Bangladesh. Political power is exerted on victims, knowing that they will be too scared to complain. It is obvious that offenders of any crime, not just rape, enjoy a certain level of impunity if they have political influence, especially under repressive regimes. Victims, in turn, are reluctant to complain and

49. The Information and Communication Technology Act 2006 (amended in 2013) and the Digital Security Act 2018 are the most criticized. Older laws, such as the Special Powers Act 1974 and the Anti-terrorism Act 2009, have not been repealed or amended.

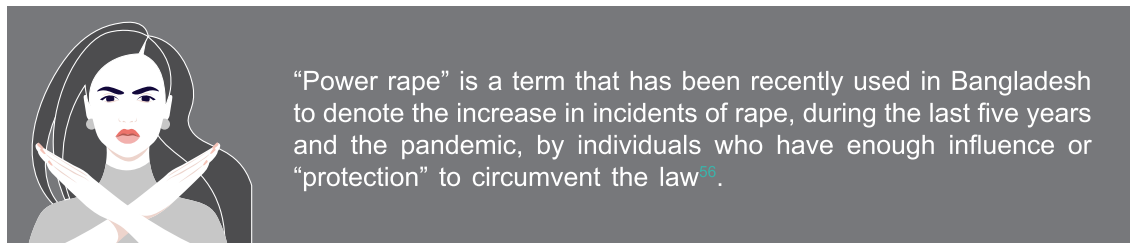
50. Odhikar documented 14,718 rape victims (including 6,900 women and 7,664 children) between 2001 to 2019. The highest numbers were documented between 2002 and 2003, with a steady decrease until 2008 when rape incidence started to increase again.

51. Rashid, Muktadir, *Bangladesh sees nearly 13 rapes every day*, New Age, May 18th, 2019, <https://www.newagebd.net/article/72764/bangladesh-sees-nearly-13-rapes-every-day>.

52. Human Rights Watch, *Bangladesh: Election Abuses Need Independent Probe*, <https://www.hrw.org/news/2019/01/02/bangladesh-election-abuses-need-independent-probe>; Reuters, *Bangladesh police arrest 10 for alleged gang rape on vote night*, January 7th, 2019, <https://www.reuters.com/article/bangladesh-politics/bangladesh-police-arrest-10-for-alleged-gang-rape-on-vote-night-idINKCN1P10R2>.

53. Lipu, Magura, *Awami League leader now threatens rape survivor to withdraw case*, Dhaka Tribune, July 22nd, 2020 <https://www.dhakatribune.com/bangladesh/nation/2020/07/22/awami-league-leader-now-threatens-rape-survivor-to-withdraw-case>.

fear for their lives. People in Bangladesh fear political “goons” and because of the dysfunctional criminal justice system there is very little justice for crimes perpetrated by them⁵⁴. Offenders believe that political backing exists to protect them and they often do not target citizens who hold better social and political positions⁵⁵.



VIII. LACK OF REHABILITATION AND COMPENSATION

In February 2021, the High Court issued a ruling asking the government to explain why it did not outline a scheme to ensure compensation for rape victims. It also asked the government to show cause as to why it had failed to take appropriate steps for the rehabilitation of rape victims.

This was not the first call for compensation schemes for rape victims. In February 2007, the Law Commission forwarded a report and a draft bill to the government, proposing and justifying a law that would provide compensation and other relief to victims of crime, including rape. At the time of writing, this bill is yet to be discussed⁵⁷.

Under the SRWCA, the fine perpetrators are charged with ranges from 10,000 TK (about 100 EUR) to 100,000 TK (about 1,000 EUR). However, as it is a fine and not direct compensation, the court is the sole beneficiary of this payment. It is upon the discretion of the judge whether this money is given to the victims or their families as compensation. As no laws specify the terms of compensation for victims, the courts rarely order the fined amount to be given to them⁵⁸.

According to a study conducted by BLAST, based on reported judgments on rape cases from 2000 to 2019, the courts only awarded compensation in roughly 7% of convictions, i.e. three out of 44 cases⁵⁹. In two of the three cases, the lower court’s conviction was overturned by the Supreme Court on appeal⁶⁰. In the remaining case, the defendant’s appeal was rejected so the compensation award was sustained but reduced from 100,000 TK (about 1,000 EUR) to 25,000 TK (about 250 EUR)⁶¹.

54. Asian Human Rights Commission, *Bangladesh: Collapsed criminal justice system compounds violence against women*, 2013, <http://www.humanrights.asia/news/ahrc-news/AHRC-STM-095-2013/>.

55. Shaon, Ashif, *Rape: Political power a factor for impunity*, *Dhaka Tribune*, October 9th, 2020, <https://www.dhakatribune.com/bangladesh/2020/10/09/rape-political-power-a-factor-for-impunity#:~:text=The%20Dhaka%20University's%20Institute%20of,becomes%20part%20of%20a%20pack>.

56. *Dhaka Tribune*, *CID: 'Power rape' cases have increased amid Covid pandemic*, April 21st, 2021, <https://www.dhakatribune.com/bangladesh/nation/2021/04/21/cid-power-rape-cases-have-increased-amid-covid-pandemic>.

57. Law Commission, Bangladesh, *List of Reports/Bills Forwarded by The Law Commission to The Government*, 2020, <http://www.lc.gov.bd/reports.htm>.

58. *The Daily Star*, *Compensation for Rape Victims: Crippled Law Cares Little*, February 6th, 2021, <https://www.thedailystar.net/frontpage/news/compensation-rape-victims-crippled-law-cares-little-2039961>.

59. Huda, Taqbir, *No Justice Without Reparation*. Bangladesh Legal Aid and Services Trust, 2020.

60. *Ibid*.

61. *Ibid*.

IX. CONCLUSION

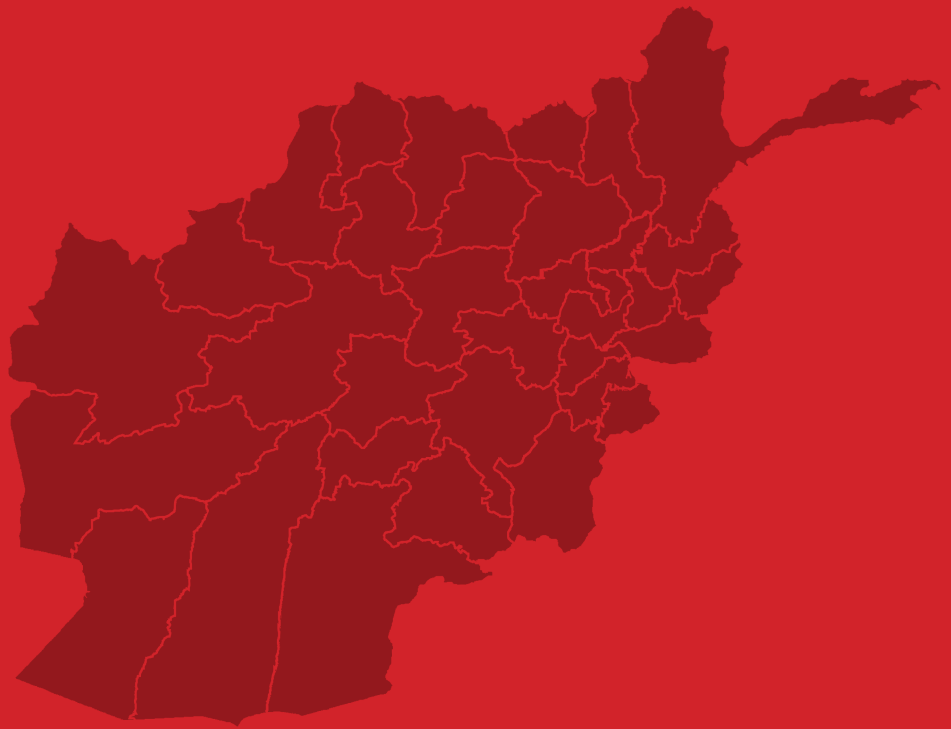
Bangladeshi women live within an environment where they are constantly at risk of rape and other forms of SGBV. Laws and policies have been enacted; however, a culture of misogynistic patriarchy prevails, trivializing allegations of SGBV levied by women, and enabling corrupt and dysfunctional legislative and judicial institutions that do little for the protection of women against violence.

Bangladesh is party to major international human rights conventions, including the CAT and CEDAW Conventions. It has laws that address SGBV and has a constitution that guarantees equality before the law and non-discrimination. Nevertheless, in practice we see that there needs to be major upheavals and amendments to the way that women, their security, and the violence they face are addressed. The current attitudes from society and the criminal justice system act as a deterrent to push survivors of rape away from seeking recourse.

Such attitudes enable perpetrators and potential perpetrators to commit violent and traumatizing acts against women. As the adage goes, “women’s rights are human rights”, and the reluctance of the police and justice system brings home the fact that the lack of effective investigation and justice for rape amounts to human rights violations.

To counter the harmful treatment of women within Bangladesh, there are several concrete actions that could be taken by policymakers and citizens alike. Several legislative amendments should be made, such as to the Penal Code and Suppression of Repression against Women and Children Act, so that they include a comprehensive definition of sexual harassment, sexual assault, and rape, and recognize all victims and provide them with adequate access to legal redress and reparations. Any laws that are prejudicial toward victims of SGBV are also under need of review. Legislation should not act as a further barrier to women, meaning that measures such as prohibiting character evidence from being used against complainants or including rape by law enforcement as a form of torture, necessitate inclusion in policy development.

Policy development that is inclusive to gender-related crimes, especially SGBV, require a shift in consciousness from those implementing and following laws. Education on approaches to tackling SGBV crimes is needed for police officers, prosecutors, judges, and anyone involved in the handling of gender-based violence. Corruption needs to be fought at every level to prevent the protection of perpetrators and the silencing of victims. Outdated practices, such as the two-finger test, must also be stricken from law books, in line with respecting the dignity of victims of SGBV. At the same time, public education systems should include comprehensive sexual education classes, equipping younger generations with the knowledge of consent, gender equity, and healthy relationships. All of which will enable future generations to reformulate Bangladeshi women’s place in society, respect their autonomy, and prevent future violence.



08

VIOLENCE AGAINST WOMEN UNDER THE TALIBAN IN AFGHANISTAN

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1. This chapter was developed with the support of the Civil Society and Human Rights Network (CSHRN).

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I. INTRODUCTION

For generations of women, even before the Taliban retook power on August 15th, 2021, Afghanistan has been one of the most dangerous places in the world. It has been estimated that nearly 90% of Afghan women are subjected to violence in their lifetime², with violence inflicted at home by members of the family being the most pervasive problem. In 2015, the Special Rapporteur on violence against women reported to the United Nations (UN) General Assembly that more than 87% of Afghan women experienced at least one instance of violence in that year³. While a 2016 report by the World Health Organization (WHO) demonstrated that nearly 90% of Afghan women have experienced at least one form of domestic violence⁴. Gender-based violence against women (GBVAW) has only increased following the outbreak of Covid-19 pandemic: Oxfam found that 97% of Afghani women had experienced domestic violence in 2020⁵.

Socio-cultural norms of masculine dominance and family honor have long played major roles in the prevalence of violence and the lack of subsequent justice. Traditionally, the integrity of a family is more valuable than complaining about violence inflicted by family members. There is a deeply-rooted notion that a “good” woman obeys and endures domestic violence to preserve the honour of their family⁶. Complaining about violence committed by a family member is deemed to bring shame and doing so will stigmatize victims for dishonoring their family⁷. Similarly, prosecutors and judges have blamed women for the violence committed against them and for not obeying the commands of their husbands or other male guardians⁸.

Despite Afghanistan having some of the worst conditions for women over the last decades, progress had been made and there were signs of hope. The Afghanistan Independent Human Rights Commission (AIHRC) and the Ministry of Women Affairs (MOWA) were established in 2001 and have continuously addressed violence against women. The former constitution adopted in 2004 recognized equal rights for all citizens⁹. In 2009, the Elimination of Violence Against Women Law (EVAWL) was passed. It criminalized 22 acts of violence against women, including sexual assault, forced marriage, underage marriage, forced prostitution, beating, and causing injury and

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2. The New Humanitarian, *A quiet crisis: As the economy fractures, violence soars for Afghan women*, December 16th, 2020, <https://www.thenewhumanitarian.org/news-feature/2020/12/16/Afghanistan-women-economy-gender-based-violence>.
 3. Manjoo, Rashid, *Report of the Special Rapporteur on Violence against Women, Its Causes and Consequences*, UN Doc. A/HRC/29//27/Add.3, May 12th, 2015, para. 13. The report further found that more than 60% of women faced multiple forms of violence. From 2012 to 2013, 4,505 cases of violence against women were registered in 32 provinces of Afghanistan. Moreover, there were 1,249 cases of physical violence, 976 cases of psychological violence, 862 cases of economic violence, 262 cases of sexual violence, and 805 cases of “other types of violence”.
 4. Radio Free Afghanistan, *Afghanistan: Nearly 6,500 Incidents Of Violence Against Women Recorded In Past Year*, 2019, <https://gandhara.rferl.org/a/afghanistan-nearly-6500-incidents-of-violence-against-women-recorded-in-past-year/30291305.html>. According to this report, 17% have experienced sexual violence, and 52% have experienced physical violence.
 5. Oxfam, *The invisible pandemic that's been years in the making*, May 12th, 2020, <https://www.oxfam.ca/story/the-invisible-pandemic-thats-been-years-in-the-making/>.
 6. Kanalstein, Eric, *Justice through the Eyes of Afghan Women: Cases of Violence against Women Addressed through Mediation and Court Adjudication*, 2015, <http://reliefweb.int/report/afghanistan/justice-through-eyes-afghan-women-cases-violence-against-women-addressed-through>.
 7. Akrami, Mary, Head of Women's Shelter in Kabul, in discussion with the author, March 7th, 2021.
 8. Kanalstein, Eric, *Justice through the Eyes of Afghan Women: Cases of Violence against Women Addressed through Mediation and Court Adjudication*, 2015, <http://reliefweb.int/report/afghanistan/justice-through-eyes-afghan-women-cases-violence-against-women-addressed-through>.
 9. *The Constitution of the Islamic Republic of Afghanistan*, 2004, https://www.diplomatie.gouv.fr/IMG/pdf/The_Constitution_of_the_Islamic_Republic_of_Afghanistan.pdf.

disability¹⁰. Afghanistan's constitution under the last two democratically elected governments contained provisions on discrimination and reference to the Universal Declaration of Human Rights and other United Nations treaties. Afghanistan has ratified the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT Convention) and the UN Convention on the Elimination of all Forms of Discrimination against Women (CEDAW Convention). Afghanistan had engaged and cooperated with the committees overseeing both conventions and their review procedures. It is further important to note that there were increases in appointments of women judges and women lawyers defending women's rights, including in cases of rape, torture, forced marriage, property disputes, and restriction of movement¹¹.

On August 15th, 2021, the Taliban takeover saw these positive legal and institutional developments almost immediately reversed and hopes of women and victims of GBVAW were shattered within days. There is arguably no population more affected by the Taliban seizing power than Afghan women and girls. In the 1990s, the Taliban consistently committed human rights abuses against this demographic, denied access to education, restricted involvement in public life, denied access to essential healthcare services, forced marriage, and developed other draconian and gender-specific measures and punishments for those not complying with their interpretation of *Sharia*. As this chapter will detail, in less than six months the Taliban have reinstituted some of these same measures and punishments.

The following chapter describes cases of GBVAW by the Taliban, documented by the author, as well as providing information on the broader legal and institutional landscape relevant for the protection of women against gender-based violence.

Before doing so, Afghanistan's obligations under international human rights law will be developed further.

II. AFGHANISTAN'S INTERNATIONAL HUMAN RIGHTS OBLIGATIONS

Despite the recent drastic changes in Afghanistan's governance, it continues to bear a legal obligation under international human rights law to guarantee the human rights of women. Specifically, as a State party to the CEDAW Convention since 2003 and to the CAT Convention since 1987, Afghanistan is required to eliminate discrimination against women and all forms of GBVAW. The Taliban, now in control of the territory, is obliged under international law to respect, protect, and fulfil the human rights of all citizens. This duty applies regardless of political, economic, and cultural systems in place. This has also been confirmed by the Human Rights Council that adopted resolution S-31/1 on "Strengthening the promotion and protection of human rights in Afghanistan". The resolution was presented at its special session in August 2021, where the "obligations of Afghanistan under international human rights covenants and instruments" were recalled. The resolution further reiterated Afghanistan's "unwavering commitment to the rights of women and girls [...] in accordance with the State's obligations under international human rights law¹²".

10. MoJ, *Law on Elimination of Violence against Women (EVAW)*, 2009, <https://www.refworld.org/pdfid/5486d1a34.pdf>.

11. Press, Claire, *Female Afghan judges hunted by the murderers they convicted*, September 28th, 2021, <https://www.bbc.com/news/world-asia-58709353>.

12. Human Rights Council, *Strengthening the promotion and protection of human rights in Afghanistan*, UN Doc. A/HRC/RES/S-31/1, August 26th, 2021.

Afghanistan is obliged to implement the recommendations from CAT it received in 2017 and from CEDAW in 2020, which among other issues asked to:

- **“Ensure that all cases of violence against women are thoroughly investigated, that perpetrators are prosecuted and held to account and that victims obtain redress, including adequate compensation”¹³;**
- **“Conduct training courses and awareness-raising campaigns and to increase the understanding that violence against women constitutes a grave violation of the Convention and domestic law”¹⁴;**
- **“Increase the presence of women among the staff of the police and the judiciary”¹⁵;**
- **“Ensure that cases of gender-based violence and discrimination against women are adjudicated by the ordinary courts rather than informal justice mechanisms such as jirgas and ”¹⁶ ;**
- **“To guarantee that women and girls who are victims of gender-based violence are provided with immediate access to effective remedies, shelter, legal assistance and reparation, including compensation”¹⁷.**

It is against the background provided by these recommendations and Afghanistan’s international obligations that the Taliban’s actions will be analysed.

III. SHARIA LAW

Shortly after the takeover, the Taliban announced that their government will be guided by Islamic law and not the principles of democracy¹⁸. Moreover, in their first press conference, the Taliban proclaimed to be “committed to the rights of women within the framework of *Sharia*”¹⁹.

Sharia is a wide-ranging body of moral and ethical principles drawn from the Quran and practices and sayings of the Prophet Muhammad. Interpretations and practices vary greatly depending on the schools of thoughts established by scholars. While many Muslim-majority countries base their laws on Islamic interpretations, none have identical laws²⁰. The Taliban’s interpretation of Islamic law stems from the *Deobandi* strand of Hanafi jurisprudence and the group’s own experience and culture as a rural and tribal society²¹. While it is not yet clear how the Taliban will legislate and institutionalize *Sharia*, we do know that it has been applied and interpreted against women’s

13. CAT, *Concluding Observations on Afghanistan*, UN Doc. CAT/C/AFG/CO/2, June 12th, 2017, para. 38c; CEDAW, *Concluding Observations on Afghanistan*, UN Doc. CEDAW/C/AFG/CO/3, March 10th, 2020, paras. 26c and d.

14. Ibid CAT, *Concluding Observations on Afghanistan*, para. 38d, and CEDAW, *Concluding Observations on Afghanistan*, para. 26h.

15. Ibid CAT, *Concluding Observations on Afghanistan*, para. 38b and CEDAW, *Concluding Observations on Afghanistan*, para. 26g.

16. Ibid, CEDAW, *Concluding Observations on Afghanistan*, para. 26b.

17. Ibid, CEDAW, *Concluding Observations on Afghanistan*, para. 26g.

18. Al Jazeera, *Explainer: The Taliban and Islamic law in Afghanistan*, August 23rd, 2021, <https://www.aljazeera.com/news/2021/8/23/hold-the-taliban-and-sharia-law-in-afghanistan>.

19. Al Jazeera, *Transcript of Taliban’s first news conference in Kabul*, August 17th, 2021, <https://www.aljazeera.com/news/2021/8/17/transcript-of-talibans-first-press-conference-in-kabul>.

20. Al Jazeera, *Explainer: The Taliban and Islamic law in Afghanistan*, August 23rd, 2021, <https://www.aljazeera.com/news/2021/8/23/hold-the-taliban-and-sharia-law-in-afghanistan>

21. Ibid.

rights. Even under the two democratic governments, *Sharia* was applied to matters which were not specifically regulated by secular laws, such as family law, including domestic violence.

For the Taliban, women's education, work, and dress code are among the most important parts of their *Sharia* interpretation. Education and work are heavily restricted and wearing a hijab is obligatory²². The Taliban mayor in Kabul, Hamdullah Numan, expelled all female members of staff, telling them to stay at home²³. On September 17th, 2021, the Ministry of Education ordered for the reopening of schools only for boys, depriving Afghan girls of their right to education²⁴. The same ministry also ordered for gender-segregated classes in all private and public universities. Coeducation is no longer permitted and male teachers cannot teach girls, except in circumstances where it is required, and *Sharia* obligations can still be observed. Abdul Baqi Haqani, the head of Ministry of Higher Education, stated that, when teaching girls and women, male teachers "should teach from behind a curtain or use [video] screens and other such facilities"²⁵.

The hijab and burqa are the symbolic representation of the Taliban state ideology. In a roundtable on TOLONews shortly after August 15th, a member of the Taliban government announced the Taliban's view on women's dress code:



"There are some specific principles that should be applied to women only. First, the color [of women's clothes] should not be attractive. Second, they are not allowed to use perfume. Third, their shoes must not make sound [when they walk]. Because these are all kinds of invitations for sexual activities"²⁶.

In a shocking example of the approaches taken to enforce dress codes, shortly before the August 15th takeover, the Taliban shot dead a girl in Balkh province for not wearing a hijab²⁷.

IV. REPLACING MINISTRY OF WOMEN AFFAIRS WITH THE VICE AND VIRTUE MINISTRY

On September 7th, 2021, the Taliban announced their new interim government. A notable exclusion was seen with the dissolvment of MOWA. The building that previously housed MOWA was handed over to the new Ministry for the Promotion of Virtue and Prevention of Vice, also called the moral police²⁸, which is headed by a cleric²⁹.

22. The Indian Express, *Women will be expected to wear the hijab but not the burqa, says Taliban spokesman*, August 19th, 2021, <https://indianexpress.com/article/world/women-will-be-expected-to-wear-the-hijab-but-not-the-burka-says-taliban-spokesman-7459395/>.
23. BBC, *Kabul Municipality has told female employees to stay home*, September 19th, 2021, <https://www.bbc.com/persian/afghanistan-58615440>.
24. 8am, *Reactions to the closure of girls' schools; "for what crime are we prevented from continuing our education?"*, September 28th, 2021, <https://8am.af/reactions-to-the-closure-of-girls-schools-for-what-crime-are-we-prevented-from-continuing-our-education/>.
25. Gul, Ayaz, *Taliban: Women Can Study in Gender-Segregated Universities*, VOA News, September 13th, 2021, <https://www.voanews.com/a/taliban-women-can-study-in-gender-segregated-universities/6223214.html>.
26. Qasimi, Malika, in Facebook, September 21st, 2021, <https://www.facebook.com/100004047624383/posts/2485844908227072/?sfnsn=mo>.
27. AZADI Radio, مقام‌ها: طالبان یک دختر را برای نوع پوشش لباسش در بلخ تیرباران کردند, <https://da.azadiradio.com/a/31391777.html>, (only available in Dari).
28. Reuters, *Taliban replaces women's ministry with ministry of virtue and vice*, September 17th, 2021, <https://www.reuters.com/world/asia-pacific/taliban-replaces-womens-ministry-with-ministry-virtue-vice-2021-09-17/>.
29. Reuters, *Young Afghan women defiant as Taliban bring back moral police*, September 8th, 2021, <https://news.trust.org/item/20210908145953-lht6qj/>.

From 1996 to 2001, the Ministry for the Promotion of Virtue and Prevention of Vice existed under the previous Taliban regime. The Ministry punished women through public beatings for a variety of “transgressions”, such as wearing socks that were not sufficiently opaque, for showing their wrists, hands, or ankles, or for not being accompanied by a male relative when leaving the house³⁰.

In November 2021, this Ministry started to issue its first guidelines: television channels have been instructed not to broadcast dramas and soap operas featuring women³¹; taxi and bus drivers are instructed not to transport women who are traveling for more than 45 miles (72 kilometers) unless they are accompanied by a close male relative³²; and vehicle owners are asked not to offer rides to women who are not properly covered according to Islam³³. Aid workers in the rural Badghis province reported that the local branch of the Ministry for the Promotion of Virtue and Prevention of Vice had threatened to shoot if women went to work without wearing the burqa and that they would conduct unannounced visits to offices to ensure that the rules are being followed³⁴.

More recently, on February 22nd, 2022, the Ministry announced that women will be able to return to their workplace at the government on the conditions that means be introduced to separate women and men and that women fully cover themselves. Those not observing this dress code will lose their job³⁵.

V. DISMANTLING OF THE JUDICIAL SYSTEM

Over the last two decades of the democratic system in Afghanistan, the global community committed substantial efforts for the establishment and development of Afghanistan’s judicial and prosecution system. Afghanistan’s partners assisted the government in capacity building and skills enhancement to provide legal services for addressing different crimes, including GBVAW. After the adoption of the 2004 Constitution, a comprehensive judicial system was established with a Supreme Court, appellate courts, and primary courts as independent organs in the Islamic Republic of Afghanistan. There was one division of the Supreme Court that was established to specifically address violence against women. A supreme court judge with several judicial advisors was responsible for fulfilling the duties of this division³⁶.

When the Taliban took power, they started to dismantle these judicial institutions. The supreme court is no longer operating, and neither is the specific division for GBVAW cases. The Taliban

30. The Washington Post, *The Taliban is bringing back its feared ministry of “vice” and “virtue”*, September 8th, 2021, <https://www.washingtonpost.com/world/2021/09/08/afghan-vice-virtue-ministry/>.

31. The Wire, *Taliban Bans Women From Acting on TV, Orders Journalists to Wear Headscarves*, November 22nd, 2021, <https://thewire.in/women/afghanistan-taliban-women-tv-headscarf-ban-journalists>.

32. NDTV, *No Trips For Afghan Women Unless Escorted By Male Relative: Taliban*, December 26th, 2021, <https://www.ndtv.com/world-news/no-trips-for-afghan-women-unless-escorted-by-male-relative-taliban-2672210>.

33. Ibid.

34. France 24, *Afghan NGO women ‘threatened with shooting’ for not wearing burqa*, January 21st, 2022, <https://www.france24.com/en/live-news/20220121-afghan-ngo-women-threatened-with-shooting-for-not-wearing-burqa>.

35. Afghanistan International, in *Facebook*, February 22nd, 2022, <https://www.facebook.com/afintlty/posts/259976769672241> (only available in Dari).

36. The Supreme Court of the Islamic Republic of Afghanistan, *History of Supreme Court*, <https://supremecourt.gov.af/en/history-supreme-court>.

terminated the EVAW Law and dismantled the EVAW courts and prosecution units in all provinces. Most judges, prosecutors, and judicial advisors fled the country and those who remained are in hiding³⁷.

In November 2021, the Taliban issued a decree putting the Afghan Independent Bar Association (AIBA) under the control of the Justice Ministry³⁸. Armed Taliban stormed the offices of the AIBA and ordered everyone to stop their work. Now only Taliban approved lawyers are allowed to work in Islamic courts, some 2,500 lawyers lost their license, including all female lawyers. Women have been banned from working in the legal field³⁹.

Following the collapse of the court system, dispute resolution mechanisms like Jirgas, have been reinstated to their central position and act as the first point of recourse for many. Jirgas, where religious leaders mediate disputes, have a long-standing tradition in Afghanistan and have been repeatedly criticized by the international community, including the CAT, as their mediation often leads to decisions that heavily restrict women's rights and normalize GBVAW⁴⁰. Taliban affiliates, who fought in the battlefield for most part of their life, are now assigned to resolve minor disputes, while tribal elders, who are largely illiterate, are mandated to decide complicated disputes⁴¹. This is concerning since tribal elders traditionally reinforce a masculine-dominated culture and society and do not recognize or respect women's rights⁴². In addition, there is no division between police, prosecution, and judiciary. The same person can hold all these positions at once⁴³.

One of the victims of a Jirga decision is Nurzia, a 36-year-old woman. On September 21st, 2021, a decision by a Taliban led Jirga forced her to go back to her former husband, despite a divorce decided by a court. According to forensic reports, she had been beaten for years by her former husband. In an interview by Etilaatroz, she said, "Just with an oath, the Taliban ordered me to return to live with my divorced husband, regardless of the former court ruling⁴⁴". She added that:

"The Taliban officials have told me that the ruling of Mohammad Ashraf Ghani's government court is not valid. When I insisted that I do not return to live with that man, I was told that under Islamic law, a man has the right to beat his wife, and that such disputes happen in every home, and we should not destroy the foundation of the family⁴⁵".

37. The Jurist, Afghanistan dispatches: "Now there are no clients for lawyers..." September 20th, 2021, <https://www.jurist.org/news/2021/09/afghanistan-dispatches-now-there-are-no-clients-for-lawyers/>.

38. Gandhara, Judge, Jury, And Executioner: Taliban Brings Afghanistan's Justice System Under Its Thumb, December 1st, 2021, <https://gandhara.rferl.org/a/taliban-afghanistan-justice-system/31588972.html>.

39. Gandhara, After Realizing Dream, Disabled Afghan Prosecutor Finds Herself Jobless And In Danger Under Taliban, January 12th, 2022, <https://gandhara.rferl.org/a/afghan-disabled-woman-prosecutor-jobless-taliban/31651273.html>.

40. CAT, Concluding Observations on Afghanistan, UN Doc. CAT/C/AFG/CO/2, June 12th, 2017, para. 39.

41. Aljazeera, Taliban: From Afghanistan's rugged mountains to policing streets, October 5th, 2021, <https://www.aljazeera.com/gallery/2021/10/5/photos-afghanistan-kabul-taliban-shift-war-policing-streets>.

42. Zada Qazi, Sebghatullah, Legislative, Institutional and Policy Reforms to Combat Violence against Women in Afghanistan, *Indian Journal of International Law* Vol. 59 (2021), pp. 257-283, <https://doi.org/10.1007/s40901-020-00116-x>.

43. Gandhara, Judge, Jury, And Executioner: Taliban Brings Afghanistan's Justice System Under Its Thumb, December 1st, 2021, <https://gandhara.rferl.org/a/taliban-afghanistan-justice-system/31588972.html>.

44. Etilaatroz, Audacity in acts of violence; How does the Taliban ensure justice, September 30th, 2021, <https://www.etilaatroz.com/131553/audacity-in-acts-of-violence-how-does-taliban-ensure-justice/?fbclid=IwAR12I>

45. Ibid.

VI. CLOSING OF WOMEN'S SHELTERS

The first Women's Protection Center (WPC) was established in 2007 by the independent organization Women for Afghan Women (WAW). It worked in coordination with its partners the MOWA and the AIHRC. The WPC was founded in response to the urgent need for safe shelter for at-risk Afghan women and girls. Their mission was defined by providing confidential, safe shelter to protect endangered women and girls escaping life-threatening and dangerous situations at home⁴⁶. In its 15 years of existence, it provided shelter, comprehensive legal support, family mediation, medical care, psychological care, counselling and empowerment to women and education for the children of women residing at the centers. According to a statement by an official from MOWA, Afghanistan had 25 shelters in 22 provinces⁴⁷. After August 15th, 2021, most of these shelters were closed and the Taliban demanded women to either return to their families or to go to prison⁴⁸.

VII. FORCED MARRIAGE

When the Taliban advanced and took power in more and more provinces, one of the major reasons for families to flee Afghanistan was the fear that their daughters would be forced to marry members of the Taliban⁴⁹. There were reports of Taliban commanders ordering tribal leaders and Imams to make lists of unmarried girls and women aged between 12 and 45 to marry their military fighters as so-called Ghanimat (war spoils or profits)⁵⁰.

Though the Taliban spokesman Zabihullah Mujahid denied allegations of forced marriage and said that it violates Islamic rules⁵¹, victims insisted that it happened in the Badakhshan, Takhar, and Bamiyan provinces⁵². One of the victims was Sooma, a mother of five, whose husband, a police officer, was killed four years ago. She was forced to marry a Talib when Herat fell on August 13th, 2021. The Talib threatened to kill her children if she did not marry him and when the Taliban retook control of the entire country, she had no choice but to acquiesce⁵³.

46. Women for Afghan Women, *Women's Protection Centers*, 2021, <https://womenforafghanwomen.org/womens-protection-centers/>.

47. The World, *Women's shelters in Afghanistan face uncertain future*, August 30th, 2021, <https://theworld.org/stories/2021-08-30/women-s-shelters-afghanistan-face-uncertain-future>.

48. Safi, Tooba Neda, *No safety under Taliban for Afghan women fleeing domestic violence*, Geneva Solutions, October 18th, 2021, <https://genevasolutions.news/explorations/dispatches-from-women-in-afghanistan/no-safety-under-taliban-for-afghan-women-fleeing-domestic-violence>.

49. Deutsche Welle, *Taliban: Afghan families flee to Pakistan over force marriage fears*, September 9th, 2021, <https://www.dw.com/en/taliban-afghan-families-flee-to-pakistan-over-forced-marriage-fears/a-59133446>.

50. Hindustan Times, *Taliban ask for list of girls above 15, widows under 45 to be married to their fighters: Reports*, July 16th, 2021, <https://www.hindustantimes.com/world-news/taliban-asks-for-list-of-girls-widows-to-be-married-to-their-fighters-reports-101626413987086.html>.

51. Smucker, Philip, *The Taliban's Forced Marriages*, The Diplomat, October 12th, 2021, <https://thediplomat.com/2021/10/the-talibans-forced-marriages/>.

52. Foreign Policy, *As Taliban Expand Control, Concerns About Forced Marriage and Sex Slavery Rise*, July 23rd, 2021, <https://foreignpolicy.com/2021/07/23/afghanistan-taliban-women-gender/>.

53. Smucker, Philip, *The Taliban's Forced Marriages*, The Diplomat, October 12th, 2021, <https://thediplomat.com/2021/10/the-talibans-forced-marriages>.

Nonetheless, in the midst of trying to gain international recognition, the Taliban supreme leader, Mullah Hibatullah Akhundzada adopted a decree on December 3rd, 2021, addressing women's rights and forced marriage by saying "Both [men and women] should be equal and no one can force women to marry by coercion or pressure"⁵⁴. While this is a positive piece of law, it has some serious shortcomings. Firstly, the decree does not mention child marriage, let alone children who are sold into marriage. Secondly, there are great doubts when it comes to the implementation of the decree. The EVAW Law is no longer in effect, the Ministry of Women's Affairs and family courts have been dismantled and most women's shelters were forced to close. Jirgas are the only body that could adjudicate in cases of forced marriage. As mentioned above, Jirgas have been widely criticized for its unfair trials and discriminatory decisions against women⁵⁵. Thirdly, one can hardly talk about equality between men and women when most women are not allowed to work or attend school.

VIII. CHILD MARRIAGE

Child marriage in Afghanistan is not a new phenomenon. In 2017, the CAT raised serious concerns about forced and early marriages for girls in violation of Articles 2, 4, and 16 of the CAT Convention and urged the State to prohibit early and forced marriage and to prosecute and punish those responsible⁵⁶. Since the Taliban retook power in Afghanistan, reports about child marriages increased. The dire economic situation and the Covid-19 pandemic pushed many families deeper into poverty and made them sell their daughters in order to be able to buy food for the rest of the family⁵⁷. Meanwhile, teenage girls are still not allowed to attend school which makes the risk of child marriage even higher. A well-documented case is the case of 9-year-old Parwana who was sold by her father and forced to marry a 55-year-old man in October 2021⁵⁸. Thanks to media reporting, Parwana was later rescued and relocated to another part of Afghanistan with her mother and siblings⁵⁹.

IX. MASS RELEASE OF PERPETRATORS

At the end of 2021, there were 29,258 persons detained as per data from the Office of Prisons Administration⁶⁰. During the last two years, the Taliban implemented the strategy of liberating detainees to boost their fighting ranks⁶¹. With the fall of every province to the Taliban, prisons were opened one by one, the last being Afghanistan's largest prison, Pul-e-Charkhi, in Kabul, which

54. New York Times, *Taliban Decree an End to Forced Marriages in Afghanistan*, December 3rd, 2021, <https://www.nytimes.com/2021/12/03/world/asia/taliban-women-marriage.html>

55. Zada Qazi, Sebghatullah, *Legislative, Institutional and Policy Reforms to Combat Violence against Women in Afghanistan*, 2021, Indian Journal of International Law Vol. 59, pp. 257-283, <https://doi.org/10.1007/s40901-020-00116-x>.

56. CAT, *Concluding Observations on Afghanistan*, UN Doc. CAT/C/AFG/CO/2, June 12th, 2017, paras. 35 and 36.

57. UNICEF, *Girls increasingly at risk of child marriage in Afghanistan*, November 12th, 2021, <https://www.unicef.org/press-releases/girls-increasingly-risk-child-marriage-afghanistan>

58. CNN, *The rescue of Parwana: 9-year-old child bride is taken to safety in Afghanistan*, December 3rd, 2021, <https://edition.cnn.com/2021/12/02/asia/afghanistan-parwana-girls-marriage-intl-hnk-dst/index.html>.

59. Ibid.

60. Printed in the following report: *Afghanistan Independent Human Rights Commission*, Human Rights Situation in Prisons, 2020, https://www.aihrc.org.af/home/research_report/9145.

61. France 24, *Sunsets and squalor: Inside Afghanistan's largest prison*, September 17th, 2021, <https://www.france24.com/en/live-news/20210917-sunsets-and-squalor-inside-afghanistan-s-largest-prison>.

housed about 15,000 inmates the day of the Taliban takeover⁶². Among the released inmates were thousands of murderers, rapists, and kidnappers who were set free before they served their full sentences and without reintegration or rehabilitation programs or the support of social services. This raises grave concerns for the safety of those who were the victims of the detained perpetrators but also of those lawyers and judges who helped put those perpetrators behind bars.

Female judges who have sentenced perpetrators of GBVAW to prison are at particular risk. Within the last 20 years, 270 women have trained to become judges and have actively worked on the benches of different courts. Following the Taliban takeover, they have all gone into hiding. Masooma is one of the former female judges who convicted hundreds of men of rape, murder, and torture against women. Soon after the Taliban released all inmates, she started receiving anonymous calls threatening her with death. Sanaa, another female judge who has worked on violence against women cases for two decades, has received more than 20 threatening phone calls from recently released criminals⁶³.

Similarly, many female lawyers are at risk, given their work as lawyers in cases concerning GBVAW, including hostage-taking, kidnapping, assassination, trafficking, harassment, domestic violence, rape, beatings, forced marriages, forced isolation, deprivation of jobs, and many more issues. These female lawyers are threatened with violence by defendants now released from prisons. The Council of Bars and Law Societies of Europe recently reported that one female defense lawyer has been killed and that two were tortured⁶⁴, painting a bleak picture for the future.

Apart from judges and lawyers, female police officers and prison officials have been targeted. Alieh Azizi, who was the director of the Herat Women's Prison, went missing on October 2nd, 2021. Her brother reported that she disappeared after an anonymous call requested her to go back to her office⁶⁵. Negar, who has worked as a police officer in Ghor Provincial Prison for 15 years, was killed in her home in Ghor on September 4th, 2021. She was seven months pregnant when shot dead in front of her family⁶⁶.

X. VIOLENCE AGAINST WOMEN PROTESTORS AND CIVIL SOCIETY ACTIVISTS

Given the Taliban's restrictions on women's rights in the 1990s, women civil society activists could not remain silent when the Taliban took power and started protesting on August 16th, 2021. The protests were not accompanied with anti-Taliban slogans, but instead demanded their rights to

62. The New Indian Express, *Sunsets and squalor: Inside Afghanistan's largest prison Rul-e-Charkhi*, September 17th, 2021, <https://www.newindianexpress.com/world/2021/sep/17/sunsets-and-squalor-inside-afghanistans-largest-prison-pul-e-charkhi-2360173.html>; The Jurist, *Afghanistan dispatches: "Now there are no clients for lawyers..."* September 20th, 2021, <https://www.jurist.org/news/2021/09/afghanistan-dispatches-now-there-are-no-clients-for-lawyers/>.
63. BBC, *Female Afghan judges hunted by the murderers they convicted*, September 28th, 2021, <https://www.bbc.com/news/world-asia-58709353>.
64. Council of Bars and Law Societies of Europe, *Background document CCBE Human Rights Award for the endangered lawyers in Afghanistan*, October 20th, 2021, https://www.ccbe.eu/fileadmin/speciality_distribution/public/documents/HUMAN_RIGHTS_AWARD/2021/EN_Background-document-HR-Award-Afghanistan-2021.pdf.
65. This case was reported by Dailyyetilaatroz on its Facebook page <https://www.facebook.com/574012715954034/posts/4585396288148970/?sfnsn=mo>.
66. This case was reported by Ariana News on its Facebook page: <https://www.facebook.com/ariananews/posts/4313446522080145>.

work, education, freedom of movement without a *maharam* (male family member as a chaperone), and to dress as they wish and not based on the Taliban's interpretation of Islam⁶⁷. All protests were met with violence. The Taliban have used severe hate speech against women protestors and have whipped and beaten them with batons. The Taliban mostly targeted the organizers and those who were filming the protests and demanded that they do not disseminate footage of the violence inflicted against the protesters on social media⁶⁸.

Nargis Sadat is one victim who faced brutality by the Taliban during protests in Kabul on September 4th, 2021. She was one of the organizers of the protest and sustained significant injuries to her head. The video clip of the attack was circulated on social media, showing blood streaming down her face⁶⁹. Also, Taranom Seyedi, a 34-year-old women's rights activist in Kabul, who helped organize protests, received a threatening letter saying that the Taliban have a list of all protest organisers and will start house-to-house searches. After receiving this letter, she deleted all protest material from her accounts on social media⁷⁰.

There have also been reports about attacks against women civil society activists. For instance, Frozan Safai, a university professor and women's rights activist, and three of her colleagues, were on their way to the airport in Mazar-e-Sharif to leave the country when they disappeared. On October 27th, 2021, their dead bodies were found in the outskirts of Mazar-e-Sharif, they had all been shot⁷¹.

XI. DENIAL OF HEALTHCARE

Afghanistan's healthcare system is on the brink of collapse because of the Covid-19 pandemic and funding retrievals after the Taliban takeover. The Sehatmandi, one of the largest healthcare projects in the country with thousands of facilities is unable to buy medical supplies and pay salaries⁷². As of September 2021, only one in five of the Sehatmandi facilities remained open⁷³. 75% of all INGOs and UN agencies in Afghanistan reported that the fall of Kabul to the Taliban adversely affected their operations, particularly for women⁷⁴. In addition, many healthcare personnel who provided critical care to women have left the country and others, in particular female workers, are in hiding or do not dare to return to their workplaces⁷⁵. Moreover, one hospital in Kabul reported that the Taliban had requested the segregation of women and men patients and staff⁷⁶. According to the Taliban, women and girls can only be treated by female healthcare

67. Human Rights Watch, *Afghanistan: Taliban Abuses Cause Widespread Fear*, September 23rd, 2021, <https://www.hrw.org/news/2021/09/23/afghanistan-taliban-abuses-cause-widespread-fear>.

68. BBC, *Afghanistan: Women beaten for demanding their rights*, September 8th, 2021, <https://www.bbc.com/news/world-asia-58491747>.

69. Ab Qadir Sediqi, on Twitter, https://twitter.com/qadir_sediqi/status/1434058723291500544.

70. Siddiqui, Zeba and Zemaryalai, Parniyan, *Protests get harder for Afghan women amid risks and red tape*, October 4th, 2021, <https://www.reuters.com/world/asia-pacific/protests-get-harder-afghan-women-amid-risks-red-tape-2021-10-04/>.

71. BBC, *Murder of 5 former women civil and military activists in the center of Balkh*, November 5th, 2021, <https://www.bbc.com/persian/afghanistan-59178668>.

72. UN News, *Afghanistan's healthcare system on brink of collapse, as hunger hits 95 per cent of families*, September 22nd, 2021, <https://news.un.org/en/story/2021/09/1100652>.

73. Ibid.

74. Refugees International, *Afghan Women and Girls Under Immediate Threat: The Responsibility to Protect and Assist Is Just Beginning*, October 7th, 2021, <https://www.refugeesinternational.org/reports/2021/10/5/afghan-women-and-girls-under-immediate-threat-the-responsibility-to-protect-and-assist-is-just-beginning>.

75. News18, *Worsening Health Crisis in Afghanistan: Taliban Urge Female Staff in Public Health Dep to Return to Work*, August 27th 2021, <https://www.news18.com/news/world/facing-desperate-health-crisis-taliban-asks-female-staff-of-public-health-dept-to-return-to-work-4135634.html>.

76. RTBF, *A l'hôpital français de Kaboul: "Beaucoup de femmes, infirmières et autres, en pleurs, il y a vraiment une terreur globale"*, August 17th, 2021, https://www.rtbf.be/info/monde/detail_a-l-hopital-francais-de-kaboul-beaucoup-de-femmes-infirmieres-et-autres-en-pleurs-il-y-a-vraiment-une-terreur-globale?id=10825106.

providers. With restrictions on women's freedom of movement, there were reports of midwives having to be accompanied by a male guardian when undertaking home visits⁷⁷.

Adding further problems to the healthcare landscape, it is estimated that maternal mortality and polio infections in girls will increase, after cases for both had been cut in half over the last 20 years⁷⁸. It is further estimated that deaths among Afghan women and children will dramatically rise by at least 33%, which would mean that nearly 2,000 women and more than 26,000 children will die over the next year if the healthcare crisis is not effectively addressed⁷⁹.

The denial of available healthcare services, which puts women's lives and their physical and mental health at grave risk and causes severe pain and suffering, constitutes cruel and inhuman treatment under the CAT Convention⁸⁰. In addition, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (Special Rapporteur) found that pain and suffering amounts to torture or other ill-treatment if the "Government failed to take all reasonable steps to protect individuals' physical and mental integrity"⁸¹. As described above, severe restrictions in access to healthcare, particularly reproductive health, for Afghan women are due to discriminatory practices. According to the Special Rapporteur, discrimination plays a prominent role in the analysis of reproductive rights violations as forms of torture or ill-treatment⁸². Consequently, the severe limitations the Taliban policies pose on Afghan women in the context of healthcare amounts to torture or ill-treatment.

XII. THE WORSENING HUMANITARIAN CRISIS HARMING WOMEN

With the Taliban retaking power, most humanitarian aid organizations almost immediately withdrew their financial, material, and human resource support. According to the UN, 95% of Afghan families are going hungry⁸³, only 5 % can afford eating three times a day, and half of the population are already in starvation as a consequence⁸⁴. The UN Office for the Coordination of Humanitarian Affairs estimates that over 18 million people need immediate humanitarian assistance⁸⁵. Job losses, soaring prices of goods, and the inability of banks to provide enough cash have exacerbated the dire situation. The middle-class struggle to survive and the lower class is already starving as, on average, breadwinners are finding work just one day a week⁸⁶. This comes on top of already persistent socioeconomic hardships due to the Covid-19 pandemic.

77. The British Medical Journal Opinion, *Staring into the darkness: women health workers in Afghanistan*, September 6th, 2021, <https://blogs.bmj.com/bmj/2021/09/06/staring-into-the-darkness-women-health-workers-in-afghanistan/>.

78. UN News, Afghanistan's healthcare system on brink of collapse, as hunger hits 95 per cent of families, September 22nd, 2021, <https://news.un.org/en/story/2021/09/1100652>.

79. New York Times, Health Care in Afghanistan is Crumbling, Aid Groups Warn, September 12th, 2021, <https://www.nytimes.com/2021/09/12/health/afghanistan-health-taliban.html>.

80. See e.g. CAT, Concluding Observation on Peru, UN Doc. CAT/C/PER/CO/4, July 25th, 2006, para. 23.

81. Human Rights Council, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, UN Doc. A/HRC/22/53, February 1st, 2013, para. 54.

82. Ibid. 37.

83. UN News, Afghanistan's healthcare system on brink of collapse, as hunger hits 95 per cent of families, September 22nd, 2021, <https://news.un.org/en/story/2021/09/1100652>.

84. Ibid.

85. UNOCHA, UN holds event on the humanitarian situation in Afghanistan, September 13th, 2021, <https://www.unocha.org/story/un-holds-event-humanitarian-situation-afghanistan>.

86. UN News, Afghanistan's healthcare system on brink of collapse, as hunger hits 95 per cent of families, September 22nd, 2021, <https://news.un.org/en/story/2021/09/1100652>.

Afghan women and girls are directly affected by food insecurity, as almost all women could not return to work and became economically dependent on men. This leaves women heads of households particularly at risk of not having enough food. Internally displaced women also suffer from a lack of humanitarian assistance. It is estimated that 80% of the more than 500,000 Afghans who fled from armed conflicts from January to October 2021 are women and girls⁸⁷.



Moreover, many Afghan women and girls are unable to access shelter, water, sanitation, jobs, and monetary assistance⁸⁸. The Taliban's ban on women in the workforce makes assistance to economically disadvantaged women and girls even more illusory.

It is important to add that there is a direct connection between economic marginalization and the risk of GBVAW, as well as between displacement and GBVAW. This means that those women and girls who are unable to sustain their livelihoods and face difficulties in accessing water, sanitation, and necessary healthcare are more likely to face violence⁸⁹. Similarly, women and girls who are internally displaced are at much greater risk of being subjected to violence compared to non-displaced women⁹⁰. Women from economically disadvantaged communities are also least able to claim their rights and seek protection and redress. It has long been understood that certain economic, social, and cultural norms and expectations act as root causes for torture and other forms of ill-treatment, including GBVAW⁹¹.

XIII. CONCLUSION

In the months leading up to the invasion of Afghanistan by the United States and its allies to topple the Taliban-ruled Islamic Emirate in 2001, the United States and NATO countries stressed the abuse of women and girls by the Taliban to gain public support for the military invasion. Twenty years later, we are back at square one. The gains made over the past 20 years were almost immediately reversed when the Taliban retook power. Reports of killings, torture, forced marriage, denial of essential health services, attacks against protesters and activists are all evidence of gross human rights violations, contrary to the country's obligations under the CAT and CEDAW Conventions. The authorities in Afghanistan must respect and protect human rights, including those of women and girls, and guarantee the absolute prohibition of torture and other forms of ill-treatment, including any form of GBVAW, whether inflicted by the Taliban government or others⁹².

87. Aljazeera, *Infographic: Afghanistan's humanitarian crisis*, August 30th, 2021, <https://www.aljazeera.com/news/2021/8/30/infographic-afghanistans-humanitarian-crisis-interactive>.

88. Refugees International, *Afghan women and girls Under Immediate Threat: The Responsibility to Protect and Assist Is Just Beginning*, October 7th, 2021, <https://www.refugeesinternational.org/reports/2021/10/5/afghan-women-and-girls-under-immediate-threat-the-responsibility-to-protect-and-assist-is-just-beginning>.

89. Mannell, Jenevieve; Grewal, Gulraj; Ahmad Lida; and Ahmad, Ayesha, A Qualitative Study of Women's Lived Experiences of Conflict and Domestic Violence in Afghanistan, *Violence against Women*, September 2021 Vol. 27.11. pp. 1862-1878.

90. Ibid.

91. See e.g. OMCT, *Attacking the Root Causes of Torture. Poverty, Inequality and Violence*, 2006, https://www.omct.org/files/interdisciplinary-study/attacking_the_root_causes_of_torture.pdf.

92. On the due diligence obligation see CAT, *General Comment No. 2*, UN Doc. CAT/C/GC/2, January 24th, 2008, para. 18.

On August 24th, 2021, the Human Rights Council convened a special session to address the human rights situation in Afghanistan, which culminated in a resolution that reiterated Afghanistan's "unwavering commitment to the rights of women and girls". Although the resolution also stressed "the need for transparent and prompt investigation into reports of all violations and abuses of human rights and violations of international humanitarian law, committed by all parties to the conflict, and to hold those responsible to account", it only mandated the UN High Commissioner for Human Rights to provide an update on the situation.

During its regular 48th session in October 2021, the Human Rights Council appointed a Special Rapporteur on the human rights situation in Afghanistan. While this is an important first step towards robust oversight, it falls short of an independent, international investigative mechanism with the power to document and gather evidence for future prosecution, which is critical for justice and reparation. Serious human rights violations are the responsibility of the international community to take before the Human Rights Council to ensure that these rights are not abused, and protected, and closely monitored. This particularly pertains to the rights of women. A robust and reliable international mechanism is imperative.

This report further reveals how the Taliban started to normalize and institutionalize impunity for GBVAW. Given the extreme danger Afghan women face, it is important that other countries consider all women and girls as *prima facie* refugees, on the grounds of high risk of gender-based persecution upon return to Afghanistan. Other countries should equally suspend visa requirements and expedite humanitarian visas to at-risk groups – including women and women's rights activists.

Continued engagement towards humanitarian aid for women and girls is more important than ever. Having said this, humanitarian aid agencies and countries providing aid should demand that the Taliban commit to uphold human rights treaties that Afghanistan ratified, including the CAT and CEDAW Conventions, and to protect women from gender-based violence.



CONCLUSION AND RECOMMENDATIONS

The Universal Declaration of Human Rights begins with the “recognition that the inherent dignity and the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world”. The failure to keep this promise was the impetus for the Working Group on Women and Torture in Asia and for this report. As data and reports show, the level of gender-based violence against women (GBVAW) has been consistently high and remains underrecognized and underreported¹. Despite relevant United Nations (UN) conventions, resolutions, declarations, and the Millennium and Sustainable Development Goals, which all contain references to violence against women, there has been little progress at the domestic level. Approaches to address GBVAW are piecemeal rather than providing transformative systemic and policy changes.

Moreover, Covid-19 measures have further laid bare pre-existing structural problems that provide even more fertile ground for GBVAW to flourish. The situation is particularly deplorable in Asia, a region that has the highest lifetime prevalence of intimate partner violence among women² and the largest number of killings of women and girls³. There are a number of factors that put women in Asia at particular risk and prevent them from getting justice, which include a lack of regional human rights mechanisms, dysfunctional criminal justice systems, weak governance, religious laws that enable violence against women, the absence of relevant laws protecting women from violence, and substantial reluctance among Asian governments in reporting to the UN Committee Against Torture (CAT), as required by the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT Convention).

The overarching goal of this report is to inform governments and the international community, including UN treaty bodies, and to enable them to adopt more robust and effective laws, policies, and specific recommendations when addressing GBVAW. This report promotes the anti-torture framework among women’s rights organisations that work on GBVAW and at motivating civil society organisations of the SOS-Torture Network to include GBVAW in their efforts when combatting torture. To this end, the country chapters in this report at first identified common patterns and gaps that perpetuate violence and prevent women from getting justice, while focusing on different areas of concern⁴, and then promoted the applicability of the anti-torture framework to GBVAW, including holistic approaches concerning prevention, protection, legislation, prosecution, and redress.

Against this background, the women’s rights defenders who authored the country chapters on Afghanistan, Bangladesh, Cambodia, India, Nepal, Mongolia, the Philippines, and Sri Lanka form part of the Women and Torture Working Group in Asia and put forward the ten following recommendations to states and the international community to address GBVAW:

1. See e.g. WHO, *Global and regional estimates of violence against women: prevalence and health effect of intimate partner violence and non-partner sexual violence*, 2013, p. 2, http://apps.who.int/iris/bitstream/handle/10665/85239/9789241564625_eng.pdf?sequence=1; WHO, *Devastatingly pervasive: 1 in 3 women globally experience violence*, March 9th, 2021, <https://www.who.int/news/item/09-03-2021-devastatingly-pervasive-1-in-3-women-globally-experience-violence>.

2. For Southeastern Asia it is 21%, Ibid.

3. United Nations Office on Drugs and Crime, *Global Study on Homicide. Gender-related killing of women and girls*, 2018, https://www.unodc.org/documents/data-and-analysis/GSH2018/GSH18_Gender-related_killing_of_women_and_girls.pdf.

4. The chapter on the Sri Lanka looks at Female Genital Mutilation and reproductive violence (including forced sterilization, child marriage, obstetric violence), the chapter on the Philippines at trafficking, the chapter on Nepal on detention and conflict related violence, the chapter on Mongolia at violence inflicted on lesbian, bi, trans, and intersex women in mental health care facilities, the chapter on India at violence inflicted by the special forces deployed to the India-Bangladesh border, the chapter on Cambodia at GBVAW at the workplace, the chapter on Bangladesh at rape and the chapter on Afghanistan looks at GBVAW under the Taliban.

1. Confronting Patriarchal and Religious Interpretations

Patriarchy, the historical and structural inequality in power relations between men and women, has been identified as one of the main root causes for GBVAW and a barrier to justice in almost all country chapters. For instance, patriarchal norms are some of the major causes for reproductive violence and female genital mutilation (FGM) in Sri Lanka and for GBVAW in Cambodia's garment factories. They are the reason why lesbian women in Mongolia are told to get married and have children in order to address their mental health issues and the reason that GBVAW has been normalized and institutionalized in Afghanistan. Patriarchy has been demonstrated as one of the reasons why there are so many women and girl rape victims in Bangladesh, it explains the prevalence of sex trafficking in the Philippines and West Bengal, and why GBVAW has not been addressed within Nepal's peace process.

It is particularly the patriarchal attitude towards sexuality that drives GBVAW. In **Cambodia**, for instance, boys grow up believing that they have power over girls and that women's sexual choices are inferior to their own. As a result, men view women as objects and believe they are entitled to demand sexual favours in exchange for job opportunities or promotions, or to use offensive or unwelcome language toward women⁵. Moreover, Cambodian society places a high value on women's sexual modesty. Loss of virginity, even when through rape, may make girls "unmarriageable" or "ruined" in the eyes of those around them⁶. The subject of GBVAW is therefore highly taboo and prevents women from speaking out due to fear of ruining their reputation and future. Patriarchal attitudes surrounding a woman's sexuality also manifests itself in the Sri Lanka, where a husband's written consent for contraception methods, like sterilization, is needed.

Because of patriarchal attitudes, sexual violence against women is often connected to "honour". In **Nepal**, a rape victim is considered to have lost her honour⁷ and to have brought shame to her entire family and sometimes her surrounding community⁸. In Bangladesh, a woman's "virtue" is intertwined with their father's reputation (*izzat*) within the local community and many victims remain silent due to a fear of the repercussions for their families. Consequently, it is the victims who are blamed for "shaming" their families and ancestors. Given these pervasive patriarchal attitudes, it is not surprising that authorities downplay or dismiss sexual harassment and violence as nothing more than attempts at "humour" or "teasing"⁹.

These types of arguments are often connected to religion, which defines what "honour" means. Religion frequently operates as a direct justification for gender inequality and violence. In **Afghanistan**, the Taliban advance an interpretation of Sharia that forces women and girls to be covered from head to toe¹⁰, not to leave their home without a man, not to be employed¹¹, and to not receive an education. The Taliban also cite Sharia when forcing women to return to violent husbands. Christian values are also characterized by patriarchy and influence how women victims of gender-based violence are seen. In the Philippines, men are commonly seen as the victims of prostitutes as they are generally perceived as characteristically vulnerable to the temptations of the "seductress" and the "sin of the flesh"; echoing the tale of Adam, who was seduced by Eve

5. Dalin, Chin, *How young people can help to stop sexual harassment: 4 quick tips!*, Klahaan, 2020, <https://www.klahaan.org/post/how-young-people-can-help-to-stop-sexual-harassment-4-quick-tips>.

6. Cambodian League for the Promotion and Defense of Human Rights, *Getting Away with it: The Treatment of Rape in Cambodia's Justice System*, 2015, <https://www.licadho-cambodia.org/reports/files/210LICADHOREport-GettingAwayWithRape2015English.pdf>.

7. WOREC, *Adolescents and Youth Speak about Violence and its Impact: A Case Study in Eastern Nepal*, 2003.

8. Ibid.

9. E.g. in Cambodia, see for instance CARE International, 'I know I cannot quit' *The Prevalence and Productivity Cost of Sexual Harassment to the Cambodian Garment Industry*, April 2017, https://www.care.org.au/wp-content/uploads/2017/04/SHCS_Full_Technical_Report_March_2017.pdf.

10. The Indian Express, Women will be expected to wear the hijab but not the burqa, says Taliban spokesman, August 19th, 2021, <https://indianexpress.com/article/world/women-will-be-expected-to-wear-the-hijab-but-not-the-burqa-says-taliban-spokesman-7459395/>.

11. BBC, Kabul Municipality has told female employees to stay home, September 19th, 2021, <https://www.bbc.com/persian/afghanistan-58615440>.

in the biblical Garden of Eden. This is also the reason why women who work in prostitution are criminalized and not the men who seek their services¹².

Strong patriarchal culture manifests itself in many ways, including legislation, criminal or judicial proceedings, and medical practice. As described in several chapters, patriarchy is often directly enacted in law, like the criminalization of abortion or child marriage for girls in **Sri Lanka**, or the lack of criminalizing marital rape in Bangladesh or India. There are also laws that contain stereotypical or derogatory language, such as the Penal Code in India that criminalizes assault or use of force that “outrages the modesty” of a woman. Patriarchy also plays a role in judicial or criminal proceedings with often far-reaching consequences. For instance, the Supreme Court of India asked a perpetrator to marry the woman who he had raped when she was a minor in order to avoid punishment. The Chief Justice was quoted as saying: “If you want to marry, we can help you. If not, you lose your job and go to jail. You seduced the girl, raped her.”¹³

Colonialism is another factor related to patriarchy. The chapter on the **Philippines** revealed how the long history of Spanish and United States colonialism has embedded a patriarchal culture among Filipinos, rendering women as sexual objects and subordinate to men. The Spanish colonizers plundered the land and subjugated its people, who suffered from severe poverty as a consequence. This being the period when prostitution and sexual exploitation emerged within the country¹⁴. The United States seized the Philippines from Spain in 1898, and operated a large army base until 1992, an occupation that saw prostitution provided by locals as a military necessity¹⁵. More than 30 years later, patriarchal colonial structures of systemic discrimination remain as driving forces behind trafficking and sexual exploitation.

Given the connection between patriarchy and gender-based discrimination and violence, the Committee on the Elimination of Discrimination against Women (CEDAW) frequently uses the term patriarchy in its concluding observations to describe the prevailing cultural practices and attitudes under Article 5 (stereotyping and cultural prejudices) of the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW Convention)¹⁶. The CAT, on the other hand, has never used the term patriarchy. This is regrettable because patriarchy goes beyond what “harmful traditional attitude”, a term frequently used by the CAT, can capture¹⁷. Patriarchy encapsulates not only the subordination of women by men but is also understood as a social and political system of power¹⁸. Therefore, using the term points toward structural and systemic problems and root causes that underly a harmful practice or attitude, like FGM, child marriage, etc.

While it is important that relevant international bodies recognize patriarchy as a key factor for the persistence of GBVAW, it is even more relevant that States fight patriarchal and religious interpretations with relevant legislation, policy, gender-sensitive budgeting of public services, public awareness raising, and education. These approaches should be accompanied by including women equally in legislative, executive, and judicial bodies where laws and policies are made. As long as equality by men and women is not achieved, patriarchy will remain the norm.

12. “women who, for money or profit, habitually indulge in sexual inter- course or lascivious conduct, are deemed to be prostitutes” (Act Decriminalizing Vagrancy, amending for this purpose Article 202 of Act no. 3815, as amended, otherwise known as the Revised Penal Code, Republic Act No. 10158).

13. The Wire, ‘Will You Marry Her?’: SC Asks Man Accused of Raping a Woman When She Was Minor, March 1st, 2021, <https://thewire.in/law/supreme-court-rape-accused-marry-pocso-government-employee>.

14. Cristina, Sevilla, Commentary Critiquing Law Reform: Prostitutes in the Philippines under the lens of Victimology Philippine Journal of Child Sexual Abuse, Vol. 3, pp. 2243-9315.

15. Ibid.

16. For more information and a critic on how CEDAW uses the term patriarchy see Mudgway, Cassandra, The Elimination of “Patriarchy” Under the Convention on the Elimination of All Forms of Discrimination Against Women, 2021, Berkeley Journal of Gender, Law & Justice, Vol. 36, pp. 79-114.

17. See e.g. CAT, *Concluding Observations on Afghanistan*, UN Doc. CAT/C/AFG/CO/2, June 12th, 2017, para. 35.

18. See e.g. Walby, Sylvia, *Theorizing Patriarchy*, Basil Blackwell, 1990, p. 20.

2. Address Intersectionality and Multiple Discriminations

It has been recognized in feminist studies that the concept of gender is not an isolated category but intersects with other categories of identity, such as race, and that this intersection is important to consider for the purpose of understanding and combating inequality¹⁹. More specifically, intersectionality means that women belonging to particular groups, like ethnic, religious, or sexual minorities, or rural or socioeconomically disadvantaged women, are more likely to experience multiple discrimination²⁰.

Understanding intersecting forms of vulnerability and discrimination is increasingly recognized as key to attain the Sustainable Development Goals (SDGs). Intersecting inequalities often reinforce and perpetuate each other. Growing concentrations of economic power often also concentrates political power and those outside the privileged few find it hard to gain influence and be heard. Data on SDGs suggest that women and girls from rural areas, born into socioeconomically disadvantaged families, and belonging to a minority ethnic group are those who benefitted least from progress and development. In order to “leave no one behind”, as pledged by Member States when they adopted the 2030 Agenda for Sustainable Development²¹, policy makers need to address the geographic locale, socioeconomic status, gender, and ethnicity of all²².

Several country chapters in this report demonstrate this type of intersectionality. The situation of reproductive violence in **Sri Lanka** shows this particularly well. FGM, obstetric violence, forced sterilization, and child marriage intersect with cultural, racial, and religious discrimination²³. FGM and child marriage affects women of the Muslim community in Sri Lanka, a religious minority for whom space is shrinking²⁴. An intersectional approach to reproductive violence means that gender and sociocultural context needs to be respected and addressed when criminalizing FGM and child marriage in order to avoid further stigmatization and discrimination of minority women. Similar considerations apply to obstetric violence. Physical and verbal abuse in maternity wards of hospitals predominantly affects Muslim and Tamil women, minorities who have been historically persecuted and discriminated. Additionally, due to the socioeconomic status of many Tamil women, in the context of obstetric violence, gender not only intersects with race but also economic marginalization.

At the **India Bangladesh** border, killings, torture, and other forms of ill-treatment of women by India's forces to counter human trafficking and cross border smuggling mostly affects women belonging to Muslim, Dalit, and Adivasis communities. Anti-Muslim sentiment has heightened under Prime Minister Narendra Modi and the ruling Bharatiya Janata Party, which has pursued a Hindu nationalist agenda since coming to power in 2014²⁵. GBVAW in India can be seen to intersect with race and religion.

19. See e.g. Grabham, Emily, Cooper, Davina, Krishnadas, Jane & Herman, Didi, *Intersectionality and Beyond. Law, power and the politics of location*, Routledge Cavendish 2009.

20. Human Rights Council, *15 years of the United Nations Special Rapporteur on violence against women, its causes and consequences* (1994-2009), UN Doc. A/HRC/11/6/Add.5, May 27th, 2009, paras. 107-111; Human Rights Council, *Report of the Special Rapporteur on violence against women, its causes and consequences*, UN Doc. A/75/144, July 24th, 2020, para 8.

21. UN General Assembly, *Resolution adopted by the General Assembly on 25 September 2015. Transforming our world: the 2030 Agenda for Sustainable Development*, UN Doc. RES/70/1, October 21st, 2015, https://www.un.org/ga/search/view_doc.asp?symbol=A/RES/70/1&Lang=E.

22. UNDP, *What does it mean to Leave no one Behind*, 2018, p. 19, https://www.undp.org/publications/what-does-it-mean-leave-no-one-behind?utm_source=EN&utm_medium=GSR&utm_content=US_UNDP_PaidSearch_Brand_English&utm_campaign=CENTRAL&c_src=CENTRAL&c_src2=GSR&gclid=Cj0KCQiA2sqOBhCGARIsAPuPK0jqlPQyV7F1UspsyFd4QueVYvsnx077Py4WmCndORus-t2LMRFnvuMaAv5OEALw_wcB#modal-publication-download.

23. General Assembly, *A human rights-based approach to mistreatment and violence against women in reproductive health services with a focus on childbirth and obstetric violence*, UN Doc. A/74/137, July 11th, 2019, para. 44.

24. CNN, *Terror in Sri Lanka. A holy day meant for rest and worship turned deadly in Sri Lanka*, April 2019, <https://edition.cnn.com/interactive/2019/04/world/sri-lanka-attacks/>.

25. Blank, Jonah, *How Hinduism Became a Political Weapon in India*, The Atlantic, May 24th, 2019, <https://www.theatlantic.com/international/archive/2019/05/hindu-nationalism-narendra-modi-india-election/590053/>.

The chapter on the **Philippines** explained how gender intersects with other identities in the context of human trafficking. Cases show that gender intersects with economic marginalization, as victims come from extremely impoverished communities without other means to survive²⁶. In order to address the issue of trafficking and sexual exploitation, the Philippine government not only has to address discrimination against women, but also economic disparity within their population and assure equal opportunities for all. Because poverty is a major root cause of trafficking and sexual exploitation, a strict law and order approach that predominantly focuses on prosecution of traffickers and women who work in prostitution falls short in preventing victimization and GBVAW.

Intersectionality has long been used as a concept to explain and address power dynamics and structural inequality by the UN Special Rapporteur on violence against women, its causes and consequences²⁷ and CEDAW²⁸. The CAT previously recognized that intersectionality is connected to the root cause for GBVAW, when it expressed regret that a State party has not provided data that disaggregates by age, ethnic origin, nationality in “such a way as to make it possible to identify the root causes of such violence and to design strategies to prevent and limit it²⁹.” Nevertheless, in the CAT Convention framework, intersectionality has only gained little traction.



There are only a few CAT concluding observations that truly refer to multiple identities or vulnerabilities of women.

With regards to the countries covered in this report, only in its review of Cambodia did the CAT mention intersectionality by stating that “sexual violence and abuse particularly affect the poor”. Intersecting and multiple discriminations are mostly mentioned and not used in recommendations in a way to address structural inequalities. Socioeconomic marginalization is not referred to again in their recommendation to Cambodia.

Considering intersectionality when addressing GBVAW is vital as it pays attention to the relations between experiences of marginalization, power dynamics, and structural inequality³⁰. It is thus important that policymakers of states, as well as relevant international bodies, consider relations and interactions between GBVAW and other identities, including race, religion and poverty. Looking at intersections and multiple discriminations provides for a more holistic response to the SDGs. In doing so, clear answers on why women face multiple disadvantages can be ascertained and it is possible for augmented responses to the root causes of GBVAW.

26. On the intersectionality approach see e.g., UN Women, *The Value of Intersectionality in Understanding Violence against Women and Girls*, July 2019, <https://www2.unwomen.org/-/media/field%20office%20eca/attachments/publications/2019/10/the%20value%20of%20intersectionality%20in%20understanding%20violence%20against%20women%20and%20girls.pdf?la=en&vs=3339>.

27. Human Rights Council, *Report of the Special Rapporteur on violence against women, its causes and consequences, implementation of General Assembly Resolution 60/251 of March 15 March 2006 Entitled “Human Rights Council”*, UN Doc. A/HRC/4/34/Add.1, March 19th, 2007, paras. 20-26.

28. See e.g., CEDAW, *General Recommendation No. 28 on the core obligations of State parties under article 2 of the CEDAW Convention*, UN Doc. CEDAW/C/GC/28, December 16th, 2010, paras. 18 and 26; CEDAW, *Concluding Observations on Bangladesh*, UN Doc. CEDAW/C/BGD/CO/8, November 25th, 2016, para. 40; *Concluding Observations on India*, UN Doc. CEDAW/C/IND/CO/4-5, July 24th, 2014, paras. 8 and 9; CEDAW, *Concluding Observations on Mongolia*, UN Doc. CEDAW/C/MNG/CO/8-9, March 10th, 2016, paras. 34-35.

29. CAT, *Concluding Observations on Togo*, UN Doc. CAT/C/TGO/CO/3, August 27th, 2019, para. 30.

30. UN Women, *Addressing Exclusion Through Intersectionality in Rule of Law, Peace and Security Context*, 2022, <https://www.unwomen.org/sites/default/files/Headquarters/Attachments/Sections/Library/Publications/2020/Brief-Addressing-exclusion-through-intersectionality-in-rule-of-law-peace-security-en.pdf>.

3. Address the Public and Private Divide and Enforce the Due Diligence Standard

Feminist scholars have long criticized the public and private dichotomy in international protection against torture³¹. The public and private dichotomy refers to the distinction that is drawn between the public and private spheres of everyday life for the purpose of international legal rules. The system of international human rights law has almost exclusively focused on state actions against individuals (e.g., in detention, on the streets when exercising freedom of expression, etc.) rather than on “private” attacks against women in private settings, like at home. In fact, it has been argued that civil and political rights have been construed as to protect against violations from the State when it comes to domestic activities³². This public and private dichotomy shaped by men creates a “hierarchy of oppressions”, in which the oppression of men by the State is seen as a violation of international law and GBVAW at home is trivialized³³. The separation of the two spheres is therefore heavily underpinned by patriarchal attitudes.

Several country chapters illustrate that this public and private divide cannot withstand in practice. In the **Philippines**, for instance, trafficking and sexual exploitation transcends through both spheres. Recruiters and traffickers are often private citizens and victims are exploited within the walls of a private home, it is the police or immigration officers who are corrupted into allowing traffickers to operate freely. The chapter on the Philippines also reported about a case in which police officers and army personnel abused their power and position to rape or otherwise exploit victims of trafficking and forced prostitution in motels, police cars, and on military bases. It is the interplay between the private and public spheres that enable and perpetuate trafficking and sexual exploitation. Unfortunately, the public and private divide is also reflected in the Philippines’ domestic laws. While violence by police officers on the streets or in custody is regulated by the Anti-torture Act of 2009, any form of rape or other sexual violence by a police officer on duty is understood to fall under Article 266A of the Revised Penal Code that defines the offense of rape. The same provision is applied to cases of rape by private individuals at home. The legal framework of the Philippines therefore understands rape as a private matter, even when committed by a public official.

The legal framework of **Bangladesh** has similar shortcomings, as explained in the country’s respective chapter. Rape by public and private individuals is criminalized under the Suppression of Repression against Women and Children Act 2000. Even if committed in custody, rape of a woman does not fall under the Torture and Custodial Death (Prohibition) Act³⁴. Although convictions under both of these acts are rare, a conviction under the Repression against Women and Children Act 2000 does not carry the same stigma and severity as a conviction under the Torture and Custodial Death (Prohibition) Act.

In order to address the public and private divide, international human rights bodies, including the CAT, have developed due diligence standards. Under Articles 1 and 16 of the CAT Convention for instance, member states are required to exercise due diligence to prevent, investigate, prosecute, and punish GBVAW by non-state actors. In line with the CAT’s General Comment No. 2, by failing to exercise due diligence, Member States of the CAT Convention are in breach, through consent or acquiescence, of the prohibition of torture and other ill-treatment³⁵. The necessity of diligence aims at protecting women who suffer violence in the private sphere at the hands of private actors.

31. See e.g. Edwards, Alice, *Violence against Women under International Human Rights Law*, Cambridge 2011, pp. 64-71.

32. Charelsworth, Hilary; Chinkin, Christine; Wright, Shelly, *Feminist Approaches to International Law*, 1991, American Journal of International Law Vol. 85.4, pp. 625-628.

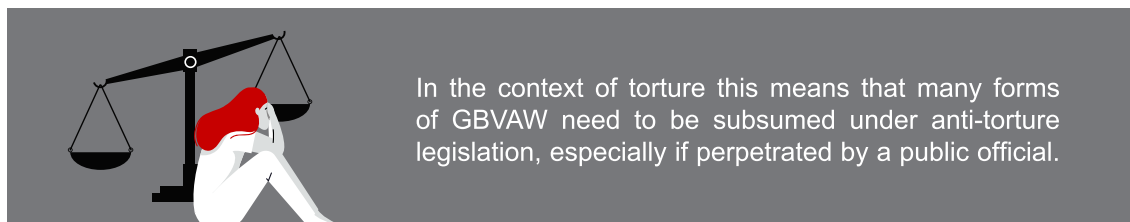
33. Copelon, Rhonda, *Recognizing the Egregious in the Everyday: Domestic Violence as Torture*, 1994, Columbia Human Rights Review, Vol. 25, pp. 295-296.

34. *Torture and Custodial Death (Prohibition) Act*, Act No. 50 of 2013, Bangladesh.

35. CAT, *General Comment No. 2*, UN Doc CAT/C/GC/2, January 24th, 2008, para. 18.

Many country chapters demonstrate the failure of governments to exercise due diligence to prevent, investigate, prosecute, and punish GBVAW by private actors. For instance, cases of rape are alarmingly high in **Bangladesh**, while convictions on the other hand, are very low; there is continued violence against sexual minority women in Mongolia; and forced marriages and child marriages in **Sri Lanka** and **Afghanistan** remain largely ignored by their respective governments.

In order to effectively address GBVAW it is vital that governments exercise due diligence and prevent, investigate, prosecute, and punish those who violate women's rights, be it in the private or public sphere. Additionally, when legislating GBVAW, States should not stick to the public and private divide but rather protect women's rights in the same way as they would protect men's rights.



4. Tackle Impunity by Bringing Domestic Legislation in Conformity with the CAT Convention and other International Standards

In many States, legislation addressing GBVAW is non-existent, inadequate, or poorly implemented³⁶. The legal analysis in many country chapters revealed that one of the reasons for impunity for GBVAW is domestic legislation that does not conform with international law.

In **Sri Lanka**, the practice of FGM is not expressly criminalized, although the CAT and the Human Rights Council have found that FGM violates the absolute prohibition of torture and other ill-treatment³⁷. At the same time, abortion is criminalized even if the woman's life is at risk, which again does not conform with the CAT Convention³⁸.

In **Cambodia**, there is no comprehensive law that defines and effectively prohibits violence and harassment in the workplace, contrary to obligations under the CAT and CEDAW Conventions³⁹.

While acts of sexual offence are criminalized under the **Indian Criminal Law Amendment Act**⁴⁰, there are no provisions for an adequate witness protection scheme, legal aid services, psychological support, counselling, and victim compensation. In light of this, CEDAW recommended that India enact legislation that "provides for a comprehensive system of reparations for victims and for gender-sensitive, victim-centred procedural and evidentiary rules"⁴¹. Moreover, India has not ratified the CAT Convention, nor has it enacted anti-torture legislation. Torture and other ill-treatment inflicted against women by the Border Security Force in West Bengal remains unpunished. This is why CEDAW has repeatedly encouraged India to ratify the CAT Convention⁴².

36. CEDAW, *General Recommendation No. 35, on gender-based violence against women*, UN Doc. CEDAW/C/GC/35, July 14th, 2017, para. 7.

37. CAT, *General Comment No. 2*, UN Doc. CAT/C/GC/2, January 24th, 2008, para. 18; *Human Rights Council, Resolution on the Elimination of female genital mutilation*, UN Doc. A/HRC/RES/44/16, July 24th, 2020, para. 13.

38. CAT, *Concluding Observations on the Philippines*, U.N. Doc. CAT/C/PHL/CO/3, June 2nd, 2016, paras. 39-40.

39. CEDAW, *Concluding Observations on Cambodia*, UN Doc. CEDAW/C/KHM/CO/6, November 12th, 2019, para. 37.

40. *Criminal Law Amendment Act*, 2013, India.

41. CEDAW, *Concluding Observations on India*, UN Doc. CEDAW/C/IND/CO/4-6, July 24th, 2014, para. 11b.

42. Ibid.

As the country chapter sets out, **Nepal** has statutory limitations to complain about rape and torture that are incompatible with the CAT and CEDAW Conventions⁴³. There is a statutory limitation of one year to lodge a complaint for rape⁴⁴. As gender-based violence, particularly rape, is a traumatic experience, exacerbated by stigma, financial barriers, lack of legal literacy, and threats of retaliation, it is difficult for women to access justice in such a short period of time. Statutory limitations also apply to complaints under the Nepalese Compensation Relating to Torture Act (TCA)⁴⁵. The statutory limitation is set at 35 days following release from detention⁴⁶. Although the TCA was enacted in 1996, at the start of Nepal's civil war, there was no possibility for women victims to bring a claim against security personnel within 35 days⁴⁷.

Stigma attached to detention, financial barriers, and threats of retaliation added further complications for women victims of gender-based violence to lodge complaints.

5. Invest in a Functioning and Gender-sensitive Justice System

Many Asian countries included in this report have dysfunctional criminal justice systems characterized by political interference, corruption, and favouritism that violate basic human rights of both complainants and defendants. Therefore, the legal mechanisms are unable to deliver justice and garner little trust within the population⁴⁸. As described in several country chapters, dysfunctional criminal justice systems are also unable to redress GBVAW.

Several authors reported a lack of registration, investigation, and prosecution in GBVAW cases. In **Bangladesh**, the police often refuse to register a First Information Report (FIR) for rape and other gender-based violence cases, which is the first step required for subsequent criminal investigations. Consequently, the in-country conviction rate for rape is at a mere 3%⁴⁹. Similar problems were reported from India, where the police refuse to register FIRs in cases of GBVAW, and in **Mongolia**, where sexual minorities are met with ignorance when they try to lodge a complaint before the police.

In **Cambodia**, patriarchal attitudes prevent authorities from adequately conducting investigations into GBVAW crimes⁵⁰. The author of the Cambodia chapter reported a case in which a police chief was accused of sexual assault against two female police officers. While investigations were initiated, prosecution was halted, and the charges were ultimately dropped, not because the police chief was found innocent but due to how “embarrassing” the crime was for the women victims⁵¹. It is these types of reactions that cause mistrust in authorities and prevent victims from filing complaints.

43. See concerns and recommendations by CEDAW in its *Concluding Observations on Nepal*, UN Doc. CEDAW/C/NPL/CO/6, November 14th, 2018, paras. 10-11; and by CAT in its *Concluding Observations on Nepal*, UN Doc. CAT/C/NPL/CO/2, April 13th, 2007, para. 28.

44. The statute of limitations has also been criticized by CEDAW, *Concluding Observations on Nepal*, UN Doc. CEDAW/C/NPL/CO/6, November 14th, 2018, para. 10c.

45. *Compensation Relating to Torture Act 1996*, Section 6, Nepal.

46. *Ibid*, Section 5.

47. Human Rights Watch, *Silenced And Forgotten – Survivors of Nepal's Conflict-Era Sexual Violence*, 2014, https://www.hrw.org/sites/default/files/reports/nepal0914_ForUpload_0.pdf.

48. ICJ, *Challenges to Accountability for Human Rights Violations in Sri Lanka*, March 2017, <https://www.icj.org/wp-content/uploads/2017/03/Sri-Lanka-FCO-Accountability-1-Advocacy-Analysis-brief-2017-ENG.pdf>; Dhanuka, Madhurima, *The great divide: theory and practice of criminal defence laws in India*, 2013, <https://www.crimeandjustice.org.uk/sites/crimeandjustice.org.uk/files/09627251.2013.805370.pdf>; Advocacy Forum, *Torture of Women. Nepal's Duplicity Continues*, June 26th, 2012, <http://www.advocacyforum.org/downloads/torture-of-women-report-june-26-2012-english.pdf>; OMCT & Odhikar, *Cycle of Fear. Combating Impunity for Torture and Strengthening the Rule of Law in Bangladesh*, July 29th, 2019, https://www.omct.org/files/2019/07/25475/cycleoffear_bangladesh_report_omct.pdf.

49. Dignity Alliance International and Equality Now, *Sexual Violence in South Asia: Legal and Other Barriers to Justice for Survivors*, 2021, <https://www.equalitynow.org/sexualviolencesouthasia>.

50. CARE International, *'I know I cannot quit' The Prevalence and Productivity Cost of Sexual Harassment to the Cambodian Garment Industry*, https://www.care.org.au/wp-content/uploads/2017/04/SHCS_Full_Technical_Report_March_2017.pdf.

51. The Straits Times, *Cambodia police chief sacked over sexual misconduct in landmark case but faces no prosecution*, September 9th, 2020, <https://www.straitstimes.com/asia/se-asia/cambodia-police-chief-sacked-over-sexual-misconduct-in-landmark-case>.

Revictimization and victim blaming are other major issues that authors identified. A trafficked rape victim revealed to the author of the **Philippines** chapter that the prosecutor in her case expressed doubt that she was a victim and claimed that she had participated willingly in her sexual exploitation. The victim then even questioned whether she was to blame for having been trafficked and sexually exploited⁵².

Revictimization is particularly strong in **Bangladesh**, where victims of rape are seen as less worthy than other claimants. When victims dare to complain, they must recall their traumatic experience to male police officers, who often do not believe them. Women are also re-victimized in court proceedings when their so called “virtue” is assessed. There are several cases in which a judge addressed directly the moral character of the victim or their sexual history. In one such case, the judge stated that the medical report indicated that the two victims “were habituated to having physical relations and that their physical condition was similar to that of someone who engages in regular sexual relations⁵³.”

This same case also reveals another problem in the context of investigation: outdated medical and unscientific methods of evidence gathering. In several South Asian countries, including **Bangladesh** and **Afghanistan**, the “virginity test” or “two-finger test” are still carried out and used in court to test vaginal laxity and decide whether the victim is frequently engaging in sexual activity. These methods call into question the victim’s moral character and whether a rape allegation is plausible. The author of the chapter on **Nepal** explained how doctors and medical personnel are not sufficiently trained on the medico-legal aspects of sexual violence⁵⁴. They are still guided by outdated notions of medico-legal examination, such as looking for signs of trauma, such as a broken hymen or visible vaginal trauma. Additionally, women victims are reluctant to report sexual violence to male doctors out of fear of exposing their genitals. This often leads to misleading and incomplete medical documents and evidence provided to courts.

Many dysfunctional criminal justice systems are further characterized by corruption that also negatively affects obtaining justice in GBVAW cases. In **Bangladesh**, victims reported perpetrators bribing police into delaying investigations, and healthcare workers taking bribes to falsify medical results⁵⁵. There were also cases reported from **Cambodia** in which the police demanded bribes from victims before taking action⁵⁶.

Because of these serious shortcomings, there is a general distrust in the formal justice and law enforcement system, and many seek informal arbitration through, for instance, influential local leaders, such as in **Bangladesh**⁵⁷. The situation in Afghanistan is even more severe since the Taliban dismantled the entire judiciary, including the special courts established under the Elimination of Violence against Women Law immediately after they took power in August 2021. Most judges, prosecutors, and judicial advisors fled the country and those who remained are in hiding⁵⁸. Consequently, alternative dispute resolutions, like *Jirgas*, are used⁵⁹. In these *Jirgas*, Taliban members, who have fought for most of their lives, are now assigned to resolve minor

52. Case on file with the author of the Philippines chapter.

53. The Daily Star, *It's no rape: They danced, drank, swam*, November 12th, 2021, <https://www.thedailystar.net/news/bangladesh/crime-justice/news/its-no-rape-they-danced-drunk-2227711>.

54. Human Rights Watch, *Silenced And Forgotten – Survivors of Nepal's Conflict-Era Sexual Violence*, 2014, https://www.hrw.org/sites/default/files/reports/nepal0914_ForUpload_0.pdf.

55. Dignity Alliance International and Equality Now, *Sexual Violence in South Asia: Legal and Other Barriers to Justice for Survivors*, 2021, <https://www.equalitynow.org/sexualviolencesouthasia>.

56. UNICEF, *Ending violence against women and children in Cambodia: Opportunities and challenges for collaborative and integrative approaches*, 2020, <https://www.unicef.org/eap/media/7346/file/Ending%20Violence%20against%20Women%20and%20Children%20in%20Cambodia.pdf>.

57. Human Rights Watch, *“I Sleep in My Own Deathbed”. Violence against Women and Girls in Bangladesh Barriers to Legal Recourse and Support*, October 29th, 2020, <https://www.hrw.org/report/2020/10/29/i-sleep-my-own-deathbed/violence-against-women-and-girls-bangladesh-barriers>.

58. The Jurist, *Afghanistan dispatches: ‘Now there are not clients for lawyers...’ September 20th*, 2021, <https://www.jurist.org/news/2021/09/afghanistan-dispatches-now-there-are-no-clients-for-lawyers/>.

59. The CAT has criticized jirgas as they are informal parallel judicial mechanisms that can impose sentences, in particular on women for so-called “moral crimes”, CAT, *Concluding Observations on Afghanistan*, UN Doc. CAT/C/AFG/CO/2, June 12th, 2017, para. 39.

disputes. Whereas, tribal elders, many of whom are illiterate, are mandated to decide complicated disputes. This is worrisome, since *Jirgas*, consisting only of men, traditionally reinforce a masculine-dominated culture that relegates women's rights⁶⁰.

6. Invest in Public Awareness Raising and Education

As described above, among the root causes for GBVAW and the lack of justice for victims are patriarchal and cultural attitudes that are widespread in societies and that empower men to believe that they are entitled to control women's bodies. One way to address stereotypes, prejudices, customs, and practices is through education and raising public awareness. CEDAW in its General Recommendation 35 on GBVAW recommended that Member States integrate gender equality content into curricula at all levels of education, targeting stereotyped gender roles and promoting values of gender equality and non-discrimination. This should include the concept of non-violent masculinity and age-appropriate, evidence-based, and scientifically accurate sexual education for girls and boys. It further asks states to develop programs that raise awareness and promote an understanding that GBVAW is unacceptable and harmful; and dismantles the commonly held victim blaming beliefs that make women responsible for their own safety and for the violence they endure⁶¹.

Similarly, the CAT frequently recommends that State Parties conduct awareness campaigns about the need to prevent and eradicate GBVAW, including its causes, dimensions, and measures to detect and prevent it for officials, social workers in direct contact with victims, and the population at large⁶².

Educational and awareness raising measures are lacking in several countries. Curricula of schools often perpetuate and normalize misogyny and the subordination of women. School textbooks in **Sri Lanka**, for instance, state that unwanted pregnancies occur due to women and girls "acting out of their feelings instead of rational thinking"⁶³. Safe sex education, explaining consent, compliance, coercion, reproductive health and rights, pleasure, exercising bodily autonomy, sexually transmitted infections, and contraception, is missing⁶⁴. Consequently, women and men are ill-equipped to make informed decisions regarding their bodies. The author of the Sri Lanka chapter stressed that the government has a responsibility to take the necessary measures to dissolve a rape culture that shifts the blame on survivors and suggests the notion that girls and women are "responsible" to prevent and resist assault.

Unsurprisingly, relevant actors, like law enforcement personnel, judges, social workers, and doctors, lack education and training. For instance, doctors and other medical professionals in Mongolia lack accurate knowledge about sexual orientation and gender identity⁶⁵. They are unable to provide proper service to LGBTI women, resulting in harassment and violence, such as "conversion therapy" or proposals to get married and pregnant in order to "cure" sexual orientation.

60. Qazi Zada, Sebghatullah, *Legislative, Institutional and Policy Reforms to Combat Violence against Women in Afghanistan*, 2020, Indian Journal of International Law, Vol. 27, p. 13, <https://doi.org/10.1007/s40901-020-00116-x>.

61. CEDAW, *General Recommendation No. 35, on gender-based violence against women*, UN Doc. CEDAW/C/GC/35, July 14th, 2017, para. 35.

62. CAT, *Concluding Observations on Kuwait*, UN Doc. CAT/C/KWT/CO/3, September 5th, 2016, para. 29f.

63. Dissanayake, *Methmalie, Questionable G11 Text Book Causes Furore*, Ceylon Today, May 1st, 2021, <https://ceylontoday.lk/news/questionable-g11-text-book-causes-furore>.

64. de Silva, Nisali, *Majority of students believe sex education inadequate, study say*, Economynext, January 9th, 2020, <https://economynext.com/majority-of-students-believe-sex-education-inadequate-study-says-47410/>.

65. This has also been criticized by CEDAW, see CEDAW, *Concluding Observations on Mongolia*, UN Doc. CEDAW/C/MNG/CO/8–9, March 10th, 2016, para. 28(c).

It is important that governments invest in raising public awareness, education, and training to change harmful narratives. Men and boys should be fully engaged as strategic partners and allies in achieving gender equality and the empowerment of women and girls, and in preventing and eliminating GBVAW⁶⁶.

7. Adopt A Gender-sensitive Approach to Disasters and Crises, including the Covid-19 Pandemic

Although disasters and crises can harm all, women and girls are affected differently than men and boys⁶⁷. Women and girls in conflict and post disaster settings are often vulnerable to trafficking, exploitation, sexual violence, and denial of lifesaving treatments⁶⁸. When large-scale crises and disasters occur, pre-existing gender-based inequalities and obstacles are amplified.

As shown in this report, the 2004 tsunami that hit **Sri Lanka** resulted in a serious increase of sexual assault, forced and child marriages, and human trafficking⁶⁹. There was a serious lack of services, infrastructure, appropriate health and medical services, female healthcare providers, female police officers, and limited access to prenatal and postnatal care. Women's needs remained unaccounted⁷⁰. Similar incidents were reported after the internal war between the Liberation Tigers of Tamil Eelam and the Sinhalese dominated Sri Lankan government ended in 2009⁷¹. So far, there has been no accountability for these violations, despite well documented cases, reports, and testimonials brought forward after the war ended. The lack of gender-sensitive approach to transitional justice has rendered female victims and survivors without support or redress⁷².

It is predicted that reproductive violence will also dramatically increase in Taliban controlled **Afghanistan**⁷³. Many healthcare personnel who provided critical care to women have left the country and others, in particular female workers, are in hiding or do not dare to return to their workplace⁷⁴. With violations on women's freedom of movement, there were reports of midwives who had to be accompanied by a male guardian when doing home visits⁷⁵. With critical humanitarian aid and support from the international community lacking, the overall safety of women is deteriorating rapidly⁷⁶.

66. UN Women, *Engaging Men*, <https://www.unwomen.org/en/news/in-focus/engaging-men>.

67. See e.g. Alam, K., and M.H. Rahman, Women in Natural Disasters: A Case Study from Southern Coastal Region of Bangladesh, 2014, *International Journal of Disaster Risk Reduction*, Vol. 8, pp. 68- 82.

68. UN OCHA, *Global Humanitarian Overview 2019. United Nations Coordinated Support to People Affected by Disaster and Conflict*, 2019, p. 17, <https://www.unocha.org/sites/unocha/files/GHO2019.pdf>.

69. See e.g. Pittaway, Eileen, Bartolomei, Linda & Rees, Susan, Gendered dimensions of the 2004 tsunami and a potential social work response in post-disaster situations, 2007, *International Social Work*, Vol.50.3; Pikul, Corrie, As Tsunami Recedes, Women's Risks Appear, *Women's eNews*, January 7th, 2005, <https://womensenews.org/2005/01/tsunami-recedes-womens-risks-appear/>.

70. Pittaway, Eileen, Bartolomei, Linda & Rees, Susan, *Waves of Violence – Women in Post-Tsunami Sri Lanka*, 2005, *Australasian Journal of Disaster and Trauma Studies*, Vol 2, pp. 1174-4704, <http://trauma.massey.ac.nz/issues/2005-2/rees.htm>.

71. Kottegoda, Sepali, Kumudini, Samuel & Sarala, Emmanuel, Reproductive Health Concerns in Six Conflict-Affected Areas of Sri Lanka, 2008 *Reproductive Health Matters*, Vol. 16.31, pp. 75-82, <https://www.tandfonline.com/doi/pdf/10.1016/S0968-8080%2808%2931359-7?needAccess=true>.

72. Kodikara, Chulani, Justice and accountability for war related sexual violence in Sri Lanka, *Open Democracy*, August 15th, 2016, <https://www.opendemocracy.net/en/5050/justice-and-accountability-for-war-related-sexual-violence-in-sri-lanka/>.

73. UN News, Afghanistan's healthcare system on brink of collapse, as hunger hits 95 per cent of families, September 22nd, 2021, <https://news.un.org/en/story/2021/09/1100652>.

74. News18, Worsening Health Crisis in Afghanistan: Taliban Urge Female Staff of Public Health Dept to Return to Work, August 27th, 2021, <https://www.news18.com/news/world/facing-desperate-health-crisis-taliban-asks-female-staff-of-public-health-dept-to-return-to-work-4135634.html>.

75. The British Medical Journal Opinion, Staring into the darkness: women health workers in Afghanistan, September 6th, 2021, <https://blogs.bmj.com/bmj/2021/09/06/staring-into-the-darkness-women-health-workers-in-afghanistan/>.

76. Human Rights Watch, Alliance for Peacebuilding, Futures Without Violence, GIWPS, Mina's List, Refugees International, Voice, Women's Refugee Commission, Lifesaving Humanitarian Response for Women and Girls in Afghanistan, December 10th, 2021, <https://reliefweb.int/sites/reliefweb.int/files/resources/Lifesaving-Humanitarian-Response-for-Women-Girls-in-Afghanistan-12102021.pdf>.

The Covid-19 pandemic has resulted in similar effects. It laid bare the inequality of rights and opportunities between men and women, the failure of previous efforts to effectively respond to GBVAW, and the systemic nature of violence perpetrated against women and girls. According to the UN Secretary General António Guterres, the Covid-19 pandemic has illustrated “what we all know, that millennia of patriarchy have resulted in a male-dominated world with a male-dominated culture that damages everyone”⁷⁷. He further added, “It is clear that we cannot go back to the failed policies that have resulted in the fragility we see around us – in healthcare systems, in social protection, in access to justice”.

Across the world, confinement to home and social isolation, combined with widespread economic insecurity and poverty, have created new risks for women. For example, in **Bangladesh**, a civil society organization counted a total of 1,627 incidents of rape reported in news outlets in 2020, compared to 732 in 2018⁷⁸. Numbers have risen so alarmingly since the start of the Covid-19 pandemic that organizations, newspapers, and journalists have talked about a rape epidemic⁷⁹. Additionally, lockdowns in Bangladesh have forced people to pursue more dangerous or unreliable job offers and to send their children into risky and unsafe work environments. The closure of schools for 18 months, one of the world’s longest shutdowns, has made many children, in particular girls, more vulnerable to human trafficking⁸⁰.

From the above it follows that governments need to better address crises and disaster by developing gender-sensitive measures. With regards to the Covid-19 pandemic, governments should invest in equal opportunities, support hotlines, shelters, and specialized services to tackle GBVAW, specifically domestic violence and online trafficking.

8. Support Women’s Economic Independence and Political Power

Economic insecurity and dependence have been identified as risk factors contributing to GBVAW and act as a barrier in accessing justice⁸¹. The situation is most extreme in Afghanistan, where women are no longer able to pursue a professional activity. Women have been told by the Taliban not to leave the house and go to work. Many women have become completely dependent on husbands or other male relatives in their family, making them even more vulnerable to violence. By only compounding the situation for Afghani women, their complete lack of economic means causes severe hunger crises for many, particularly families with female heads of household. At the same time, many Afghan women and girls are unable to access shelter, water, sanitation, livelihoods, and monetary assistance⁸².

In **Nepal**, many women who were subject to torture and GBVAW have no financial means and can therefore not afford legal representation. As a consequence, their prospects of obtaining justice

77. UN News, *Generations of progress for women and girls could be lost to COVID pandemic*, 2020, <https://news.un.org/en/story/2020/08/1071372>.

78. Reza Shovon, Fahim, ASK: *Rise in gender-based violence, despite Covid-19*, *Dhaka Tribune*, December 31st, 2020, <https://www.dhakatribune.com/bangladesh/2020/12/31/ask-2020-saw-a-rise-in-gender-based-violence-rapes-increased-despite-covid-19>.

79. Khan, Umayama, “I am alive but not living”: *Survivors of Bangladesh’s rape crisis*, *Al Jazeera*, October 26th, 2020, <https://www.aljazeera.com/features/2020/10/26/survivors-of-bangladeshs-rape-epidemic>; Das, Shuva, *Rape in Bangladesh, An Epidemic Turn of Sexual Violence*, 2021, *Harvard International Review*, <https://hir.harvard.edu/rape-in-bangladesh-an-epidemic-turn-of-sexual-violence/>.

80. The Daily Star, *Future impacts of Covid-19: Human trafficking on India-Bangladesh border*, July 9th, 2021, <https://www.thedailystar.net/views/opinion/news/future-impacts-covid-19-human-trafficking-india-bangladesh-border-2125521>.

81. CEDAW, *General Recommendation No. 35, on gender-based violence against women*, UN Doc. CEDAW/C/GC/35, July 14th, 2017, para. 14.

82. Refugees International, *Afghan Women and Girls Under Immediate Threat: The Responsibility to Protect and Assist Is Just Beginning*, October 7th, 2021, <https://www.refugeesinternational.org/reports/2021/10/5/afghan-women-and-girls-under-immediate-threat-the-responsibility-to-protect-and-assist-is-just-beginning>.

are poor⁸³. The chapter on India reports similar barriers. Many victims of gender-based violence belong to marginalized sectors of society who cannot afford to fight legal battles without adequate legal aid services.

The Covid-19 pandemic has made the economic situation and dependence of women even worse. In **Cambodia**, for instance, women make about 80% of the workforce in garment factories⁸⁴. Contracts of women are most often fixed term, which contributes to the precariousness of employment for garment workers and adds to the imbalance of power between male employers and female employees. Threats of being fired or having one's contract not renewed are a constant risk and undermine the ability to report GBVAW in the workplace. Additionally, many women garment workers are the primary provider for their families. During the Covid-19 pandemic, employers took advantage of circumstances to lay off or suspend workers, leaving them unable to support themselves and those dependent on them⁸⁵.

In Asia, women are drastically underrepresented in leadership positions in both the public and private sector and progress in gender parity has been consistently slow⁸⁶. As reported in the chapter on Cambodia, underrepresentation of women in leadership and decision-making positions affects all sectors of Cambodian society, including trade unions, law enforcement, and the judiciary. This produces substantial barriers when trying to protect women workers, gaining justice for victims of gender-based violence, and advancing women's rights more generally in the country. Only with equal political and economic opportunities for men and women will patriarchal norms and structures vanish.

Since political and economic empowerment of women is related to the elimination of GBVAW, states need to invest in ensuring that women have access to and control over regular, secure, and long-term income. This is also a commitment under SDG 5 (achieve gender equality and empower all women and girls) that asks States to "undertake reforms to give women equal rights to economic resources"⁸⁷.

9. Establish Gender-sensitive Rehabilitation Programs and Social Services

One of the overall aims of this report is the promotion of the applicability of the anti-torture framework to GBVAW. This does not only mean prevention, criminalisation, and prosecution of GBVAW but also requires a holistic approach toward redress, including reparation and restitution with gender-sensitive rehabilitation programs and social services. This is also in line with the CAT and CEDAW Conventions that both require Member States to ensure that women victims of gender-based violence have access to medical, legal, and social services, counselling, rehabilitation, shelters, and compensation⁸⁸.

83. Advocacy Forum-Nepal, *Torture in Nepal in 2019 The Need for New Policies and Legal Reform*, 2020, <http://www.advocacyforum.org/downloads/pdf/publications/torture/26-june-2020.pdf>.

84. Granum, Charlotte Ruud & Leffler, Carin, *Overworked and exposed: Short term contracts and gender issues in the Myanmar and Cambodian garment industries, Future in Our Hands*, 2019, <https://www.central-cambodia.org/wp-content/uploads/2019/06/Report.pdf>.

85. Solidarity Center, *Survey: Cambodian Workers Struggle to Survive in Covid-19*, 2021, <https://www.solidaritycenter.org/survey-cambodian-workers-struggle-to-survive-in-covid-19/>.

86. UN Women, *Snapshot of Women's Leadership in Asia and the Pacific*, 2020, <https://asiapacific.unwomen.org/en/news-and-events/in-focus/csw/snapshot-of-womens-leadership-in-asia-and-the-pacific>.

87. UN Department of Economic and Social Affairs, *Sustainable Development, Achieve gender equality and empower all women and girls*, <https://sdgs.un.org/goals/goal5>.

88. See e.g. CAT, *Concluding Observations on Turkmenistan*, UN Doc. CAT/C/TKM/CO/2, January 23rd, 2017, para. 32; CAT, *Concluding Observations on Kuwait*, UN Doc. CAT/C/KWT/CO/3, September 5th, 2016, para. 29g; CAT, *Concluding Observations on Mongolia*, UN Doc. CAT/C/MNG/CO/2, September 5th, 2016, para. 28; CEDAW, *Concluding Observations on Bangladesh*, UN Doc. CEDAW/C/BGD/CO/8, November 25th, 2016, para. 19a; CEDAW, *Concluding Observations on India*, UN Doc. CEDAW/C/IND/CO/4-5, July 24th, 2014, para. 11f.

Information from the country chapters reveals that many States lack adequate rehabilitation programs, social services, and compensation schemes for victims of GBVAW. In **Cambodia**, healthcare or social services for women victims of violence are lacking. Many available services are provided by international organizations or local NGOs, whose programs are typically not offered nationwide and rely solely on inconsistent donor funding⁸⁹. As the author of the Cambodia chapter explains, the government tried to address this gap in its National Action Plan 2019-2021, but there was not enough funding dedicated to GBVAW to systematically provide services and support. In Sri Lanka there is no medical treatment provided to victims of FGM and obstetricians and gynaecologists are not trained to respond to victims who seek their services and counselling⁹⁰.

Additionally, compensation for GBVAW is completely missing or inadequate in many countries. In **India**, for instance, victims of a crime, including GBVAW, can file an application under the Victim Compensation Scheme⁹¹. Often, applications for crimes involving GBVAW or abuse by government officials are dismissed because of a lack of evidence and witnesses. In **Bangladesh**, the money for compensation for victims of rape is taken from the fine imposed on the perpetrator. However, whether the fined amount is given to the victim is upon the discretion of the judge. A 2020 study found that compensation is an exception and provided in less than 10% of cases⁹².

10. Support Women Rights Defenders and their Organisations

States have an obligation to protect women human rights defenders and ensure a safe and enabling environment for their work. On December 18th, 2013 the UN General Assembly adopted a landmark resolution calling on States to protect women human rights defenders; respect and support their activities; prevent abuse, including violence; and to create a safe and enabling environment for the defence of human rights with a gender perspective. In December 2017, just before the 20th anniversary of the Declaration on Human Rights Defenders, the General Assembly expressed particular concern about systemic and structural violence faced by women human rights defenders and reiterated its call upon States to take robust steps to protect women human rights defenders and to integrate a gender perspective into their efforts. In doing so, it is hoped that a safe and enabling environment for the defence of human rights can be created. In his 2019 report, the Special Rapporteur on the Situation of Human Rights Defenders stated similar concerns by saying that in the current political climate, where misogyny, sexism, and homophobia are normalized, women human rights defenders from across the globe face increasing risks and violence⁹³.

Recent examples documented in this report are the attacks by the Taliban against those participating in protests related to women's rights. Protestors demanded their right to work and education, the right to leave their homes without a male family member, and not having a prescribed

89. US Department of State, *2020 Trafficking in Persons Report: Cambodia*, 2020, <https://www.state.gov/reports/2020-trafficking-in-persons-report/cambodia/>.

90. Dawson, Angela and Wijewardene, Kumudu, *Insights into preventing female genital mutilation/cutting in Sri Lanka: a qualitative interpretative study*, 2021, Reproductive Health, Vol 18:51, <https://reproductive-health-journal.biomedcentral.com/articles/10.1186/s12978-021-01114-x#citeas>.

91. Section 357 A of the Criminal Procedure Code.

92. Huda, Taqbir, *No Justice Without Reparation. Why Rape Survivors Must Have a Right to Compensation*, BLAST, 2020, <https://www.blast.org.bd/content/publications/No-Justice-without-Reparation.pdf>.

93. Human Rights Council, *Situation of Women Human Rights Defenders. Report of the Special Rapporteur on the situation of human rights defenders*, UN Doc. A/HRC/40/60, January 10th, 2019, para. 24.

dress code⁹⁴. The Taliban reacted with hate speech, physical violence, and threatening letters⁹⁵. The Taliban further demanded that footage of the violence inflicted against the protesters not be disseminated on social media⁹⁶. Additionally, there were reports of disappearance and killings of women rights defenders⁹⁷.

Women human rights defenders, including some who contributed to this report, have stressed that they have been facing increased repression and violence, and that perpetrators enjoy impunity. Threats women human rights defenders face range from systemic exclusion, non-recognition of their views and work, belittling stances, public shaming, attacks on their “honour”, online harassment, threats of violence, physical attacks, arbitrary detention, torture, killings, and enforced disappearances⁹⁸.

Funding has been identified as a critical aspect by the members of the OMCT Working Group on Women and Torture to address attacks against women human rights defenders and to support their work. The way funding for human rights and women’s rights operates can diminish women’s empowerment and limit their impact in the fight against GBVAW. Short-term, project-oriented funding not covering staffing and core costs can be damaging to smaller NGOs; and funds with bureaucratic reporting requirements can be inaccessible. Women defenders and women’s rights organizations are chronically underfunded, especially those working on politically sensitive topics, such as reproductive rights⁹⁹.



Allocating sufficient resources to women’s rights organisations, defenders, and networks and making them accessible to small grassroots organisations is vital as it increases their participation in human rights movements, ensures their contributions and voices are heard and valued, and ensures that women’s own pathways in addressing GBVAW are understood.

94. Human Rights Watch, *Afghanistan: Taliban Abuses Cause Widespread Fear*, September 23rd, 2021, <https://www.hrw.org/news/2021/09/23/afghanistan-taliban-abuses-cause-widespread-fear>

95. BBC, *Afghanistan: Women beaten for demanding their rights*, September 8th, 2021, <https://www.bbc.com/news/world-asia-58491747>.

96. BBC, *Afghanistan: Women beaten for demanding their rights*, September 8th, 2021, <https://www.bbc.com/news/world-asia-58491747>.

97. BBC, *Murder of 5 former women civil and military activists in the center of Balkh*, November 5th, 2021, <https://www.bbc.com/persian/afghanistan-59178668>; see also statement by 35 members of UN Special Procedures, *Afghanistan: Taliban attempting to steadily erase women and girls from public life – UN experts*, January 17th, 2022, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=28029&LangID=E>.

98. See e.g. Human Rights Council, *Report of the Special Rapporteur on the situation of human rights defenders. Situation of women human rights defenders*, UN Doc. A/HRC/40/60, January 10th, 2019, paras. 35-57.

99. Open Democracy, *Show me the money: the fight for funding and accountability for women’s rights*, August 28th, 2017, <https://www.opendemocracy.net/en/5050/show-me-the-money-accountability-womens-rights/>; Staszewka, Kasia; Dolker, Tenzin; Miller, Kellea, *Only 1% of gender equality funding is going to women’s organisations – why?*, The Guardian, July 2nd, 2019, <https://www.theguardian.com/global-development/2019/jul/02/gender-equality-support-1bn-boost-how-to-spend-it>; Cordua, Isabel-la & Mahtani, Sabrina, *Forgotten by Funders*, Women Beyond Walls, 2021, <https://www.womenbeyondwalls.org/files/ugd/2d77c8ae579a0503db4104b73671a79f407c1c.pdf>.

SPECIFIC RECOMMENDATIONS

Under international human rights law, States are obliged to prevent, investigate, prosecute, and remedy torture and other forms of ill-treatment, including GBVAW amounting to torture or ill-treatment perpetrated by public officials. In addition, when public officials know or have reasonable grounds to believe that acts of gender-based violence are being committed by non-State officials or private actors they must act. It is incumbent upon States that they exercise due diligence to prevent, investigate, prosecute, and punish private actors. If this is not achieved, the State bears responsibility for acts of torture or other ill-treatment and its officials should be considered as authors, complicit or otherwise, who are responsible under the Convention for consenting to or acquiescing in these impermissible acts. Based on these responsibilities, this report makes the following specific recommendations to address GBVAW:

Recommendations to States related to the

Root Causes of GBVAW and Systemic Failures

- Target the root causes for GBVAW, including negative sociocultural and religious norms and patriarchal attitudes.
- Educate and raise awareness among the general public, including young adults, judges, prosecutors, police officers, lawyers, healthcare providers, and community and religious leaders, of harmful patriarchal norms, customs and systems as well as discriminatory stereotypes that limit women's rights and opportunities and lead to social stigma.
- Address poverty, corruption, and structural inequalities that increase the risk of women becoming victims of gender-based violence.

Laws and Procedures

- Criminalize all forms of GBVAW and harmful practices, including forced marriage, child marriage, female genital mutilation, reproductive violence, and all forms of sexual violence, including rape, whether occurring in public or private life.
- Remove legislation that is discriminatory toward women and girls and amounts to torture and other forms of ill-treatment, including the prohibition of abortion, or so-called "moral crimes", like adultery.
- Adjudicate GBVAW by a public official under anti-torture provisions or legislation.
- Ensure that all legislation, including family law, criminal law, administrative law, and business law, provide for equal rights of women and men in all matters.
- Provide equal opportunities to women and men to ensure that women are equally represented in the judiciary, legislative, and executive bodies and other professions.
- Eradicate legal, economic, and social barriers preventing victims from getting justice for GBVAW.
- Ensure that cases of GBVAW are adjudicated by ordinary courts rather than informal justice mechanisms.

- Setup a legal aid system in order to support women victims of gender-based violence.
- Ensure that all alleged cases of GBVAW are investigated promptly, effectively, and in a transparent manner.
- Provide access to shelters, legal assistance, effective remedies, reparation, including compensation that covers victim and survivor-oriented perspectives.
- Ensure that all perpetrators of GBVAW, including those of high social rank, public officials, police officers, and members of the armed forces, are prosecuted and adequately punished.
- Ensure that punishment is commensurate to the crime and that it prevents recidivism, rehabilitates perpetrators, prepares them for reintegration, and deters others from committing similar offences.
- Provide adequate protection to victims and their families who lodge complaints, seek legal remedy, or need shelter.
- Improve collection and analysis of data on the prevalence, cause, and consequences of GBVAW as well as the nature and number of cases of GBVAW disaggregated by age, ethnic group, disability, and relationship between the victim and the perpetrator. In order to better design, monitor, and assess programs and interventions.
- Ensure a multi-sectoral approach when responding to cases of GBVAW, including law enforcement, medical, and social services.

Social and Economic Factors

- Eradicate legal, economic, and social barriers that prevent women from education and employment at all echelons.
- Allocate enough financial resources to relevant governmental bodies and services in order to properly implement national action plans that address GBVAW.
- Take action to improve income-generating and employment opportunities for women.
- Support the active participation of men and boys in the prevention and elimination of GBVAW and increase awareness in men and boys of their responsibility to end GBVAW.

Women Human Rights Defender

- Protect women human rights defenders and activists, and women's rights organizations from harassment and attacks to guarantee their freedom of movement and expression.
- Prosecute acts of torture, murder, gender-based violence, and intimidation against women human rights defenders and adequately punish the perpetrators of these crimes.
- Allocate sufficient financial resources to women rights defenders, organisations, and networks, including grassroots organisations and movements,

Health

- Ensure women's access to high quality and equal healthcare, in particular mental health and reproductive healthcare.
- Take measures to ensure that healthcare services are available and accessible to LGBTI women, and women from marginalized communities.
- Ensure that health care, in particular reproductive healthcare, is provided in a non-stigmatizing and a non-discriminatory manner.
- Take gender-sensitive approaches to crisis management, including pandemics, natural disasters, and conflict to prevent GBVAW

Engagement with the Multilateral System

- Ratify the CAT and CEDAW Conventions and accept the individual complaints procedures under these Conventions.
- Regularly engage and cooperate with international mechanisms, including the UN Special Rapporteur on Violence against Women, its Causes and Consequences; the UN Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the UN Special Rapporteur on the right to Physical and Mental Health, the UN treaty bodies; and the ASEAN Intergovernmental Commission on Human Rights (AICHR).

To the international community, including UN treaty bodies and special procedures, ASEAN, humanitarian actors, the diplomatic community, and the donor community

- Systematically include a gender-perspective into resolutions, declarations, country reviews, and humanitarian and development aid.
- Scale up funding opportunities for civil society organizations and HRDs that work on GBVAW.
- Promote international and regional standards, including the ASEAN action plan on eliminating GBVAW and the ASEAN Declaration Against Trafficking in Persons Particularly Women and Children.
- Collaborate with women's rights organizations when providing humanitarian and development aid, developing funding schemes, and designing foreign policy strategies.
- Provide political support to initiatives that address GBVAW and to women human rights defenders who are under threat.
- Denounce misogynistic laws, policies, and statements by governmental leaders that normalize GBVAW.



BIOS



Shreen Abdul Saroor is the co-founder of Mannar Women's Development Federation and Women's Action Network, a collective of nine women's groups that advocate for advancing women's rights. They advocate through research and documentation, the promotion of women's engagement in law reforms and access to justice through legal aid, the provision of shelter and livelihood assistance and raising awareness in Sri Lanka. In 2017, she was the recipient of the Franco-German Human Rights and Rule of Law Prize and UN N-Peace Award, in addition to being an Ashoka Fellow. Her publications include *Our Struggles and Our Stories* – a collection of research papers that she edited on the war and post-war women's movement in the North and East of Sri Lanka. Her latest publication is a collection of essays that looks at anti-Muslim sentiments in post-war Sri Lanka.

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Mujtaba Moradi is an Afghan Human Rights defender and researcher for the Civil Society and Human Rights Network (CSHRN). Since the Taliban took control of Afghanistan, he has reported to several international organizations and to the Hungarian newspaper Magyar Nemzet, about the situation and human rights violations in Afghanistan. He is a graduate of the Law and Political Science faculty from Herat University, Afghanistan. He also holds a Master of Arts degree in Politics and Security Studies from the Academy of Organization for Security and Cooperation in Europe (OSCE) in Bishkek. During his studies, he chaired several model United Nations (MUN) and organized two MUN conferences in Herat and Bamiyan provinces.

Saira Rahman Khan is a professor at the School of Law at BRAC University in Dhaka, Bangladesh. She received her PhD in Socio-Legal Studies from the University of Kent for her thesis titled “The Socio-Legal Status of Bengali Women in Bangladesh”. She is a Chevening scholar and a founding member of Odhikar, one of the leading human rights organizations in Bangladesh that is working on torture and enforced disappearances and supporting human rights defenders and women’s rights. Ms. Khan is also a member of the international Every Woman Treaty, a coalition of experts and civil society actors who work towards a global convention to counter violence against women. Her areas of focus include matters of gender-based violence against women, torture and freedom of expression.

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