



## Sri Lanka

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### Introduction and Summary

1. **Equality Now** is an international human rights organisation with ECOSOC status working to protect and promote the rights of women and girls worldwide since 1992, including through our membership network comprised of individuals and organisations in over 160 countries.
2. **Centre for Equality and Justice** (CEJ) is a women's organization based in Colombo, Sri Lanka working primarily with Sinhalese, Tamil and Muslim women affected by war and political unrest. CEJ's mission is the achievement of gender justice so that men, women and gender minorities live in a society that is free, just and equal. Its objectives are the promotion of gender equality, advancing the rule of law, good governance and democratic principles, promoting women's advancement and economic empowerment, advocating for the commitment to international human rights standards and fostering partnerships with grassroots level women's networks.
3. During the previous UPR cycle, Sri Lanka received 39 recommendations to strengthen and improve measures regarding women's rights protection. Of these recommendations, 11 related to preventing and eliminating violence against women; including to strengthen efforts to eliminate sexual violence.
4. This submission outlines the challenges in the criminal justice system and the legislation of Sri Lanka in addressing sexual violence crimes and provides recommendations for improving access to justice for sexual violence through improving legislation and criminal justice procedures. Developing effective criminal law mechanisms for the elimination of sexual violence is a fundamental step in achieving substantive and transformative equality for women and girls in Sri Lanka.

## **Legislative Standards on Sexual Violence are not compliant with International Human Rights Standards**

5. The definition of rape under Section 363 of the Penal Code of Sri Lanka is defined as '*forced sexual intercourse/penetration by a man of a woman without her consent*' excluding sexual violence in the context of same-sex partners and forced penetration of instruments. The law is restricted to penile penetration of the vagina and does not incorporate any oral or anal penetration or penetration by objects without consent. Any other act not amounting to 'rape' falls under the offence of grave sexual abuse under section 365B of the Penal Code. However, this gradation of offences between 'rape' and 'grave sexual abuse' creates the impression in the law that forms of penetration other than peno-vaginal penetration are not grave enough to be considered rape. Hence, the definition of rape under Section 363 must be expanded to be made gender-neutral and to include all forms of sexual penetration within its scope.
6. The definition of rape under the Sri Lankan Penal Code contains an exemption for marital rape; providing that sexual intercourse with a woman even if it is without her consent is not considered rape if such woman is his wife (unless they are judicially separated).<sup>1</sup> Further, the law explicitly permits marital rape of girls over the age of 12, despite the age of consent for sex being otherwise set at the age of 16. Both the CEDAW Committee (in 2017)<sup>2</sup> and the Human Rights Committee (in 2014)<sup>3</sup> have issued recommendations to Sri Lanka that marital rape ought to be recognised as a criminal offence.
7. Section 12 of the Prevention of Domestic Violence Act<sup>4</sup> (hereinafter referred to as the *PDVA*) provides for mandatory counselling between the respondent and the aggrieved person subsequent to the issuance of a protection order under the Act, '*..where the Court is satisfied that it is reasonably necessary to protect and provide for the immediate safety, health or welfare of the aggrieved person...*'.<sup>5</sup> Most victim-survivors are further revictimized by this provision as they are forced to attend counselling with their abusive partner when they are not willing or ready to attend such sessions. A recent amendment in discussion recommends the removal of this provision by incorporating the option for counselling *when the victim so desires*.<sup>6</sup> Even if the provision is amended to only provide for optional counselling based on the consent of the victim-survivor, additional safeguards also have to be put in place to ensure that the consent of the victim-survivor is full, free and informed and that the victim-survivor is not being pressured or coerced into counselling.
8. The Evidence Ordinance specifically allows the introduction of evidence in rape cases which shows that 'the prosecutrix was of generally immoral character'.<sup>7</sup> There have been cases where courts have drawn adverse inferences based on the finding that the victim was 'habituated to sex'.<sup>8</sup> Laws which allow the introduction of a victim's sexual history are based on patriarchal assumptions that only "chaste" and "moral" women can be raped, contribute to the impunity of perpetrators and lead to the re-victimisation of survivors who are subjected to traumatic and degrading cross-examinations in court. Since consent can only be evaluated according to the circumstances prevailing at the time under charge, evidence of past sexual history should be irrelevant in a rape trial.

## **High Prevalence of sexual violence**

9. The Women's Wellbeing Survey in 2019 shows that 1 in 5 (20.4%) women in Sri Lanka have experienced sexual and/or physical violence by an intimate partner in their lifetime, and 1 in 4 women (24.9%) have experienced sexual and/or physical violence since the age of 15.<sup>9</sup> There were 1792 reported rape cases in 2018 and 1490 cases of rape against girls below the age of 16 in 2019.<sup>10</sup>
10. During COVID-19, a rapid survey revealed that during the curfew period, 5.6% of respondents had experienced sexual violence.<sup>11</sup> There was also a surge in the number of complaints of sexual and gender-based violence received by the Women's Helpline.<sup>12</sup> The Centre for Equality and Justice (CEJ) conducted a rapid assessment of domestic violence and service provision in Puttalam, Anuradhapura, Kilinochchi, Batticaloa, Hambantota and Moneragala during the pandemic.<sup>13</sup> In general, all districts reported an increase in incidents of domestic violence, but not necessarily an increase in formal complaints. This was mostly because women were unable to reach service providers due to travel restrictions and the lack of transport services, especially in remote areas. In Kilinochchi in the Northern province, a key informant described how even in a very serious case of domestic violence where the husband set fire to his wife, she refused to name her husband as the perpetrator for fear that if she were to die, her children would be left without a parent to care for them. All interviews reveal the stigma attached to reporting domestic violence which prevents women from seeking assistance at an early stage. Women mostly sought help when they faced aggravated violence, often requiring them to seek medical treatment. Similarly, even if women wanted to seek help, they were unable to seek help due to travel restrictions and were exposed to severe forms of domestic violence due to being forced to be confined to their homes with the perpetrator.
11. Key informants reported aggravated forms of domestic violence with a higher incidence of sexual violence which they believed was aggravated by the use of alcohol, abuse of drugs, and stress. Many women were forced to share a home with their husbands or partners who were heavily under the influence of illicit alcohol, brewed locally due to the closure of bars. Key informants in Kilinochchi highlighted that many women attempted suicide, due mostly to partners having extra-marital affairs, and some attempted suicide due to violence.<sup>14</sup>
12. CEJ conducted a confidential research study on conflict-related sexual violence against Tamil, Sinhalese and Muslim women. The study interviewed 54 women victim-survivors and victim representatives who had been subjected to sexual violence.<sup>15</sup> The perpetrators included the military and the police. Of the 54 victim-survivors and victim representatives interviewed, only 22 had accessed law enforcement or courts in search of justice. The institutions approached included the Grama Niladhari, (Village officer), Police, and Army camps and a few had filed cases in the courts. The culture of impunity, lack of accountability and lack of faith in the justice system dissuade war-affected women from accessing the criminal justice process in search of justice.

## **Gender insensitivity among actors in the criminal justice system**

13. There is no mandatory gender sensitization training given to all actors in the criminal justice system such as the police officers, lawyers, judges, court staff and Judicial Medical Officers (JMOs).
14. When leading evidence in rape cases etc it is particularly hard for the victim-survivor as lawyers mock the victim-survivor using rape myths and gender stereotypes and trivialize the case. Even mudliyars (court bailiffs) and interpreters in court are insensitive and this directly affects how comfortable the victim-survivors feel narrating their story. Police officers are often accused of being gender insensitive when dealing with victim-survivors. JMOs are also known to be insensitive at times and make inappropriate remarks to the victim-survivors. Sometimes the judges also trivialize the victim-survivor's case by dismissing their narrative, for example, in a rape case out of Colombo, the judge thought the accused should consider the act of raping the victim-survivor like using a sex worker and agree to pay compensation.<sup>16</sup>
15. The starting point for the courts is that if it was rape then the victim ought to have resisted and if she had resisted, then there should be physical evidence to that effect to present itself in the form of bodily evidence of violence. Judges often resort to patriarchal norms when interpreting physical and medical evidence. Further, courts often place undue importance on physical and medical evidence when deciding on rape cases, instead of taking a holistic view of available evidence (including testimonies) to interrogate whether there was genuine consent to sex without coercion.<sup>17</sup>
16. There is a lack of gender-sensitive bilingual female police officers who should be present at all times at the police women's and children's desks.<sup>18</sup>

### **The language barrier**

17. Many police stations in the country do not have adequate Tamil-speaking officers present at the stations at all times. This is evident even in predominantly Tamil-speaking areas of the country. Complainants from the Tamil and Muslim communities are often unable to fully understand the police complaint or affidavit they are asked to sign. In instances where there are no Tamil-speaking officers present, the victim-survivor is asked to report back at a different date and time which increases the burden and discomfort of reporting.<sup>19</sup> A study conducted by FOKUS WOMEN (that consisted of some former CEJ staff) on access to Tamil-speaking police officers in police stations in the Northern and Eastern provinces of Sri Lanka revealed that of the 73 female police officers, only 37% were fluent in Tamil.
18. Sometimes in cases of sexual violence, the full information is not recorded in the first complaint, creating a gap in the case proceedings'.<sup>20</sup> The same study further reveals that although the women's and children's desks were equipped with Tamil-speaking police officers, the preliminary inquiry is conducted in Tamil but complaints were written in Sinhala and the victim-survivors are asked to sign documents that they cannot read and understand.<sup>21</sup> 'Where translation has to be part of the process, the women are doubtful whether the translation is a correct record of what they have stated...'.<sup>22</sup>

19. The emergency contact number of Sri Lanka Police, i.e. 119, is also operated mostly by Sinhala-speaking officers and as a result, emergencies can only be reported in Sinhala.<sup>23</sup>
20. Article 24 of the Sri Lankan Constitution<sup>24</sup>, regarding the language of the court system provides that ‘Sinhala and Tamil shall be the languages of the Courts throughout Sri Lanka and Sinhala shall be used as the language of the courts situated in all the areas of Sri Lanka except those in any area where Tamil is the language of administration. The record and proceedings shall be in the language of the Court...’. Article 24(3) further provides that ‘ ... any party or an applicant party or any person legally entitled to represent such party or applicant, who is not conversant with the language used in a court, shall be entitled to interpretation and to translation into Sinhala or Tamil provided by the State, to enable him to understand and participate in the proceedings before such court, and shall also be entitled to obtain in such language at any such part of the record or a translation thereof, as the case may be, as he may be entitled to obtain according to law’.
21. However, the court system does not have adequate qualified translators and interpreters. This is a significant problem as litigants are unable to read and understand the notices sent by the court and thereby miss dates in court that sometimes adversely affect the case itself. Tamil-speaking victim-survivors make mistakes during cross-examination due to a lack of proper interpretation and contradict themselves. Inconsistent interpretation of their evidence by court interpreters adversely affects the victim’s case. Litigants are also unable to follow what is happening in court or are unable to read proceedings and in extreme cases, settlements and agreements entered into by their lawyer. Translation costs of lengthy court documents also add to the burden of the litigants.

### **Barriers to Accessing Justice for Survivors of Sexual Violence**

22. Police officers are slow to respond or take action in cases of gender-based violence. The 119 emergency hotline is not efficient as there have been instances where the line has often been unresponsive. Court Registries are also not very efficient and delays have been encountered in issuing court proceedings on time further affecting the victim-survivor.
23. The police fail to file rape complaints in some cases, particularly if the alleged perpetrator is from a powerful family or community. There have been instances where the police officers have misreported information provided by the victim-survivors in the official police complaint in a manner often detrimental to the victim-survivors’ interests.<sup>25</sup> Police officers and healthcare professionals are susceptible to political pressures or compromising investigation results due to fear of reprisals from the perpetrator (especially if he is from a powerful community).<sup>26</sup>
24. Perpetrators of rape sometimes attempt to avoid criminal punishment by entering into a compromise with the victim-survivor’s family, whereby the victim-survivor is pressured or coerced into marrying the perpetrator. Though such compromises are not permitted under the law, in practice, charges are not pursued or dropped by the police or courts when they receive information about the compromise. If the victim-survivor is from the Muslim community, sometimes Quazi Courts, which do not have any legal authority to take on cases of sexual

violence, intervene to order payment of compensation by the perpetrator without reporting the case to the police.<sup>27</sup>

25. The Sri Lankan court system is already burdened with a heavy caseload. Given the lack of investment in the court system and given there is no separate court to hear and determine cases of sexual violence, trials in rape cases are often delayed and take years to complete. The High Court of Sri Lanka has original jurisdiction over all major sexual violence crimes. It has criminal and admiralty jurisdiction and also jurisdiction in regard to offences committed aboard aircraft and within the territorial air space. Under the current judicial process, it takes an average of 8 years for a rape case to conclude.<sup>28</sup> A 2020 study of 14 rape cases before the Negombo High Court found that the process for indictment by the State (filing of charges) took between 3 to 11 years in the cases studied, while the trial process before the High Court took anywhere between 6 months to 14 years.<sup>29</sup> The long trial process means that victim-survivors have to relive their trauma when cases are finally taken up years after the incident. By that time they may have even got married with children - the long lapse of time since the incident may mean that the victim-survivors are no longer willing to pursue the case.<sup>30</sup>
26. The court systems and the court records have not been digitized. There is a lack of procedures and remedies in place to expedite court proceedings. In 2017, the Ministry of Justice initiated a court automation and digitisation project along with the assistance of the Information and Communication Technology Agency (ICTA).<sup>31</sup> The then Minister of Finance during the budget speech for 2022 proposed to allocate Rs. 5,000 million towards the automation and digitisation project.<sup>32</sup> The project envisaged automating the “Court hearing process and related activities with key modules of e-filing, case management and transcription along with other related sub-modules.”<sup>33</sup> It is imperative that this digitization project is implemented on a priority basis, as a key step toward expediting court proceedings.
27. The conviction rate for rape cases in 2019 was 3.8% only.<sup>34</sup> The 2020 Grave Crime Abstract (the latest year for which this data is available) published by the Sri Lanka police states there have been 300 reported cases of rape of women over the age of 16. Out of these 300 cases, 287 were pending conclusions by 31st December 2020.<sup>35</sup> The same report provides that of the 1653 cases of statutory rape reported, 1283 were pending trial and 358 cases were pending conclusion by 31st December 2020.<sup>36</sup> There were zero convictions of rape cases during this entire year (i.e 01.01.2020 to 31.12.2020).<sup>37</sup>
28. Even in the few cases where the conviction has taken place, courts have reduced or suspended sentences in rape cases on the grounds that the perpetrator had married the victim-survivor (even though this is not permitted by law).<sup>38</sup>
29. A specific law to protect victims and witnesses of crime was passed in 2015. However, the law is not implemented properly and has not had the expected impact of ensuring that victims and witnesses are kept safe.<sup>39</sup> Similarly, a Victims of Crime and Witnesses Assistance and Protection Fund has been provided, but the law is not being implemented effectively making compensation inaccessible.<sup>40</sup>

## **Lack of qualified medico-legal experts and proper procedures**

30. A sexual violence victim-survivor will be referred to a medico-legal examination by a judicial medical officer. In practice, an accurate medico-legal report plays a key role in corroborating the evidence of a sexual violence victim-survivor, due to the undue importance given by courts to medical evidence in rape cases. However, Sri Lanka does not have an adequate cadre of qualified forensic medicine experts to conduct judicial medical examinations of sexual violence victim-survivors.<sup>41</sup> The lack of quality forensic medical reports may have an impact on the conviction rates in cases of sexual violence.
31. According to the National Guidelines on Examination, Reporting, and Management of Sexually Abused Survivors for Medico Legal Purposes<sup>42</sup> (hereinafter referred to as the '*guidelines*') "ideally victims of sexual assaults should be examined by specialists in Forensic Medicine or Senior Medical Officers with special training in Forensic Medicine. However, in their absence, any Government medical officer with a basic medical degree will be required to provide these services."<sup>43</sup>
32. There is no conducive environment for sexual violence victim-survivors in hospitals. No proper facilities to safeguard the privacy of sexual violence victim-survivors are available. Some hospitals lack proper facilities to conduct medico-legal examinations of the victims.
33. In Sri Lanka sexual assault forensic exam kits (rape kits) are not widely used to examine the sexual violence victim-survivors. The DNA evidence that can be collected through such examination increases the likelihood of successful prosecution. The '*guidelines*' recommend the use of sexual assault forensic evidence (SAFE) kits provided by the Ministry of Health, for evidence collection if the alleged incident has taken place within 72 hours of examination *if available*.<sup>44</sup> The Chief Judicial Medical Officer indicated that the available SAFE kits that were provided by USAID are almost finished and they are hoping to secure more through other donors.<sup>45</sup>
34. There have also been instances of delays in obtaining the DNA test results, even when they are conducted. DNA results which are supposed to be obtained within 2 weeks sometimes take months to arrive. Reports from the Northern and Eastern provinces of Sri Lanka have highlighted that processing of DNA test results can sometimes take up to 1.5 years.<sup>46</sup>
35. Though the national guidelines for medico-legal examination of rape survivors do not prescribe the conduct of the two-finger test, they do not proscribe it either and survivors and commentaries have confirmed that the two-finger test is being conducted and that courts do rely on the "findings" when deciding rape cases.<sup>47</sup> This unscientific and traumatising test involves a medical practitioner inserting two fingers into the vagina of a rape victim-survivor in an attempt to determine if the hymen is broken, as well as to test the laxity of the vagina. The test is often used to declare rape victim-survivors as "habituated to sex", which has an impact on the potential for a successful conviction. The Chief JMO stated that this is a cruel practice and is currently not practised (though there is evidence to the contrary).<sup>48</sup> However, he confirmed that there were no written instructions for specialists to refrain from using the

two-finger test during medico-legal examinations. He was of the view that the visual identification method to deduce if the hymen is intact is practised by JMOs, and that the two-finger test is now obsolete.<sup>49</sup> However, the hymen test is also unscientific since it is proven that the lack or existence of the hymen cannot lead to conclusive proof of sexual intercourse. The national guidelines need to explicitly ban both the two-finger test and the reliance on the hymen test for medico-legal examination in rape cases.

### **Lack of qualified psychosocial resources and experts for SGBV victim-survivors**

36. Victim-survivors also need access to psychosocial resources, and access to trained mental health professionals to deal with the trauma and mental health consequences of sexual violence. There are no adequate resources in this respect. “In most domestic violence cases in Sri Lanka, victims access courts after exhausting all available non-legal remedies including counselling and further, the referral by courts often to court family counsellors becomes a problem as this cadre is often not comprehensively trained to conduct family and marriage counselling.”<sup>50</sup>
37. In 2007, the Family Health Bureau of the Ministry of Health launched “Mithuru Piyasa/Natapu Nilayam” centres in government hospitals as one-stop service centres for GBV victim-survivors. These centres provide a host of services including counselling for GBV victim-survivors, referrals to psychiatric medical attention, and other services.<sup>51</sup> According to a 2019 report on Health sector responses to GBV, there were 70 of these centres in selected government hospitals.<sup>52</sup> The same report provides that by 2021, these centres are expected to be extended to all the hospitals with specialists.<sup>53</sup> Currently, there are 80 centres islandwide.<sup>54</sup> Only some of these centres function effectively. Discussions are ongoing on having public-private partnerships and extending these centres to private hospitals.
38. However, despite some promising progress through the Mithuru Piyasa/Natapu Nilayam centres, overall, sexual violence survivors lack information on government services that can be accessed and the services that are available are inadequate and short-staffed. There are no adequate safe shelter spaces for victim-survivors of sexual and gender-based violence. The existing facilities face many challenges due to a lack of resources.

### **Cyber-based Sexual and Gender-Based Violence (CSGBV)**

39. There are no legal definitions identifying different forms of Sexual and Gender-based violence on online platforms. The lacunae in law in identifying and defining cyber violence particularly affect Sexual and Gender Minorities. The first responders to incidents of Cyber violence categorize different forms of cyber sexual and gender-based violence (CSGBV) under broader categories such as money laundering, obscene publications, and harassment. Such broader categories do not take the gendered element into account. The legal protection for victims/survivors of CSGBV and gendered online hate speech (GOHS) has to be read broadly and interpreted through different sections of the penal Code, Obscene Publications Ordinance, and Article 14 of the Constitution. Similarly, online hate speech is often dealt

with through a mainstream human rights approach. The law would rarely recognize the gendered drivers or the intersectionality embedded in hate speech. While legal reforms are vital in incorporating a gender-sensitive mechanism to respond to victims/survivors of CSGBV and GOHS, first responders and law enforcement personnel need to be capacitated on the concepts of gender and the application of a gender-sensitive mechanism.

40. Through research conducted by CEJ, it was observed that most of the victims/survivors of CSGBV and GOHS would refrain from seeking support from service providers and are hesitant to take legal action against perpetrators due to the social stigma and the ambiguity in the law related to the violations. With social stigma and the lack of awareness of the gendered impact of these violations, the victims-survivors are discouraged from reaching out for support and this often results in psychological disorders such as depression, anxiety and suicide.
41. There is no conducive environment in court houses for sexual violence victim-survivors. Adequate structures must be put in place and measures must be taken to safeguard their privacy and enable them to participate in court proceedings without any fear of reprisal, stigma or intimidation.

### **LGBTIQ persons are not expressly protected under the laws relating to sexual violence**

42. The laws relating to rape, domestic violence and sexual harassment do not expressly cover victim-survivors belonging to the LGBTIQ community.
43. In March 2022, the most recent development in the field occurred<sup>55</sup> in which the UN Committee on the Elimination of Discrimination Against Women (CEDAW) found that Sri Lankan law enforcement officials violated the petitioner's fundamental right to non-discrimination by harassing her and falsely accusing her based on her gender and sexual orientation.
44. In its decision, the Committee urged Sri Lanka to "take immediate and effective action against the threats, harassment, and abuse to which the author has been subjected, including through the adoption of preventative and protective measures, and, where appropriate, initiate criminal procedures to hold those responsible accountable; *Ensure that victims of gender-based violence against women, including lesbian, bisexual, transgender and intersex women, have access to effective civil and criminal remedies and protection, including counselling, health services and financial support, in line with the guidance provided in the Committee's General Recommendation No. 33; Provide training to law enforcement agencies on the Convention, the Optional Protocol thereto and the Committee's general recommendations, in particular general recommendations Nos. 19, 21, 28, 33 and 35, to raise awareness of the human rights of lesbian, bisexual, transgender and intersex women and so that crimes with homophobic undertones committed against lesbian, bisexual, transgender or intersex women will be understood as gender based violence or hate crimes requiring active State intervention.*<sup>56</sup>

45. Even though the Sri Lankan penal code contains offences regarding rape, sexual harassment, sexual assault etc; LGBTIQ people have become conditioned to victimization and believe that they do not have the right to seek redress. According to those who have experienced a miscarriage of justice, unwelcoming attitudes of legal institutions have also hampered LGBTIQ people from fully exercising their fundamental rights.

### **Ineffective implementation of the protection orders issued under the *PDVA***

46. In March 2022, a domestic violence victim-survivor was murdered by her husband against whom a protection order has been issued by the court. The court had ordered her husband to move out of her home. However, he had taken up residency in a house close to her and had continued to harass her. She had complained to the police twice about this. On the day of the murder she had come back from the police station after her second complaint, the man in question had entered her house and killed her in front of her daughter.<sup>57</sup>

47. Rights groups had lobbied for an amendment to the *PDVA* where the police must monitor the compliance of a Protection Order and submit periodic reports to the court. Under the current law, there is no proactive requirement to follow up on a complaint of a breach as the court does not compel the police to do so.<sup>58</sup>

### **Recommendations:**

48. We would respectfully request that the following recommendations be issued to Sri Lanka:

- The laws relating to rape and domestic violence need to be amended to:
  - (i) widen the definition of rape to include all forms of sexual penetration;
  - (ii) to remove the requirement for mandatory counselling for domestic violence victim-survivors with their abusive partner when the victim is not ready;
  - (iii) to amend the evidence law and disallow the introduction of evidence relating to the “immoral character” or the past sexual history of the victim-survivor; and
  - (iv) to criminalise marital rape in all circumstances
- The laws relating to sexual violence should expressly cover LGBTIQ victim-survivors.
- There should be resources allocated to expediting sexual violence cases so that they are heard within a reasonable period (either through the use of specialised courts or otherwise). Law enforcement personnel should be properly trained with a gender-sensitive approach and to reject rape myths and negative stereotypes that adversely affect justice.
- The procedural court delays should be addressed by digitizing the court records and systems, and accountability mechanisms should be put in place to address long delays in sexual violence trials.
- Mandatory gender sensitization training should be provided to all actors involved in the criminal justice process including police, lawyers, judges, court staff, JMOs and Court Counselors.

- There should be specific sentencing policies or guidelines for cases of sexual violence, which should also specifically instruct judges that marriages or settlements between the parties are not valid grounds for acquittal or reduced sentences in cases of rape or statutory rape.
- There should be an adequate cadre of qualified medico-legal experts and mental health professionals. Access to these services with proper facilities should be ensured.
- The use of sexual assault forensic kits (rape kits) should be made mandatory and proper facilities should be provided to conduct the judicial medical examinations. Guidelines should be passed prohibiting the use of the two-finger test and the hymen test in medical examinations of rape victim-survivors.
- Victim-survivors of sexual violence should have access to safe shelter spaces, and the said facilities should have adequate facilities to provide the services needed for such victim-survivors.
- There should be gender-sensitive bilingual female police officers present at all times at the police women & children desks.
- There should be officers and staff trained in all three languages (Sinhala, Tamil and English) at the police, court and hospitals. There should be adequately qualified interpreters and translators in the police and court system.
- The police 119 emergency service and other state-run emergency services should be improved to provide swift responses.
- Conducive environments for sexual violence victim-survivors safeguarding their privacy should be established in hospitals and in court houses.

## Endnotes

1. The penal code Ordinance No. 2 of 1883 ( as amended) Section 363(a)
2. CEDAW/C/LKA/CO/8, 3 March 2017.
3. CCPR/C/LKA/CO/5, 21 November 2014.
4. Prevention of Domestic Violence Act No. 34 of 2005
5. Prevention of Domestic Violence Act No. 34 of 2005, Section 12(1)(c)
6. Ramani. Jayasundera, 'Fulfilling promises to address domestic violence against women' *The Morning* (Colombo, 12th March 2022)  
<https://www.themorning.lk/fulfilling-promises-to-address-domestic-violence-against-women/>
7. Section 155(4), Evidence Ordinance.
8. Equality Now and Dignity Alliance International (2021), Sexual Violence in South Asia: Legal and Other Barriers to Justice for Survivors, <https://www.equalitynow.org/ending-sexual-violence-in-south-asia/> Accessed 3 June 2022
9. Department of Census and Statistics, 2019, Women's Wellbeing Survey - 2019, Findings from Sri Lanka's first dedicated National Survey on Violence against Women and Girls: Final Report  
[http://www.statistics.gov.lk/Resource/refference/WWS\\_2019\\_Final\\_Report](http://www.statistics.gov.lk/Resource/refference/WWS_2019_Final_Report) (accessed 31 May 2022)
10. Equality Now and Dignity Alliance International (2021), Sexual Violence in South Asia: Legal and Other Barriers to Justice for Survivors, <https://www.equalitynow.org/ending-sexual-violence-in-south-asia/> (accessed 3 June 2022)
11. IPS News Service, 2020, Report Shows Sri Lanka has Escalation of Violence during COVID-19 Lockdown, 19 August, <https://www.ipsnews.net/2020/08/report-shows-sri-lanka-escalation-violence-covid-19-lockdown/> (accessed 5 June 2022)
12. UNDP Sri Lanka, 2020, When home isn't safe anymore,  
<https://www.undp.org/srilanka/news/when-home-isnt-safe-anymore> (accessed 5 June 2022);
13. Center for Equality & Justice, Rapid assessment of the increase of domestic violence in a Covid-19 context in selected districts,( February 2022, awaiting publication)
14. ibid.
15. The Life I Used to Live: Realizing Reparations for Victim Survivors of Sexual Violence in Sri Lanka, Centre for Equality and Justice, July 2018, p.
16. The case in question was taken up for hearing at a Magistrate's Court in the Western Province of Sri Lanka as verbally reported to CEJ by a lawyer present at court during the hearing.
17. Equality Now and Dignity Alliance International (2021), Sexual Violence in South Asia: Legal and Other Barriers to Justice for Survivors, <https://www.equalitynow.org/ending-sexual-violence-in-south-asia/> Accessed 3 June 2022
18. FOKUS WOMEN, 'Whither Justice? The language barrier in accessing the criminal justice system- In cases of violence against female heads of households in the North and East of Sri Lanka' (2016)
19. Women's Action Network, 'Women's Access To Justice In The North And East of Sri Lanka' (Women's Action Network 2016)  
[https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/LKA/INT\\_CEDAW NGO\\_LKA\\_25964\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/LKA/INT_CEDAW NGO_LKA_25964_E.pdf) at page 4. Accessed 16th May 2022.
20. FOKUS WOMEN (n9) page 20
21. ibid
22. ibid page 21
23. ibid at page 5
24. The Constitution of The Democratic Socialist Republic of Sri Lanka, Article 24(1)
25. Equality Now and Dignity Alliance International (2021), Sexual Violence in South Asia: Legal and Other Barriers to Justice for Survivors, <https://www.equalitynow.org/ending-sexual-violence-in-south-asia/> Accessed 3 June 2022
26. ibid.
27. FOKUS WOMEN (2016), "Hidden Truth: Discrimination of Muslim Women in the Quazi Courts in Puttalam and Batticaloa", pg 12.
28. See; Shyamala Gomez & Mario Gomez, *From rights and shame to remedies and change: Gender violence in Sri Lanka* (Canadian International Development Agency's (CIDA's) Shakti Gender Equity Project. 1999)

29. Muthukuda Niriella, (May 2020), Inadequacy of Legal Protection for Rape Victims: Analysis of High Court Cases in Negombo Division of Sri Lanka,  
[https://www.researchgate.net/publication/342623471\\_Inadequacy\\_of\\_Legal\\_Protection\\_for\\_Rape\\_Victims\\_Analysis\\_of\\_High\\_Court\\_Cases\\_in\\_Negombo\\_Division\\_of\\_Sri\\_Lanka](https://www.researchgate.net/publication/342623471_Inadequacy_of_Legal_Protection_for_Rape_Victims_Analysis_of_High_Court_Cases_in_Negombo_Division_of_Sri_Lanka) in Equality Now and Dignity Alliance International (2021), Sexual Violence in South Asia: Legal and Other Barriers to Justice for Survivors,  
<https://www.equalitynow.org/ending-sexual-violence-in-south-asia/> Accessed 3 June 2022
- <sup>30</sup>. See; Shyamala Gomez & Mario Gomez, *From rights and shame to remedies and change: Gender violence in Sri Lanka* (Canadian International Development Agency's (CIDA's) Shakti Gender Equity Project. 1999
- <sup>31</sup>. T. Hoole & S. Sallay, 'Urgent Need For Justice Reforms: Digitalisation Can Lead The Way (2021) (Advocata Institute | Sri Lanka | Independent Policy Think Tank)  
<https://www.advocata.org/commentary-archives/2021/12/04/urgent-need-for-justice-reforms-digitalisation-can-lead-the-way> accessed 17 May 2022
32. ibid
33. See,  
[https://www.moj.gov.lk/index.php?option=com\\_content&view=article&id=144:agreement-signed-with-icta-to-digitize-entire-judicial-system-in-sri-lanka&catid=17&Itemid=208&lang=en](https://www.moj.gov.lk/index.php?option=com_content&view=article&id=144:agreement-signed-with-icta-to-digitize-entire-judicial-system-in-sri-lanka&catid=17&Itemid=208&lang=en)
34. Equality Now and Dignity Alliance International (2021), Sexual Violence in South Asia: Legal and Other Barriers to Justice for Survivors, <https://www.equalitynow.org/ending-sexual-violence-in-south-asia/> (accessed 3 June 2022)
35. Sri Lanka Police,  
[https://www.police.lk/images/crime\\_ststistics/2020/01.Grave-crime-abstract-for-the-Year-2020.pdf](https://www.police.lk/images/crime_ststistics/2020/01.Grave-crime-abstract-for-the-Year-2020.pdf), p. 7.
36. ibid
37. ibid
38. Equality Now and Dignity Alliance International (2021), Sexual Violence in South Asia: Legal and Other Barriers to Justice for Survivors, <https://www.equalitynow.org/ending-sexual-violence-in-south-asia/> Accessed 3 June 2022; See also Lawyers for Human Rights and Development, 'Justice Suspended? A Study on Suspended Sentences for Sexual Offences', (2012, LHRD Colombo).
39. ibid.
40. ibid.
41. ibid.
- <sup>42</sup>. The College of Forensic Pathologists of Sri Lanka, *The National Guidelines on Examination, Reporting, and Management of Sexually Abused Survivors for Medico Legal Purposes* (2014) at pages 12 and 19.  
<http://www.medical.sjp.ac.lk/downloads/forensic-medicine/Medico%20Legal%20Purposes.pdf>
43. ibid
44. ibid
45. Interview with Chief Judicial Medical Officer (JMO), 1st July 2022. The JMO was also of the opinion that some of the instruments in the SAFE kits were unnecessary and costly and that it would suffice to have test tubes and resealable bags instead of SAFE kits
- <sup>46</sup>. ibid.
47. Equality Now and Dignity Alliance International (2021), Sexual Violence in South Asia: Legal and Other Barriers to Justice for Survivors, <https://www.equalitynow.org/ending-sexual-violence-in-south-asia/> Accessed 3 June 2022
48. Interview with Chief Judicial Medical Officer (JMO), 1st July 2022.
49. ibid
50. R. Jayasundara, 'Fulfilling promises to address domestic violence against women', *The Morning* (Colombo, 12th March 2022) <https://www.themorning.lk/fulfilling-promises-to-address-domestic-violence-against-women/>
- <sup>51</sup>. J.L.H.R Wijegunasekara & KDP Wijesinghe, 'Health Sector Interventions to address Gender Based Violence: in Sri Lanka' (2020) 6(5): 246-248 The Journal of Medical Research  
[http://www.medicinearticle.com/JMR\\_20205\\_15.pdf](http://www.medicinearticle.com/JMR_20205_15.pdf) at page 248, accessed on 16th March 2022
52. UNFPA Sri Lanka, 'Health Sector Response to Gender Based Violence Standard Operating
53. ibid.
54. Interview with National Program Manager, Gender and Women's Health, Family Health Bureau, 1st July 2022.
55. Rosana Flamer Caldera v Sri Lanka, CEDAW/C/81/D/134/2018, UN Committee on the Elimination of Discrimination Against Women (CEDAW), 23rd March 2022. Available at  
<https://www.humandignitytrust.org/wp-content/uploads/resources/CEDAW-C-81-D-134-2018-English-clean-copy.pdf>

<sup>56</sup>. Ibid at page 11 & 12

<sup>57</sup>. Pamodi Waravita, ‘Rights groups slam domestic violence-related service providers’ *The Morning* (Colombo, 17th March 2022) <https://www.themorning.lk/rights-groups-slam-domestic-violence-related-service-providers/>

<sup>58</sup>. Ramani Jayasundera, ‘Fulfilling promises to address domestic violence against women’ *The Morning* ( Colombo, 12th March 2022) <https://www.themorning.lk/fulfilling-promises-to-address-domestic-violence-against-women/>