

# Sri Lanka Shadow Report

on the UN Convention on the Elimination of All Forms of Discrimination Against Women

**Prepared by the  
Centre for Women's Research (CENWOR)  
November 2001**

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With technical assistance from  
**International Women's Rights Action Watch –Asia Pacific  
(IWRAW –AP)**



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## Preface

The NGO alternative report was originally published by the Sri Lanka Women's NGO Forum (SLWNGOF) in 1999. Updating the 1999 report, in addition to its compilation and publication was co-ordinated by the Centre for Women's Research (CENWOR) – a constituent member of the SLWNGOF - in 2001, with technical support from the International Women's Rights Action Watch - Asia Pacific (IWRAW – AP).

The national machinery for women which comprises the Ministry of Women's Affairs, the Women's Bureau and the National Committee for Women (NCW) are tasked with formulating State policy on women's issues and its implementation respectively. The State policy on women in Sri Lanka is articulated in the Sri Lanka Women's Charter of 1993, which is based on CEDAW and was a collaborative effort of the national machinery and women's NGOs. Seven areas of concern, specific to women in Sri Lanka (civil and political rights, right to education and training, right to economic activity and benefits, right to healthcare and nutrition, rights within the family, right to protection from social discrimination and right to protection from gender based violence) are addressed in the Charter. The Charter provides for the establishment of the NCW which comprises experts from fourteen sectors and a Chairperson, who are appointed by the Executive President. The NCW is mandated to monitor and ensure the implementation of the provisions of the Charter. However, the Charter is only a policy document and has no legal binding.

Sri Lanka ratified the Women's Convention in 1981 without any reservations. The Sri Lankan government presented its first report to the CEDAW Committee in 1986 which was followed by a second report in 1992. Thereafter the government has not met its reporting commitments to the CEDAW Committee. The government is expected to submit its third and fourth reports (combined) in January 2002. Hence this alternative report which is an NGO initiative, is in response to the envisaged State report.

The alternative report contains a critical assessment of the status of Sri Lankan women in terms of selected areas of concern; and as such deals with articles 1, 2, 3, 4,

9, 11, 12, 15 and 16 of the UN Convention on the Elimination of All Forms of Discrimination Against Women (UNCEDAW), and General Recommendation 19 of the Committee.

The first shadow report published by SLWNGOF used a participatory approach in identifying the areas of concern to Sri Lankan women, and in gathering relevant data for the report. Fifty four NGOs representing all nine provinces of the island participated in the initiative in 1996. The framework for data collection was provided by a questionnaire prepared by the IWRAW and the Commonwealth Secretariat's '*Assessing the Status of Women.*' Sinhala and Tamil translations of the questionnaire were sent out to the network organisations of the SLWNGOF, some of who responded with relevant information. The data thus received were used as the basis for compilation of the report by experts on the relevant areas of interest; Education (Article 10) – Prof. Swarna Jayaweera, Employment (Article 11) – Dr. Sepali Kottegoda, Equality in Access to Health Care (Article 12) – Dr. Kamini Alahakone, Equality before the Law and in Civil Matters (Article 15) and Equality in Marriage and Family Law (Article 16) – Ms. Kishali Pinto Jayawardene; and the report was edited and introduced by Ms. Sunila Abeysekera.

In 2001, the participation of NGOs was sought in updating the shadow report, in anticipation of the presentation of the government report to the CEDAW Committee at the forthcoming sessions in January 2002. A preparatory meeting was held in October 2001, where the several NGOs that participated gave relevant inputs to the existing information; others who were unable to be present submitted their responses for consideration and inclusion. In keeping with the guidelines prepared by IWRAW – AP, and the Commonwealth Secretariat's '*The Convention on the Elimination of All Forms of Discrimination Against Women: The Reporting Process – A Manual for Commonwealth Jurisdictions,*' and the Concluding Comments on the Committee of the government's report of 1992; the sector experts from several NGOs were tasked with updating the different sections of the report – Discrimination (Articles 1 and 2), Fundamental Rights (Article 3), Affirmative Action (Article 4), Nationality (Article 9), Equality before the Law in Civil Matters (Article 15) and Equal Rights during Marriage and its Dissolution (Article 16) – Ms. Camena Guneratne; Equal Rights in Education (Article 10) – Prof. Swarna Jayaweera; Elimination of Discrimination in

Employment (Article 11) – Dr. Sepali Kottegoda; Equal Access to Health Care and Family Planning (Article 12) – Dr. Kamini Alahakone; Violence against women (General Recommendation 19) – Ms. Kumudini Samuel. The report is introduced by Ms. Faizun Zackariya and is edited by Ms. Kamalini Wijayatilake.

The following NGOs gave inputs for the participatory exercise in connection with compiling this Shadow Report. Their valuable contributions are acknowledged with thanks.

1. All Ceylon Women's Buddhist Congress - Colombo
2. Agromart Foundation – Colombo
3. Centre for Women’s Research – Colombo
4. Centre for Women and Development - Jaffna
5. Christian Workers’ Fellowship – Ja-Ela
6. Community Education Centre - Malabe
7. Da-Bindu – Ja-Ela
8. Empowered Women's Forum - Moneragala
9. Hanguranketha Women and Children’s Forum – Hanguranketha
10. Hill Country Women’s Forum – Polgollawatte
11. Human Rights Organisation – Moneragala
12. INFORM – Colombo
13. Institute of Policy Studies - Colombo
14. Kantha Shakthi – Colombo and Balangoda
15. Lawyers for Human Rights and Development – Colombo
16. Muslim Women’s Research and Action Forum – Colombo
17. Penn Wimochana Gnanodayam – Hatton
18. Raja Rata Aapada Sahana Sevaya – Anuradhapura
19. Raja Rata Kantha Padanama – Kekirawa
20. Rural Women’s Front – Kirindiwela
21. Rural Women’s Organisation – Hambantota
22. Rural Women’s Organisation Network – Galle
23. Sarvodaya Women’s Movement – Moratuwa
24. Sinhala Tamil Rural Women’s Network – Nuwara Eliya
25. Siyath Foundation – Colombo and Hikkaduwa
26. South Asia Partnership - Sri Lanka - Colombo
27. Sri Lanka Federation of University Women – Colombo
28. Sri Lanka Muslim Women’s Conference – Colombo
29. Sri Lanka Women's Conference - Colombo
30. Sri Lanka Women Lawyers' Association - Colombo
31. Sri Lanka Women’s NGO Forum – Colombo
32. Suriya Women’s Development Centre – Batticaloa
33. The Women and Media Collective – Colombo
34. Uva Wellassa Women Farmers’ Organisation – Buttala
35. Vehilihini Development Centre – Siyambalanduwa
36. Voice of Women - Colombo
37. Weera Seva Sansadaya – Rambukkana
38. Wilpotha Women’s Savings Effort – Chilaw

39. Women's Counselling Centre - Ratnapura
40. Women's Development Centre – Kandy
41. Women's Development Federation - Hambantota
42. Women's Development Foundation – Akkaraipattu
43. Women's Development Forum – Batticaloa
44. Women's Development Foundation – Kurunegala
45. Women in Need - Colombo

Centre for Women's Research (CENWOR)  
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## **Executive Summary**

The latest census for Sri Lanka compiled in the year 2001 has put the country's total population at a figure of 19 million, with 50.8 % females. The figure excludes some districts in the Northern and Eastern provinces where the census could only be partly held or not held at all and therefore does not represent the actual situation islandwide. Moreover, it does not take into account factors of out-migration and in-migration as well.

Traditionally Sri Lanka has fared well in terms of basic social indicators like life expectancy, literacy, school enrolment, infant mortality, child mortality, maternal mortality and composite qualitative indices such as Human Development Index and Gender Development Index. However these indices have to be carefully analysed in terms of political-structural and regional imbalances within the country, which in turn has its implications for women placed in disadvantaged positions. In particular the impact on health, education, employment and human freedoms is indeed striking.

The political agenda of the government has been dominated by the twin challenges of sustaining the economy amidst the onslaught of globalism and the impact of the International Financial Institutions (IFIs); various Trade Agreements on the one hand, and on the other the continuing pressure of a growing defence budget on account of the war, which is in the range of 5-6% of GDP. Tensions in the state-civil society relations and effective governance were also evident.

Sri Lanka is a signatory to the International Convention on Protection of Migrant workers. This is another obligation that the state has entered into besides the UN Convention on the Elimination of All Forms of Discrimination against Women signed in 1981 and other international instruments like the Bill of Human Rights, the International Covenant on Civil and Political Rights, the Covenant on Economic Social and Cultural Rights, the Convention against Torture. In toto these state obligations underline that discrimination on grounds of sex amounts to human rights violations.

## **Human Rights and Violence Against Women**

The war economy had its consequences on the national polity. Increased incidence of violence against women, on account of their gender and by reason of their ethnic origin were vulnerable as a target for both state- military and non state armed groups. By using the ethnic conflict and 'emergency laws', regular legislative law enforcement procedures have more often been by passed. Detentions, disappearances, women being held in hostage, mass arrests and cordon and search operations are very common in the conflict zones. Another distinct feature of war- induced displacements is the growing number of war widows and female- headed households. It has been recorded (in 1994) that 21% of the population (excluding the North and East) was female headed and this figure is bound to have increased with acceleration of the war and new recruitments to the military.

Though reforms have been made to the Penal Code (1995) offering a sense of legal equality, it is still problematic the way law, enforcement mechanisms (procedural & administrative) and practice enmesh. Lapses in substantive law have not been wholly addressed; for example where it concerns unnatural offences, incest and marital rape. Records of complaints, media reports and police statistics point to a high incidence of domestic violence. Constitutional guarantees are still lacking to recognize violence against women as a human rights violation. Further, changing social and judicial attitudes in dealing with cases of women victims still remains a major challenge. The National Committee on Women (part of the National Machinery) set up a 'Centre for Gender complaints' in 1999 but structural and institutional barriers constrain effective remedies for women seeking assistance. The special 'Women and Children's Desks' set up in 34 police stations to receive complaints seem inadequately equipped in terms of staff competence, sensitivity and accessibility. Women in general are still reticent to bring forward complaints due to reprisals, lack of knowledge and 'fear of the court'.

## **Governance and Democracy**

The Constitution of 1978 while providing for non- discrimination on grounds of sex, prohibits judicial review of past legislations. Such laws violating constitutional standards and guarantees continue to coexist until there is a parliamentary amendment. Glaring examples are, personal and family laws, women's rights to State

grants of public land, criminalisation of abortion and prostitution. The other limitation imposed on effecting constitutional provisions is the clause that violations can be brought about only if it concerns State parties and not non State violators. With an expanding emphasis on neo-liberal policies and 'freedom of the market', private sector accountability in this area is considered critical.

The absence of public interest litigation under the present constitution is a serious drawback especially in instances where individual women cannot litigate on their own accord. This has meant that rights violations cannot be taken up in the Supreme Court by women's organisations and human rights organisations on behalf of affected parties or in the national interest. Citizen's right to freedom of information has not been included as a fundamental right, which has also contributed to a lack of transparency in political and civic governance. Women's political representation has declined from 4.8% in 1994 to 4.0 % in 2000 - an indicator of women's reluctance towards political participation, the lack of interest of political parties to promote women and the prevailing culture of violence.

### **Employment, Education and Health**

The number of women in the labour force continued to increase within the domestic economy and in the West Asian countries. In 2000, 96.7% of migrant workers were housemaids remitting a total of 20 % the total foreign exchange earnings. But the plight of these workers has not changed much as far as protection of workers' employment rights and terms & conditions of employment are concerned.

In the FTZs, 80% of workers are single women and 70% of the women are between the ages 17-25. Nearly 450,000 workers are employed in the garment industry which amounts to 52% of exports from Sri Lanka. The shift of women's labour into low paid occupations shows a marked increase in the last ten years from 26.5% to 31.0%. The trend is towards feminisation and casualisation of employment especially in subcontracted labour arrangements, which remains unregulated by the formal labour legislation. Women domestic workers are still unorganised and not part of the formal sector. Wage discriminations still exist in some sectors of employment especially in the informal sector. It has been found that in some instances, even existing labour regulations as regards maternity leave and benefits are not implemented in the

private, public sectors and the free trade zones. Paternity leave is still an undecided factor though the Ministry of Women's Affairs tried to initiate legislation. Sri Lanka has also withdrawn from the ILO Convention prohibiting night work for women. Thus there are clear indications that women workers are vulnerable to extreme forms of exploitation, violence and sexual harassment.

Women's household work remains unvalued and uncalculated as productive contribution to the national economy. This is compounded by the given ideology that still regards male as head of households and female heads have been discriminated in accessing social security and other State benefits in certain areas. Attempts by women's groups to remedy this is still under negotiation.

As far as education is concerned, women have had equal rights to education but the regional disparities in accessing quality education remains, due to district wise imbalances. Here again the situation in the North and East has been excluded from the statistical compilations. In these zones of war, multiple displacements and lack of access to education have resulted in deprivations in this regard where both boys and girls are adversely affected.

Gender role stereotyping in the curriculum prevails as much as behavioural expectations and self-perceptions of educators, women and their families regarding 'culturally appropriate' courses. Policy level changes including policy analysis are woefully lacking in this regard.

According to the latest census, overall female life expectancy of 75.4 is higher than the male, which is 70.74. However, with an ageing population and the majority being women, the quality of health care and its outreach is inadequate to cover all sectors and regions. Women needing health care in the conflict zones are exposed to greater risks due to lack/non existence of services as well as inability to access services in time, due to security problems. The differential health status of women inter-regionally, (outside the conflict zones) also remains to be addressed.

An increase in abortions has been observed and most often these are done illegally. The incidence of STDs also shows an increase over the last 3 years. Special needs of

traumatised women of all ages and all ethnic groups are being marginally dealt with by some NGOs, but the problem of dealing with the longer term psycho-social effects has to be a priority for State level policy interventions.

### **Women's Agenda**

Women's organisations, Women's coalitions and the Women's NGO Forum have continuously agitated for peace and against violence and discrimination of all forms. They have also contributed to the debates on meaningful devolution as a means of resolving the ethnic conflict with sensitivity to the issue of women's rights as human rights. Lobbying for policy level changes consistent with the constitutional provisions and international human rights standards will remain on the agenda of women. The Women's Charter of 1993 based on the CEDAW remains to be translated into a legally binding instrument. The National Committee on Women has been mandated with monitoring the implementation of the provisions of the Women's Charter but lacks institutional back up. Converting the National Committee on Women to the proposed National Commission with quasi-judicial functions is still in the making. The National Plan of Action on Women revised in 2000 is yet to be successfully implemented.

## Articles 1 - 4

### **Article 1**

*For the purposes of the present Convention, the term 'discrimination against women' shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment of exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.*

### **Article 2**

*States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and to this end, undertake;*

- (a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realisation of this principle;*
- (b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;*
- (c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;*
- (d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;*
- (e) To take all appropriate measures to eliminate discrimination against women by any person, organisation or enterprise;*
- (f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;*

- (g) *To repeal all national penal provisions which constitute discrimination against women.*

**Article 3**

*States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.*

**Article 4**

- 1. Adoption by States Parties of temporary special measures aimed at accelerating de facto equality between men and women shall not be considered discrimination as defined in the present Convention, but shall in no way entail as a consequence the maintenance of unequal or separate standards; these measure shall be discontinued when the objectives of equality of opportunity and treatment have been achieved.*
- 2. Adoption by States Parties of special measures, including those measures contained in the present Convention, aimed at protecting maternity shall not be considered discriminatory.*

**The Context with Respect to Human Rights and Democracy in Sri Lanka**

The Sri Lankan Constitution of 1978 provides for the protection of the fundamental rights of its citizens in Chapter III. These rights include the right to equality and Article 12 states that all persons are equal before the law and are entitled to the equal protection of the law. The Article further provides that no person shall be discriminated against on certain specified grounds including sex. And further, a more debatable provision states that nothing in this Article shall prevent special provision being made by law, regulations or administrative action for the advancement of “women, children and disabled persons”.

There are some limitations on the effectiveness of the constitutional provisions. Although the Constitution provides for gender equality, there is no provision for judicial review of legislation and courts cannot review laws which were in place prior to 1978 when the Constitution was enacted. Consequently, several laws which violate these standards are still on the statute books and discriminatory administrative action grounded on these laws remains legal. These laws will remain on the statute books until they are amended by Parliament.

Some further limitations on the effectiveness of the constitutional provisions is the fact that remedies for their violation are available only as against the State and not against the private sector. The increasing role of the private sector particularly as an employer makes it imperative that the equality provisions should extend to this area as well.

An action for a remedy consequent to the violation of a fundamental right has to be brought within a one month period of the violation taking place, in effect preventing many women from using the established procedure. The right to freedom of information has not been included as one of the fundamental rights. This enables the executive to take arbitrary action on various issues without being required to base their actions on specified rules or regulations.

There is no provision for public interest litigation in the Sri Lankan Constitution. Therefore only a woman directly affected by the violation of her rights can bring a petition before the Supreme Court for a remedy. However, many women lack the resources to file such actions or may be unaware of their legal rights. The absence of a provision for public interest litigation prevents women's and human rights organisations from filing cases on behalf of affected women who may be unable to do so themselves.

The Sri Lankan Government approved the Women's Charter of 1993 which reflects the provisions of CEDAW and elaborates on the steps the State should take in ensuring the equal rights of women. However, this Charter is only a policy document and has no legal force.

There is a fairly comprehensive national machinery to implement State action regarding the status of women. A Ministry of Women's Affairs at Cabinet level was established in 1988. The Woman's Bureau was set up in 1978 and the National Committee on Women was established in 1993. The Committee is mandated with overseeing the implementation of the Women's Charter. Its most recent venture was to establish a Gender Complaints Unit to receive complaints on gender based discrimination. The Bureau is more project based and focuses mainly on issues such as income generation. The effectiveness of this machinery however is limited.

Violence against women remains the most significant area of indirect discrimination. Although the Penal Code provisions on sexual violence were amended and enhanced in 1995, several shortcomings still exist both in the substantive law and in its implementation. An important omission in this regard is the absence of both procedural and substantive laws which specifically deal with domestic violence.

### ***Land Rights***

The existing legal framework on land rights in the context of State grants of public land to citizens, discriminate against women both in law and in practice. Grants of State land in agricultural colonisation schemes are made to the male with the female spouse receiving no rights. Inheritance rights under the land settlement laws are founded on a concept of primogeniture which favours the male heirs over the female.

The laws on land rights pre-date the Constitution and they remain valid in spite of their inconsistency with the constitutional provisions on equality. Since these laws cannot be challenged in the Courts, State action is required to bring them in line with the constitutional standards. The State has made no effort to amend either the laws or the administrative practices carried out under them.

### ***Commercial Sex Workers***

Sri Lankan law does not criminalise prostitution in itself. The law relating to prostitution is found in the Vagrants Ordinance and the Brothels Ordinance. The former makes provision to arrest those soliciting on the public roads and the latter makes it an offence to live off the earnings of prostitution.

Women engaged in commercial sex work are routinely arrested by the police and charged in court. Women under detention in the police stations are frequently subject to abuse. Fines are imposed on them and if they are unable to pay, they are then sent to State detention homes. Similarly, the police raid brothels and take the women into custody rather than the owners and others involved in procuring. This is, in spite of the fact that the law is intended to penalise the brothel owners rather than those working in them. These laws are also not subject to judicial review and require legislative amendments to make them consistent with the principles of equality in CEDAW.

### **Recommendations**

1. Provisions enabling judicial review of legislation should be introduced into the Constitution of Sri Lanka to enable the courts to review the constitutionality of legislation particularly in the light of the fundamental rights provisions. These provisions should be made applicable to all laws presently in force and future laws.
2. The fundamental rights provisions in the Constitution should be made applicable to both State and private sector in the light of the latter's increasing role in the social, economic and political context.
3. The time period for filing a fundamental rights action should be extended, as the current period of one month effectively precludes many victims of such violations from obtaining redress.
4. Provisions permitting public interest litigation should be introduced into the Constitution enabling interested persons from filing action on behalf of those who are unable to do so, or in order to obtain a judicial ruling on issues of public interest.
5. Provisions of the Women's Charter should be enacted into law and given legal force.

6. Since the Constitution of Sri Lanka makes provision for special treatment for (among others) women, there is nothing to prevent the State from implementing such measures when they are found to be necessary. Therefore such action should be taken in appropriate instances.
  
7. The Optional Protocol to CEDAW should be ratified.

## Article 9

1. *States Parties shall grant women equal rights with men to acquire, change or retain their nationality. They shall ensure in particular that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband.*
2. *States Parties shall grant women equal rights with men with respect to the nationality of their children.*

Sri Lankan women married to foreign men are unable to pass on their nationality to their children, since the citizenship laws specify that married women cannot pass on their citizenship to their children. This issue is grounded in the Citizenship Act of 1948 which cannot be judicially reviewed by the Courts, and it would therefore require legislative amendment to bring it in line with the relevant human rights standards.

### **Recommendation**

1. The laws which preclude the child of a Sri Lankan mother and a non Sri Lankan father from taking his/her mother's nationality be amended to permit the parents to choose the nationality of the child.

## Article 10

*States Parties shall take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education and in particular to ensure, on a basis of equality of men and women:*

- a) The same conditions for career and vocational guidance, for access to studies and for the achievement of diplomas in educational establishments of all categories in rural as well as in urban areas; this equality shall be ensured in pre-school, general, technical, professional and higher technical education, as well as in all types of vocational training;*
- b) Access to the same curricular, the same examinations, teaching staff with qualifications of the same standard and school premises and equipment of the same quality;*
- c) The elimination of any stereotyped concept role of men and women at all levels and in all forms of education by encouraging coeducation and other types of education which will help to achieve this aim and, in particular, by the revision of textbook and school programmes and the adaptation of teaching methods;*
- d) The same opportunities to benefit from scholarships and other study grants;*
- e) The same opportunities for access to programmes of continuing education, including adult and functional literacy programmes, particularly those aimed at reducing, at the earliest possible time, any gap in education existing between men and women;*
- f) The reduction of female student drop-out rates and the organisational programmes for girls and women who have left prematurely;*
- g) The same opportunities to participate actively in sports and physical education;*
- h) Access to specific educational information to help to ensure the health and well being of families, including information and advice on family planning.*

## **Legislation Policies and Regulations – Right to Education**

The Directives of State Policy (1978 Constitution Sec. 27) set a goal of eradication of literacy and universal access to education at all levels. Free education at primary, secondary and tertiary levels was introduced in 1945. Financial incentives have been provided over the years, such as island-wide scholarship schemes at the end of primary education and at entry to university, free textbooks, subsidised transport, two free school uniforms a year and an allowance for the mid-day meal at times. Compulsory education regulations, for which enabling legislation was provided in the Education Ordinance of 1939, were introduced only with effect from January 1998 as a component of the on-going educational reforms. The state has accepted the right of every child to education for over five decades.

Although Sri Lanka ratified CEDAW in 1981, it was the ratification of the UN Convention on the Rights of the Child (1989), the Jomtien UN Declaration on Education for All (1990), and the thrusts of the SARRC Summits on children and the Declaration of the 1990s as the SAARC Decade of the Girl Child that stimulated a complacent administration to re-focus on educational opportunity. The reform proposals of the National Education Commission appointed in 1991 are being translated into action since 1997 - “the year of educational reform”. The Women’s Charter which was accepted as state policy in 1993 but has not been incorporated yet in legislation, reaffirms the concept of gender equality in educational opportunity.

## **Current Situation**

### ***School Enrolment***

Gender disparities in enrolment are minimal in the 5 – 14 and 15 – 19 age groups (Tables 1 and 2). Participation rates are slightly higher for girls in the latter age group in both urban and rural sectors. In fact, there have been over 50% girls in secondary school for more than two decades – 48.5% in grades 1 – 5, 50.5% in grades 6 – 11, and 57.5% in grades 12 – 13 in 1998 (Table 3). “Drop-out” rates are higher for boys (Table 4), except in rural Muslim and plantation labour families. Nevertheless only 55% of the girls and 53% of boys of the 15 – 19 years age group are enrolled in school and around 25% reach grades 12 and 13. Socio-economic constraints however, affect the access of both girls and boys to quality education. In the mid 90 's, 44% girls and 42% boys in the 3 - 5 age group were enrolled in pre-school.

The conflict situation and civil war in the North and East has had an adverse effect on educational opportunities for girls and women as the operation of the school system has been disrupted intermittently. Children in internally displaced families including those in temporary camps have problems in accessing quality services.

Studies have found that gender differences hardly exist in abilities and in performance at the year 5 scholarship examination and in the GCE Ordinary Level examination after ten years of schooling. Grade repetition rates have been lower for girls than for boys over recent decades. At the GCE Advanced Level examination however, more girls than boys qualify for university entrance but a lower proportion are eventually admitted as they fail to achieve the high scores that determine admission. The most striking differences in performances are associated with socio-economic disparities and district wise imbalances rather than gender.

Scholarships are given on the basis of merit and income criteria and there is therefore no gender differentiation.

### ***Literacy***

The cumulative effect of the expansion of primary education has been the rising literacy rates of women from 46.2% in 1946 to 82.2% in 1981 as compared with male literacy rates of 76% and 90.5% in those two census years (Table 5). The expansion of educational opportunity virtually stagnated in the 1980s due to economic reform programmes that have affected the state educational system. There has been an increase in literacy rates in the 1990s to 92.5% male and 87.9% female literacy in 1944 and to 94.3% male and 89.4% female literacy in 1997.

There are no gender disparities in the literacy rates of the population below 45 years - an outcome of the free education policies introduced in 1945. Disparities are wide in the older age groups and literacy or functional literacy has received low priority in an environment of complacency caused by the relatively high literacy rates in Sri Lanka as compared with the rest of South Asia excluding the Maldives.

### ***Curriculum***

Sri Lankan schools have a largely uniform curriculum up to grade 10. Gender based diversification has been seen however in the allocation of students after the common Life Skills programme in grade 6 and 7 to subjects such as wood work and metal work for boys and home science for girls. Common core courses in technical skills are being introduced in Grade 6 to 9 under the current educational reforms. The influence of gender roles stereotypes is seen still in text books and other curriculum materials, in the 'hidden' curriculum, and particularly in the different behavioural expectations of girls and boys in schools in respect of personality qualities. It is also seen in the self-perceptions of girls which lead them to opt for arts courses, for biological sciences in preferences to physical sciences, and for culturally ascribed 'feminine' vocationally related courses.

Sports are a focus of attention in Sri Lanka currently and young women have achieved international distinction, but the differentiation between games suited for women and for men persists in social perceptions.

Education policy or curriculum policy has not made any strong effort to counter the impact of gendered socialisation through the education process. The current reforms will hopefully make teacher education more gender sensitive, as gender issues have been incorporated in the curriculum. Hardly any purposeful action has been taken but CENWOR for instance is hoping to fill the lacunae in gender sensitive materials for use in State institutions.

### ***University Education***

University entrance is highly competitive, and only 3% to 4% of the relevant age group can find places in the 12 universities. Alternative opportunities for higher education are minimal.

The percentage of women in the university student population had increased to 44% by 1970 and was 45.7% in 1998. The percentage of women students of total admission to universities has been around 51% since 1997 and was 51.5% in 1999. The faculty wise distribution of university students reflect gendered social norms. Around 45% to 50% of the enrolment in medical, dental, veterinary, agriculture,

management and around 60% to 70% in arts and law courses are women; but the low percentage of women in engineering related courses - 12% to 14% - has not changed over the last two decades (Table 6).

### ***Vocational Education***

Women are most disadvantaged in the vocational education sector as gender role assumptions limit them to a narrow range of 'suitable' skills. Vocational education facilities in the country are inadequate to meet the needs of female and male school leavers and they have had few linkages with the labour market except in the apprenticeship programme until the on-going educational reforms. Even the existing facilities in technical related training are under utilised by women whose socialisation has created aspirations for 'feminine' courses.

Consequently, around 70% of women students in Technical Colleges are enrolled in commerce and secretarial courses; 85% to 90% of women trainees in the programmes of the Vocational Training Authority, the National Apprenticeship Training Authority, the National Youth Services Council, the Non Formal training courses of the Ministry of Education, and the training centres of the Ministry of Rural Industries are enrolled in sewing, home science and secretarial courses. Representation of women within agriculture courses is low in a country in which half the female labour force is in the agriculture sector. The construction industry uses women in physically arduous tasks, but the enrolment of women in skills training programmes connected to the construction industry is minuscule.

### ***Counselling***

Vocational information and counselling have no place in the education system at present. The counselling programme, which is being introduced in schools, is envisaged to provide some guidance. Technical – vocational authorities are also more conscious of this need in the introduction of reforms in the technical – vocational sector. A frontal attack on gender role stereotypes has yet to come. Only a few NGOs are engaged in promoting advocacy, information and training in 'non traditional' courses. Many women who leave school in search of employment have access largely to low skill jobs such as on – the – job assembly line training in semi-skilled tasks that meet the demand for low cost female labour.

### ***Adult Education***

Adult education has received low priority conceptually. Continuing education for the majority of women takes the form of family health and 'income generating programmes' organised by state agencies and NGOs which have very limited inputs in the skills training and technology required for occupational mobility and economic development.

### ***Teachers and Education Professionals***

Teaching has been attractive over the years as a 'suitable' occupation for women and 67% of teachers are currently women, with disproportionate numbers at lower qualification levels. There is a higher cut off mark for women for admission to teacher education institutions, on the grounds that more women are eligible for admission on performance, while residential facilities for students have been constructed on the basis of a 50:50 student composition. Representations have been made to the authorities regarding this manifestation of gender inequality in access to professional education.

What is more significant is that few women are principals of co-education schools which constitute the majority of schools in the country. Overall, only around 25% of all principals are women. In the Sri Lanka Education Service which comprises administrators and principals of schools, there are no women at the top in class I. In the universities, the position has improved in recent years, as one third of the academic staff and around 10% of Professors are women. It was only in 1999 that a woman was appointed Vice Chancellor of the University of Colombo, the first woman to hold such a high post within the University system. Another woman became Vice Chancellor of the Open University in 2000. Currently, therefore, 16.7% of Vice Chancellors are women.

### **Conclusion**

Women have had equal rights to education in policy, legislation, and substantially in general education over several decades. Impediments to gender equality have been

- (i) the impact of gender role stereotypes on the perceptions of educators, families and women themselves,

- (ii) complacency at official level regarding the need to eliminate them and to monitor the achievement of equality in all educational institutions, and
- (iii) the socio-economic constraints of poverty groups.

The current educational reforms, introduced gradually in the school system, in universities and in technical and vocational education since 1998, provide an opportunity for interventions to counter (i) and (ii). We hope this opportunity will be utilised but curriculum revision and development have yet to be perceived as fruitful strategies in reducing gender disparities in enrolment.

### **Recommendations**

1. The State should resist all pressures to dismantle the scheme of free education which has been a major instrument for promoting gender equality in educational opportunity.
2. The State needs to monitor closely the implementation of compulsory education regulations and to re-activate the moribund local compulsory education monitoring committees.
3. The current scheme of providing a senior secondary school with science education facilities in each administrative division to ensure a more equitable distribution of educational opportunities should be implemented vigorously.
4. Gender sensitive and competent persons should be invited by the State to assist curriculum developers in eliminating gender role stereotypes in educational materials and in introducing appropriate content.
5. The new counselling programme in schools needs to focus also on vocational counselling in order to motivate women to seek entry to more diversified tertiary education and vocational training programmes to facilitate their access to remunerative employment.

6. The practice of using different cut off points for women and men candidates applying for teacher education institutions should be abandoned from 2002.

**Table 1**  
**Educational participation rates**  
**Urban, Rural -1981**

| Age    | Total |      |        | Urban |      |        | Rural |       |        |
|--------|-------|------|--------|-------|------|--------|-------|-------|--------|
|        | Total | Male | Female | Total | Male | Female | Total | Male  | Female |
| 05- 09 | 84.4  | 84.5 | 84.2   | 86.6  | 86.4 | 86.9   | 83.8  | 84.1  | 83.6   |
| 10- 14 | 82.4  | 82.9 | 81.8   | 85.2  | 86.4 | 84.4   | 81.6  | 82.1  | 81.1   |
| 05- 14 | 83.7  | 83.7 | 83.6   | 85.9  | 86.4 | 85.6   | 82.7  | 83.1  | 82.4   |
| 15- 19 | 41.9  | 41.2 | 42.7   | 46.7  | 44.9 | 48.0   | 40.6  | 40.02 | 41.3   |
| 20- 24 | 8.9   | 8.7  | 9.0    | 9.7   | 9.4  | 10.2   | 8.7   | 9.1   | 8.7    |
| 05- 24 | 55.8  | 56.0 | 55.6   | 56.6  | 55.3 | 57.3   | 55.7  | 56.3  | 55.1   |

Source: Based on Census Report 1981

**Table 2**  
**Educational participation rates - 1994**

| Age group   | Total | Female | Male |
|-------------|-------|--------|------|
| 5- 9 Year   | 83.9  | 83.9   | 84.0 |
| 10- 14 Year | 94.4  | 94.4   | 94.3 |
| 5- 14 Year  | 89.5  | 89.5   | 89.4 |
| 15- 19 Year | 54.5  | 55.3   | 53.4 |
| 20- 22 Year | 4.7   | 4.6    | 4.7  |
| 5- 22 Year  | 61.8  | 61.4   | 62.2 |

Source: Demographic Survey 1994, Department of Census and Statistics,

Colombo

**Table 3**  
**Percentage of girls of total enrolment in schools**

| School years     | 1985            |                  |          | 1998            |                  |          |
|------------------|-----------------|------------------|----------|-----------------|------------------|----------|
|                  | Total enrolment | Female enrolment | % Female | Total enrolment | Female enrolment | % Female |
|                  | No              | %                | No       | %               | No               | %        |
| 1 – 5            | 1,898,434       | 914,209          | 48.2     | 1, 801,387      | 873, 633         | 48.5     |
| 6 – 8            | 850,421         | 421,354          | 49.5     | 1, 342,459      | 665, 753         | 49.6     |
| 9 – 11           | 758,440         | 397,719          | 52.4     | 727, 157        | 378, 888         | 52.1     |
| 6 – 11           | 1,608,856       | 819,073          | 50.9     | 2, 069,416      | 1, 044,641       | 50.5     |
| 12 - 13 Science  | 49,144          | 22,682           | 46.2     | 53, 039         | 23, 657          | 44.6     |
| 12 - 13 Arts     | 49,924          | 35,186           | 70.5     | 140, 728        | 94, 096          | 66.0     |
| 12 - 13 Commerce | 33,722          | 18,836           | 55.9     | 70, 268         | 34, 119          | 48.6     |
| 12 - 13 Total    | 132,790         | 76,704           | 57.8     | 264, 035        | 151, 872         | 57.5     |
| 1 – 13           | 3,640,080       | 1,809,986        | 49.7     | 4, 134,838      | 2, 070,146       | 50.1     |

Source: Annual School Census, 1993, 1998, Ministry of Education

**Table 4**  
**School dropout rate by level of education**

| Year | Primary education |       |      | Secondary education |       |      |
|------|-------------------|-------|------|---------------------|-------|------|
|      | Total             | Girls | Boys | Total               | Girls | Boys |
| 1985 | 2.95              | 2.69  | 3.19 | 5.50                | 4.63  | 6.37 |
| 1987 | 2.72              | 2.50  | 2.92 | 6.17                | 5.19  | 7.12 |
| 1990 | 3.25              | 3.03  | 3.45 | 6.27                | 5.30  | 7.20 |
| 1991 | 2.54              | 2.46  | 2.81 | 6.22                | 5.12  | 7.30 |
| 1992 | 2.44              | 2.28  | 2.59 | 5.46                | 4.15  | 6.39 |

Source: Ministry of Education

**Table 5**  
**Literacy by sector and sex**

|                   | Census 1946 | Census 1953 | Census 1963 | Census 1971 | Census 1981 | LF & SE Survey 1985/86 | House hold survey 1991 | Demogr-aphic survey 1994 | Central Bank 1996/97 |
|-------------------|-------------|-------------|-------------|-------------|-------------|------------------------|------------------------|--------------------------|----------------------|
| <b>All Island</b> |             |             |             |             |             |                        |                        |                          |                      |
| Total             | 62.8        | 69.0        | 76.8        | 78.5        | 86.5        | 84.2                   | 86.9                   | 90.1                     | 91.8                 |
| Male              | 76.5        | 80.7        | 85.6        | 85.6        | 90.5        | 88.6                   | 90.0                   | 92.5                     | 94.3                 |
| Female            | 46.2        | 55.5        | 67.1        | 70.9        | 82.8        | 80.0                   | 83.8                   | 87.9                     | 89.4                 |
| <b>Urban</b>      |             |             |             |             |             |                        |                        |                          |                      |
| Total             | 76.2        | 82.6        | 87.7        | 86.2        | 93.3        | 89.1                   | 92.3                   | 93.2                     | 94.5                 |
| Male              | 84.5        | 88.5        | 91.8        | 90.3        | 95.3        | 92.4                   | 94.0                   | 94.8                     | 96.1                 |
| Female            | 65.7        | 74.1        | 82.5        | 81.5        | 91.0        | 86.1                   | 84.3                   | 91.8                     | 93.0                 |
| <b>Rural</b>      |             |             |             |             |             |                        |                        |                          |                      |
| Total             | 60.1        | 66.4        | 70.1        | 76.2        | 84.5        | 84.6                   | 87.1                   | 89.5                     | 92.3                 |
| Male              | 74.7        | 79.0        | 83.9        | 84.1        | 89.0        | 88.5                   | 89.9                   | 92.1                     | 94.5                 |
| Female            | 43.0        | 52.4        | 63.6        | 67.9        | 79.9        | 80.7                   | 84.3                   | 87.1                     | 90.4                 |
| <b>Estate</b>     |             |             |             |             |             |                        |                        |                          |                      |
| Total             |             |             |             |             |             | 59.4                   | 66.1                   |                          | 76.9                 |
| Male              |             |             |             |             |             | 74.5                   | 79.0                   |                          | 87.2                 |
| Female            |             |             |             |             |             | 45.9                   | 52.8                   |                          | 67.3                 |

- (i) Labour Force and Socio-economic Survey 1985/86, Dept. of Census and Statistics
- (ii) Household Income and Expenditure Survey 1990/91 Demography Survey 1994, Dept. of Census and Statistics, Excluding North and East
- (iii) Central Bank of Sri Lanka Consumer Finance and Socio-economic Survey 1996/97
- (iv) Census 1946,1953,1963,1971,1981, Dept. of Census and Statistics

**Table 6**  
**Faculty – wise distribution of university students**

| Facilities                              | 1966  |      | 1975  |      | 1992  |      | 2000  |      |
|---|-------|------|-------|------|-------|------|-------|------|
|   | Total | %F   | Total | %F   | Total | %F   | Total | %F   |
| Medicine                                | 1551  | 28.8 | 1239  | 47.1 | 3869  | 42.9 | 5555  | 43.5 |
| Dentistry                               | 95    | 37.9 | 193   | 55.9 | 407   | 52.1 | 538   | 52.8 |
| Vet. Science                            | 70    | 14.3 | 108   | 49.9 | 261   | 44.1 | 387   | 47.5 |
| Agriculture                             | 83    | 13.3 | 390   | 25.6 | 1517  | 44.6 | 2281  | 49.1 |
| Engineering                             | 571   | 1.9  | 1210  | 10.4 | 3082  | 12.2 | 4224  | 14.9 |
| Architecture                            | 25    | -    | 73    | 28.8 | 211   | 47.4 | 321   | 37.1 |
| Science & App. Science                  | 802   | 24.6 | 1797  | 30.7 | 5640  | 41.6 | 8025  | 41.3 |
| Management Studies                      | -     | -    | 889   | 29.6 | 5555  | 44.1 | 10360 | 48.2 |
| Law                                     | 72    | 26.4 | 144   | 42.4 | 924   | 56.9 | 795   | 71.4 |
| Social Science/ Humanities<br>Education | 10902 | 41.7 | 6425  | 49.4 | 9207  | 55.9 | 15565 | 60.2 |
| Total                                   | 14171 | 37.3 | 12648 | 40.7 | 30637 | 44.4 | 47871 | 47.8 |

Source: University Reports and University Grants Commission

## Article 11

1. *States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular:*

- (a) The right to work as an inalienable right of all human beings;*
- (b) The right to the same employment opportunities, including the application of the same criteria for selection in matters on employment;*
- (c) The right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and recurrent training;*
- (d) The right to equal remuneration, including benefits and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the equality of work;*
- (e) The right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as well as the right to paid leave;*
- (f) The right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.*

2. *In order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work, State Parties shall take appropriate measures:*

- (a) To prohibit, subject to the impositions, dismissal on the grounds of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status;*
- (b) To introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances;*
- (c) To encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibility and participation in public life, in particular through promoting the establishment and development of a network of childcare facilities;*

*(d) To provide a special protection to women during pregnancy in type of work proved to be harmful to them.*

*3. Protective legislation relating to matters covered in this article shall be reviewed periodically in the light of scientific and technological knowledge and shall be revised, repealed or extended as necessary.*

### **Introduction**

In the year 2000 an estimated 2.4 million women 10 years of age and over were counted as being the labour force. The steady increase in the labour force participation of women is reflected in the fact that women's earnings both within the domestic sphere as well as through employment in West Asian countries is critical to the national economy.

### **Proportion of Women in the Workforce**

According to the second quarter 2000 of the Department of Census and Statistics Labour Force Survey, which excludes data from the North and the East of the country, the economically active population of Sri Lanka was estimated at 7.0 million. Of this, 36% are females and 68% are males.

**Table 1**  
**Labour force participation rate by sex and sector**

|            |              | <b>Sector</b> |              |
|------------|--------------|---------------|--------------|
| <b>Sex</b> | <b>Total</b> | <b>Urban</b>  | <b>Rural</b> |
| Total      | 52.0         | 44.6          | 53.1         |
| Female     | 36.0         | 26.6          | 37.5         |
| Male       | 68.0         | 62.4          | 68.9         |

Source: Department of Census and Statistics,  
Ministry of Finance and Planning, 2000

### **Labour Force Participation**

The second quarter 2000 of the Department of Census and Statistics Labour Force Survey indicated that of the 2.4 million women in the labour force, 89.9%, (2.2 million) women were employed while 10.1% (247,207) were unemployed.

The labour force participation rate of both women and men is higher in the rural sector.

The age distribution of women in the labour force indicates that the highest numbers of women are in the economically active category between the ages 30 and 60 years.

**Table 2**  
**Labour force status (current) of the household population**  
**10 years of age and over, by age - female**

| Age         | Labour force                        |   |   |
|-------------|-------------------------------------|---|---|
|             | Labour force participation rate (%) | Employed rate (% to total labour force) | Unemployed rate (% to total labour force) |
| All Ages    | 36.0                                | 89.9                                    | 10.1                                      |
| 15-19 years | 21.9                                | 74.3                                    | 25.7                                      |
| 20-24 years | 53.3                                | 73.2                                    | 26.8                                      |
| 25-29 years | 50.7                                | 86.2                                    | 13.8                                      |
| 30-39 years | 53.8                                | 94.1                                    | 5.9                                       |
| 40-49 years | 49.4                                | 96.7                                    | 3.3                                       |
| 50-59 years | 35.7                                | 98.7                                    | 1.3                                       |

Source: Department of Census and Statistics, Ministry of Finance and Planning, 2000. The Labour Force Participation Rate comprises the labour force (employed and unemployed) divided by the working age population age 10 and above. The Employed Rate comprises the employed divided by the Labour Force.

The labour force participation rate of both women and men is higher in the rural sector.

The age distribution of women in the labour force indicates that the highest numbers of women are in the economically active category between the ages of 30 and 60 years.

**Table 3**  
**Unemployment rate by sex and sector**

|            | <b>Sector</b> |              |              |
|------------|---------------|--------------|--------------|
| <b>Sex</b> | <b>Total</b>  | <b>Urban</b> | <b>Rural</b> |
| Total      | 7.0           | 8.4          | 6.8          |
| Female     | 10.1          | 11.7         | 10.0         |
| Male       | 5.3           | 7.0          | 5.1          |

Source: Department of Census and Statistics,  
Ministry of Finance and Planning, 2000

Data on unemployment indicates that female unemployment is higher than men in both the urban and rural sectors.

The unemployment rate for women is double that of men. The age distribution of the workforce indicates that highest unemployment for women is in the age cohort 15-19 years (25.7%) and the age cohort 20-24 years (26.8%). For men the distribution for the above age cohorts are 20.8% and 17.3%. This shows that gendered responsibilities of marriage and childcare have a greater impact on women's engagement in economic activities compared with men<sup>1</sup>.

Out of the women in the category of employed, women employers comprised 0.8% of total women employed, indicating a decrease from the 1.1% noted in 1995. A similar decrease is noted in the distribution of women in the category of employees from 67.9% in 1995 to 52.7% in 2000<sup>2</sup>.

Almost 45% women in the labour force were in the lower echelons of the labor force; 31% were found to be in the category Unpaid Family Worker (indicates an increase of approximately 50% over the figure in 1995), while 15.5% were found to be Own-Account Workers, (indicating a marginal decrease compared with the figure for 1995).

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<sup>1</sup>Department of Census and Statistics, Ministry of Finance and Planning, Labor Force Survey, 2000.

<sup>2</sup> The ILO definition on International Standard Industrial Classification the employment status categories are as follows: employees (wage and salary workers), employers, own account workers (self-employed) and unpaid family workers.

The changes noted above indicate that while the numbers of women entering the workforce have been increasing steadily over the decade 1990 – 2000, the shift of women workers has been into occupations where remuneration is low, e.g. Unpaid Family Workers where the proportion of women has increased from 26.5% to 31.0%.

### **Potential for Advancement**

In Sri Lanka, while enrollment of women who have received at least a secondary education in vocational training or computer skills training courses has risen, gender-based discriminatory attitudes frame women having equal access to training and programmes for skills development for higher remuneration jobs. Women's capacity to enter male-dominated vocations remain limited by social and cultural norms, and promotions in places of employment are often linked to traditional assumptions about women not giving priority to the workplace due to family problems.

### **Recruitment Practices**

Recruitment and employment practices can be distinguished between the private sector and the public sector. In the public sector, in particular in institutions such as universities, the practice tends to be that recruitment is carried out on the basis of merit, such as for example, education or professional qualifications.

However, in the private sector, there is a greater tendency to view applicants in terms of their gender and assumed capabilities. It is common to see advertisements in the national newspapers calling for applications for jobs on gender specific criteria. E.g. advertisements for applicants to fill vacancies for secretaries are clearly addressed to women; those to fill executive positions in companies are clearly addressed to men.

It is also important to note that the highest rates of unemployment were found to be among women who have obtained better educational qualifications. In 2000, for example, 59% of women with educational qualifications between Grade 0-10 were employed while only 16.5% of women with educational qualifications up to GCE Advanced Level and above were found to be employed.

In terms of the proportion of unemployed women it was found that 36% of women with educational qualifications between Grade 0 and 10 were found to be unemployed

while 33.2 of women with educational qualifications up to GCE Advanced Level and above were found to be unemployed.

### **Provisions to Eliminate Discrimination Against Women in Employment**

The Constitution of Sri Lanka (1978) seeks to ensure gender equality and recognizes that citizens have equal rights. The Women's Charter of Sri Lanka states that women should have equal opportunities in the sphere of employment and wages along with men. It also reiterates women's right to work.

The National Plan of Action (NPA) on Women prepared by the National Committee on Women and the Ministry of Women's Affairs in collaboration with experts from the NGO field outlines the strategies for the implementation of the Women's Charter of Sri Lanka. The NPA on Women was being revised in 2000 in the light of changes that have taken place in the country since it was first formulated. The revisions to the NPA indicate that in relation to women's access to and status in employment, little has changed.

While efforts to make public the Women's Charter and to involve representatives of other government institutions in discussions on issues contained in the NPA on Women took place in 2000, the response to its successful implementation remains poor.

### **Measures to Promote Equal Employment Opportunities**

There is no policy, which overtly calls for equal opportunities for employment for women and men. In 1999, the government drafted a bill on Equal Opportunities to be tabled in Parliament. The draft sought to guarantee the rights of women as well as a number of other categories of persons to equal opportunities in terms of employment. The draft bill received mixed reactions from the constituencies approached by the government, though overall the response was not negative.

However, the recurrent focus on the on-going ethnic conflict as well as lack of strong political support saw discussions on the draft failing to make the desired impact. The draft appears to have been withdrawn from the public at present.

**Table 4**  
**Currently employed persons by hours per week actually worked (percentage)**

| Total  | 0*   | 1-9 | 10-19 | 20-29 | 30-39 | 40-49 | 50 & over |
|--------|------|-----|-------|-------|-------|-------|-----------|
| Female | 16.2 | 4.5 | 12.4  | 15.3  | 15.2  | 24.8  | 11.6      |
| Male   | 12.4 | 2.4 | 8.8   | 13.6  | 13.5  | 28.0  | 21.4      |

\* Has a job but not at work during the reference week

Source: Department of Census and Statistics,  
Ministry of Finance and Planning, 2000

### **Working Day**

The available data is not classified in terms, which indicate if a person is working full time or part time. It is possible, however, to give some indication through Number of Hours worked in employment by women and men per Week

Since current available data classifies work as only that which is remunerated, the national surveys do not indicate the number of hours worked for both remunerated and unremunerated work, including engagement of housework. Hence the data excludes women's primary contributions to the economy.

### **Women in Subcontracting Work**

Many women work in their homes doing piecework or outwork. Their products range from foodstuff to beedies (small cigars), artificial flowers, parts of footwear, garment manufacture, and embroidery as well as cultivation of cash crops for export (eg.gherkins).

This area of employment is not covered by labour legislation that applies mainly to the formal sector employees. Hence workers employed in subcontracted production are not entitled to benefits such as sick leave or holiday pay. The wages for such activities are low compared to other employment and is linked to production of a 'target' rather than on any computation of the number of hours worked.

There is a dearth of facilities provided by either the Municipality or the private sector for low-skilled and self-employed women who work in urban settings as fruit sellers, traffic wardens etc. Public sanitary facilities are almost non-existent for women, and

the general public has little or no access to safe drinking water within the municipalities.

### **Occupational Characteristics**

While there are few laws which specify criteria for employees, positions such as secretaries in companies or in government institutions are generally filled by women; while jobs such as executives in companies or in the armed forces, Bank Managers or airline pilots tend to be male dominated. Overall, positions of decision-making and authority are taken by men while those in the lower ranks of administration are given to women.

### **Domestic Work**

At present, domestic helpers do not have regulated working hours, rest days or holidays, medical facilities, gratuity and employment benefits enjoyed by law by other workers. Any such benefits a domestic worker may receive depends entirely on the decisions of individual employers. An old 1871 Domestic Servants Ordinance provides only for the protection of the employers in the case of domestic servants with previous convictions. Women who work as domestic aides in Sri Lanka are not covered by any labour legislation and fall within the definition of the informal sector.

In recent years, there have been a number of media reports on ill treatment of child domestic workers in the country, which has resulted in the setting up of a Child Protection Authority to ensure that the rights of children are protected. However, such a body to protect adult domestic workers (the majority of whom are women) is yet to be set up. In 2001, there has been more discussion among NGOs to lobby for legislation to protect domestic workers in the country; as yet, these initiatives are new and are being developed upon.

### **Migrant Workers**

Sri Lanka has recently ratified the International Convention on the Protection of the Rights of All Migrant Workers and their Families.

In 2000, an estimated 89,000 women were employed as housemaids in West Asian countries and some East Asian countries to work as domestic aides. This comprises

96.7% of all migrant workers from Sri Lanka employed in West Asian countries.<sup>3</sup> Remittance from migrant workers accounted to approximately Rs. 87 million in the year 2000 compared to Rs. 74 million in 1999.

Many of these migrant workers enter into contracts with unscrupulous employment agencies and work in conditions of virtual slavery. In 1997, the government enacted laws that bring private sector foreign employment agencies under some degree of control by stipulating that contracts entered into by migrant workers and foreign agencies should be binding and embassies in all recruiting countries be compelled to register all foreign agencies with them. The Sri Lanka Bureau for Foreign Employment (SLBFE) has in recent years been making a concerted effort to ensure that women migrant workers are registered with the SLBFE along with offers of several packages such as insurance schemes and child benefits, to try to protect some of the rights of these workers prior to them leaving the country.

Since 1998, The Ministry of Labour was able to come to some agreement on labour contracts for prospective migrants with job agents in a few receiving countries (e.g.Saudi Arabia, United Arab Emirates). However, the protection of the rights of workers to these countries remains uncertain and for the most, women migrant workers fall into what can be called the International Informal Sector.

An issue which has been the focus of several NGOs lobbying for the rights of migrant workers has been that of ensuring that Sri Lankans working overseas are enabled to vote at all elections in the country. This campaign was launched in December 2000 by a coalition of organisations comprising women's organisations, human rights groups, community based organizations, the Migrant Services Centre, and some trade unions and calls for the Commissioner of Elections to bring in relevant amendments to election law and the setting up of required procedures to enable workers overseas to exercise their right to vote.

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<sup>3</sup> Analysis based on provisional data for 2000 provided by the Sri Lanka Bureau for Foreign Employment.

### **Working in the FTZs**

In 2000 the government bowing to pressure from investors in manufacturing, proposed changing the provision of 100 hours of compulsory overtime per year to 100 hours of compulsory overtime per month. This change was to affect all workers in manufacturing including those in the FTZ. However, due to protests from unions and other organisations working on the rights of women workers, the number of compulsory overtime hours was reduced to 70 per month.

The workers in the FTZs as well as in manufacturing are usually compelled to sign contracts that are often illegal both according to Sri Lankan labour laws and ILO standards. These contracts stipulate a number of conditions including the following: that they should agree to work overtime when asked to do so and, that they should agree to resign when they get married. An earlier 'informal' ban on unionization was revised in 1998 with an amendment to labor law that allows some degree of unionization of workers within the FTZ.

A Presidential Task Force was appointed following these protests in 2000, to make amendments to the Wages Board Ordinance, to make compulsory two weeks notice prior to strike action, amend the Termination of Employment Act with the intention of making the environment more amenable to employers at the expense of the rights of the employees.

Many women workers in the FTZs work, sleep and live under appalling conditions, and do not seek recourse from Labour Tribunals due to their ignorance or fear of retrenchment. Their employers cannot be called to order under the constitutional guarantees that prohibit gender discrimination, because the latter does not apply to private sector employers. This problem will be remedied if national legislation is brought, extending the prohibition against gender discrimination to all employers, whether public or private.

Unions working outside the FTZs which work on the rights of workers have lodged protests regarding these proposed amendments as well as the conditions of employment of workers.

The year 2000 also saw a gradual decrease in the number of factories operating in the FTZ as investors have found other more lucrative locations to situate their enterprises. This development and the ensuing trend of retrenchment of workers reflect a serious detrimental impact on employment opportunities for women within the FTZs in the future.

### **State Sponsored Programmes for Women in Non-Traditional Employment**

The government does not actively ensure that opportunities are opened up for women in occupations that are not traditionally pursued by women. However, the Ministry of Women's Affairs has a record of initiating interventions to facilitate women's entry into such areas. NGOs have a longer history of such interventions and some have recorded the successful entry of women into skilled employment as electricians, auto rickshaw drivers etc.

The National Apprenticeship Board that was set up by the State has training courses for both women and men. Despite over a decade of such trainings, the ideology remains clearly gender biased with women continuing to be guided into skills training in sewing, cooking and weaving while men are encouraged into skills training in areas such as welding, carpentry and electrical wiring etc.

### **Equal Pay for Equal Work**

Under the Equality Provision of the Constitution, it can be interpreted that there should be no discrimination in wages paid to women and men for equal work. However, clear differentials continue to exist in different sectors of employment, primarily in the non-State sector.

In the public sector, high level and middle level personnel are entitled to receive equal remuneration while equal wages for manual labour was introduced in the plantation sector in 1984 and, soon after in occupations under the Wages Board Ordinance.

In the agricultural sector and the informal sector where the majority of working women are to be found, there is clear discrimination in wages paid to women and to men. The daily wage rate for a woman agricultural worker is around Rs. 100-150 while the rate paid to men is never less than Rs. 200. Such discrimination is carried

out on the basis of 'customary practices' where women's labour is considered to be of less value than that of men.

It should be noted that the current proposals by government to accede to pressure from employers to abolish the Wages Board Ordinance could drastically change the degree of equality of wages and the rights of workers in the formal sector and make these workers as vulnerable as those in the informal sector.

### **Legal Framework**

Sri Lanka has not ratified the ILO Convention 111 pertaining to Discrimination in respect of Employment and Occupations (1958).

Workers in the formal sector including labourers and unskilled workers are covered by existing labour laws and are entitled to such benefits as employment provident fund, sick leave and maternity leave. There are little provisions for disability benefits (unless a person is in the armed forces) and no old age benefits apart from the employment provident fund.

Employment of women in the service sector, in shops, restaurants and so on is guided by the Employment of Women and Young Persons and Children Act No.47 of 1956. Women workers in these sectors can, under Section 10 of the Shop and Office Employees Act (Regulation of and Remuneration) Act No. 19 of 1954 obtain 84 days of maternity leave with full pay for the first 2 children; the leave allocation is 42 days for any subsequent children.

Formal sector women workers are entitled to benefits during pregnancy and after delivery under the Maternity Benefits Ordinance. In the late 1980s, maternity leave and benefits were extended from 6 weeks to 84 days (approximately 4 months), for two pregnancies with subsequent nursing intervals. For 3 months before and after the confinement, a woman cannot be given tasks that may be dangerous to the mother or the child.

However, violations of these regulations have been found in the formal sector including in the FTZs. There is little or no provision for nursing intervals in either the

private or the public sectors. There are also instances where women have lost their jobs or were being obstructed from promotions as a result of using their maternity leave and benefits entitlements.

In 2001 the Ministry of Women's Affairs attempted to initiate discussion to bring in laws which would grant paternity leave for a maximum period of one week to enable fathers to participate in and share childcare at the birth of a new child. While public reaction was mixed it was overall positive. However, when the Minister at the time made observations to this effect in parliament, it was met with general disdain and the proposal was not prepared as a cabinet paper to obtain approval to proceed with drafting new legislation.

The Penal Code Reforms of 1995 for the first time introduced legislation criminalising sexual harassment. This legislation applies to such incidents, which may take place either in the workplace or in public places and if the accused is found guilty can face prison sentences of up to 5 years. While many women's groups welcomed this development, it has to be noted that at present the number of cases reaching the courts is extremely low. Women's organisations in particular have been active in attempts to raise awareness among women and among the public in general as well as among private sector companies on the criminal aspect of sexual harassment; however, it has to be noted that without accompanying State adoption of such strategies island wide, victims may remain largely unaware or lack confidence to use the legal measures available. Prevailing norms based on gender discrimination also weigh heavily against women victims in persuading the authorities to take note of such violations.

### **Women's Work in the Home**

Despite attempts by NGOs and other concerned persons to lobby for the recognition of housework as contributing to the national economy, women's work in the domestic sphere remains unaccounted for in the national statistics of the economically active population. In the year 2000, the Department of Census and Statistics recorded that 4.3 million women, almost twice the number of women categorized as employed (and thus receiving wages or salaries), were estimated be 'not in the labor force'.

## **Age of Retirement**

The mandatory retirement age for women and men is 55 years in the public sector. In certain circumstances, this could be extended up to 60 years. In the private sector, the age of retirement tends to be more flexible and an employee may work up to 65 years before retirement.

## **Social Security and Work-Related Benefits**

In the formal sector, women and men contribute equal proportions of wages/salaries towards their employment provident fund/pension scheme. In addition to the Employees Provident Fund and Employers Trust Fund, a gratuity is also made to all public servants, plantation and service workers and all employees of the State Corporations and Companies. In recent years, women public servants have been brought within social security schemes available to men (Widows and Orphans Pension Fund Act 1983).

In the formal sector both women and men are entitled to the pensions of their spouses.

In general where social security provisions exist, both women and men are entitled to these benefits. However, the emergence of *female headed households* as a significant proportion of households in the country, (an estimated 21% of all households excluding the North and East), in the last two decades has resulted in such women being discriminated against accessing some of these benefits. Poverty Alleviation programmes geared to the upliftment of the quality of life and economic security of poor households as well as State housing programmes continue to regard the male as head of households and women heads of households tend to be overlooked in eligibility criteria applied.

## **Employment Security**

### ***Dismissal of Women Workers***

Dismissal of women on the grounds of pregnancy or marital status is prohibited under the labour laws of the country. However, as noted above, such incidents occur and are largely uncontested by those dismissed.

### ***Paid Leave and Flexible Work Hours***

The country has provision for paid leave and such leave is equally available to women and men. In general there is little provision for flexible working patterns such as job-sharing or permanent part-time employment. Such practices are found in a few private sector institutions.

### ***Marital Status***

By law marital status does not affect job security. However, in practice, marital status is considered to be important. For example, employment in the FTZs is primarily given to unmarried young women; airline hostesses are also mostly young unmarried women. NGOs continue to report that where applicants for jobs are called for interviews, married and/or pregnant women are more likely to be discriminated against.

### ***Health and Safety Laws for Women***

The country has an extensive network of health services around the country that are largely provided by the State free of charge. Most formal sector enterprises are expected to be covered by existing health and safety regulations under the Labour Ministry. However, there are only a few institutions, which are mainly in the private sector, which have special provisions to protect pregnant women workers.

Sri Lanka withdrew from the ILO Convention prohibiting night work for women and has yet to ratify the new ILO Convention on Home-based Workers.

### ***Childcare Facilities***

With the increase in the number of women joining the labour force, there has been a significant expansion in small-scale childcare centres particularly in the urban areas of the country. However, these are enterprises run by family concerns or as small business and largely do not fall under any health and safety regulatory stipulations. These institutions are mostly staffed and managed by untrained personnel. There has been growing pressure on the State to ensure such regulations are met with but as yet the response from the State has been poor.

Most school age children whose parents work longer than the school day are cared for by other family members in the home or in the neighbourhood.

### ***Nursing Breaks for Employed Women***

Nursing breaks for breast-feeding mothers is required by law in the formal sector. In practice, such breaks are time restricted and thus do not enable women to make use of the break or are not permitted to do so due to pressure from employers who could penalize the woman citing loss of productivity.

### ***Unionisation of Women Workers***

Most formal sector enterprises/institutions are unionized – with the exception of the majority of enterprises in the FTZs and smaller sweatshops outside the FTZs where most of the workforce is female. Although in general, males are the majority of union membership, there are significant numbers of women union members as well. In the plantation sector, the bulk of the union membership is made up of women; however, women are rarely seen in the decision-making positions of labour unions.

### **Recommendations**

1. It is clear that women continue to be viewed as cheap labour to be utilized with or without remuneration commensurate with qualifications and/or capabilities. The State should institute policies which will ensure that avenues for training and skills upgrading for women are concretely manifest in the implementation of programmes such as the vocational training and youth services counseling/training.
2. The continued bias in employment policies, which favour low skilled and less educated women who can be recruited for lesser wages need to be addressed urgently by the State. The State should put into place legislation and implement policies which guarantees Equal Opportunities for women and men.
3. There is urgent need to reformulate criteria for assessing the multiple economic activities of women whether in the agricultural sector, the urban sector, the estate sector or within the household.
4. There is urgent need to adopt criteria in national surveys that would measure women's economic contributions both within and without the domestic sphere.

5. Existing labour laws need to be revised to include informal sector workers within the framework currently available to workers in the formal sector in terms of wages, leave as well as working conditions.
6. Labour legislation should be revised to address the rights of Domestic Workers, most of whom are women.
7. The Ministry of Labour and the Ministry of Women's Affairs together with the Office of the Commissioner of Elections need to strongly recommend and follow through legislation which would ensure the franchise of migrant workers from Sri Lanka.
8. The State should develop concrete measures to guarantee employment opportunities to all those workers retrenched from employment in FTZs.
9. The government should take all possible measures to guarantee that the rights of workers assured under current labour legislation is protected.
10. The Ministry of Women's Affairs in collaboration with the Ministry of Justice should take all necessary steps to ensure that all legal professionals are aware of current legislation in relation to sexual harassment and rape.
11. State should ensure that these households have equal access to all social security benefits of the State.
12. The concept of the head of household needs serious and urgent review especially in the light of joint household heads.

## Article 12

1. *State parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health services including those relating to family planning.*
2. *Notwithstanding the provision of paragraph 1 of this article State parties shall ensure to women appropriate services in connection with pregnancy, confinement and the post natal period granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.*

### **Introduction**

The population of Sri Lanka has increased from 17,865,000 in 1994 to 19,043,000 in 1999. The average annual growth rate from 1981 to 2001 is 1.2 according to the most recent census carried out in 18 out of the 23 districts in Sri Lanka in 2001. This census also indicates that the total number of females outnumber males by 176,616, (Dept of Census and Statistics). During the period 1946 to 2001 the sex ratio has decreased from 113 in 1946 to 97.9 in 2001. The life expectancy at birth during the period 1996 to 2001 for both sexes was 73.0 and the figure for males was 70.7, and 75.4 for women.

The census of 2001 also revealed that the population under the age of 18 years has declined from 41.6 in 1981 to 32.9 in 2001, which indicates a narrowing of the population age pyramid at lower ages, attributed to decline in fertility.

Table 1 and 2 shows a significant decline in the sex ratios for all age groups. This trend is also seen in the age specific sex ratios in the Demographic Health Survey of 1994 when compared to the sex ratios of the 1981 census. Further the sex ratios in 1994 were below 100 in the age groups between 20 and 74, resulting in a higher concentration of women in the older age groups. Hence the population of Sri Lanka has become relatively older, with increasing life span, the majority being women.

**Table 1**  
**Sex ratio of the population (1946 -2001)**

| <b>Year</b> | <b>Sex ratio</b> |
|-------------|------------------|
| 1946        | 113.0            |
| 1953        | 111.5            |
| 1963        | 108.3            |
| 1971        | 106.1            |
| 1981        | 104.0            |
| 1994        | (97.4)           |
| 2001        | (97.9)           |

Source: Dept: of Census and Statistics  
( ) excludes eastern and northern provinces

**Table 2**  
**Age specific sex ratio, 1981 and 1994**  
( excludes northern and eastern provinces)

| <b>Age Group</b> | <b>Sex Ratio 1981 *</b> | <b>Sex Ratio 1994 **</b> |
|------------------|-------------------------|--------------------------|
| All ages         | 103.7                   | 97.4                     |
| Less than 1 year | 104.1                   | 100.9                    |
| 1-4              | 103.8                   | 102.7                    |
| 5-9              | 103.6                   | 103.2                    |
| 10-14            | 104.1                   | 101.2                    |
| 15-19            | 102.7                   | 100.1                    |
| 20-24            | 100.3                   | 93.0                     |
| 25-29            | 99.8                    | 91.2                     |
| 30-34            | 102.0                   | 93.1                     |
| 35-39            | 100.6                   | 96.0                     |
| 40-44            | 106.0                   | 97.3                     |
| 45-49            | 102.0                   | 97.3                     |
| 50-54            | 111.4                   | 95.5                     |
| 55-59            | 110.2                   | 93.1                     |
| 60-64            | 116.2                   | 95.0                     |
| 65-69            | 111.0                   | 96.3                     |
| 70-74            | 115.7                   | 94.6                     |
| 75 and over      | 107.3                   | 101.9                    |

Source: \* Population Census 1981  
\*\* Demographic survey 1994

## **Measures to Eliminate Discrimination Against Women in the Field of Health Care**

In Sri Lanka there is no formal or structural discrimination against women in terms of access to health care.

### ***Pregnancy and Maternal Health***

Maternal health has been given high priority, both in the preventive and curative sectors of the Ministry of Health. At grass root level, trained Public Health midwives/Family Health Workers (one per 3000 population) monitor the health of pregnant and lactating mothers and children during home visits. Mothers are referred by them to antenatal clinics within easy access of pregnant mothers.

Two specialised hospitals in Colombo cater exclusively to women. All government hospitals ranging from the Central Dispensary and Maternity Home to the Provincial hospitals have maternity wards for pregnant mothers and female wards for women. The Provincial and Base hospitals have specialist services for pregnant mothers and women in general.

It has been reported that in some estate areas and very remote areas including areas exposed to conflict the health care available during the antenatal, natal and postnatal period is inadequate if complications were to arise. Delay in transferring mothers requiring specialised care to Base and Provincial hospitals due to lack of transport has contributed to maternal morbidity.

In some very remote areas with limited or absence of transport facilities, mothers are greatly inconvenienced, as they have to walk 2 to 3 miles to reach the closest antenatal clinic.

### ***Cost of Medical Care for Women***

Medical care at all government hospitals is provided free of charge to both men and women. However quality and quantity of health care available for all sectors of the population is not uniform in all areas of Sri Lanka. In the more remote areas, quality of health care is poor. In the areas exposed to conflict (uncleared areas), there is a skeleton staff of Medical Officers and midwives supervised by Medical Officers from

the NGO Consortium. They refer cases to the Base Hospitals and patients are transferred by ICRC. For instance, in Vavuniya Base Hospital there is a Consultant in Obstetrics and Gynaecology as well as in the Provincial Hospitals of Trincomalee, Batticaloa, Kalmunai and Ampara. Shortage of staff is noted in Mannar. Economic and security problems mean that people from these areas do not have the possibility to access even the available health care services.

### *Nutritional Status of Women*

It is well known that the incidence of low birth weight is a very sensitive indicator of maternal health and nutrition, as well as the health status of a country. In Sri Lanka the incidence of low birth weight (when compared to other countries of the region) is not in keeping with the reduced maternal and infant mortality rates, although percentage access to health facilities is comparatively high in Sri Lanka (See Table 3).

**Table 3**

| <b>Countries in the region</b> | <b>Percentage access to health services *</b> | <b>Percentage incidence of low birth weight **</b> | <b>Maternal mortality rate/100,000 live births ( 1990)</b> | <b>Infant mortality rate (1990-1996) **</b> |
|--------------------------------|---|--|--|---|
| Sri Lanka                      | 93  | 25   | 140  | 17  |
| Pakistan                       |   | 33   | 340  | 95  |
| Bangladesh                     | 45  | 50   | 850  | 83  |
| India                          | 85  | 33   | 570  | 73  |
| <b>Developed countries</b>     |   |  |  |   |
| Australia                      |   | 6  | 9  | 6   |
| Canada                         |   | 6  | 6  | 6   |
| United Kingdom                 |   | 7  | 9  | 6   |
| United States                  |   | 7  | 12   | 8   |

Source: \* State of the World's Children 1996 UNICEF

\*\* State of the World's Children 1998 UNICEF

It is also seen in Table 3 that the rates in Sri Lanka and other developing countries are much higher than the rate in developed countries. Within Sri Lanka there is a wide variation of these rates. e.g. Percentage incidence of low birth weight ranges from 36.3 to 12.5 in the different districts. The annual report on Family Health for 1998

states that data on incidence of low birth weight are not available for 1997 and 1998, as many surveillance points have not reported. Although low birth rate reflects a state of under-nutrition in mothers other factors have also to be analysed such as hypertension. The prevalence varies from 18.6% in the estate sector to 15.6% in metro Colombo and 10.9% in other urban areas. Data from Jaffna and other conflict areas in the Annual Health Bulletin reveals a low figure but accuracy could be doubted because of access to State Medical Institutions. Since the percentage of low birth weight is a very sensitive indicator of maternal and child health and also the health of a country, it is imperative that these surveillance points be revamped and accurate data obtained, in order to detect areas of high incidence; so that cause for same could be identified and necessary action taken to improve the health and nutrition of mothers in such areas. It is well known that malnutrition in pregnant women leads to low birth weight babies with a series of lasting repercussions on both mother and child. Only 10% of women in Sri Lanka gained more than 8kg during pregnancy, whilst many women failed to gain even 0.2kg per week in 46% of women followed up in late pregnancy. It was concluded that their energy and protein intakes were insufficient to meet the increased demands in pregnancy (CENWOR). The approximate overall weight gain in pregnancy was 317grams per week which is much lower than those reported for developed countries (WHOSEARO). Low haemoglobin levels were observed in 58.3%. Of these 23.4 % were severely anaemic (CENWOR). Both iron and folate deficiencies were noted, as also hook worm anaemia (CENWOR).

Studies on anaemia in pregnancy are afoot. Preliminary results show percentages varying from 10.7% - 26.1% in Moneragala, 24.8% in Anuradhapura with an average of 16.9% in women 18 – 49 years of age. However, 27% of pregnant mothers could be anaemic. Other associated clinical status has not been analysed yet.

The State seeks to ensure that women receive adequate nutrition during pregnancy and lactation through

- nutrition awareness programmes at antenatal clinics and home visits by public health midwives
- nutrition demonstration programmes at antenatal clinics and at village level

- issue of Thriposha ( a nutritional supplement) to all pregnant and lactating mothers
- issue of micronutrients such as iron tablets, vitamin C, folic acid etc at antenatal clinics
- issue of anti-helminthics at clinics
- monitoring of weight gain of mother at antenatal clinics.

Maternal weight gain is not recorded universally. Though provision of health services is recorded as 98% in the recent Census Survey (Preliminary report – 2001) 97% of pregnant mothers were assisted by trained personnel at delivery. Ninety percent of women have received two doses of tetanus toxoid. Ninety one percent of rural women have received this and is a higher percentage than other sectors. The lowest percentage is in the estate sector viz 82%. This is in respect of the first child.

### **Health Facilities and Personnel Available for Women in Sri Lanka**

All government hospitals conduct antenatal and family planning clinics, whilst the Medical Officers of Health conduct antenatal and family planning clinics in the field. At antenatal clinics too, nutrition education and health education are provided for mothers, whilst a complete physical examination is undertaken at regular intervals to detect risk conditions. Nutritional supplement Thriposha, Vitamins, iron tablets, calcium tablets etc. are distributed to pregnant mothers and Tetanus toxoid is also administered at antenatal clinics.

Of the estimated pregnant women needing antenatal care, approximately 93.6% at least once attended the MCH clinic conducted in the field and smaller institutions in 1998, which is an improvement of the 1997 figure, which was 89%.

Family planning clinics are also held at all government medical institutions, and in the field, public health midwives distribute condoms and oral pills. In the Government sector there are 865 centers established island wide for insertion of the intra uterine contraceptive device, and 119 medical institutions with sterilisation facilities.

### ***Female Mortality and Morbidity***

The maternal mortality rate in Sri Lanka has declined dramatically over the past 50 years from 155 per 10,000 live births in 1946 to 2.33 per 10,000 live births in 1996 (Family Health Bureau). However the figure ranges from 0 in some areas to 14.3 in others. Investigation of causes of maternal deaths is being undertaken and the main causes are given in Table 4.

**Table 4**  
**Main causes of maternal mortality in Sri Lanka 1998**

|  |            |
|--|------------|
| Haemorrhage                                  | 25% (43)   |
| Heart disease complicating pregnancy         | 12.2% (21) |
| Pregnancy induced hypertension and eclampsia | 10.4% (18) |
| Sepsis                                       | 9.9% (17)  |
| Abortions (septic)                           | 7.0% (12)  |
| Hepatitis complicating Pregnancy             | 5.8% (10)  |
| Anaemia complicating pregnancy               | 4.7% (08)  |
| Complications of Anaesthesia                 | 2.3% (04)  |

Source: Annual Report Family Health Bureau-1998

"The majority of Maternal deaths are preventable and good maternal care especially during the intranatal and postnatal periods could cause an effective reduction of maternal deaths in Sri Lanka. Hepatitis and anaemia which are responsible for 10.5% of maternal deaths, if identified early by service providers can be referred by them for necessary specialised care and such deaths could be avoided" (Family Health Bureau).

Maternal mortality is low but the incidence of that due to septic abortions can vary from 10% - 30% of maternal mortality. Attention to this must be highlighted both in terms of statistics and aspects of legalisation and prenatal foetal testing. Since this is mostly among married women, awareness or lack of family planning needs correction.

### ***Infant and Child Mortality***

According to gender differences in mortality in Sri Lanka during the period 1900-1988 the infant mortality rates were higher for boys (21.7) than girls (18.5) (Fernando). The preschool child mortality rate was the same for both sexes (1.3) and the 5-14 age group mortality rate was also a little higher for boys.

### ***Average Life Expectancy for Men and Women***

The overall life expectancy at birth has increased from 42.8 years in 1946 to 73 years during the period 1996-2001. From 1967 female life expectancy has overtaken male life expectancy (Table 5).

**Table 5**  
**Expectancy of life at birth (1921-2001)**

| <b>Year</b> | <b>Male</b> | <b>Female</b> |
|-------------|-------------|---------------|
| 1920-1922   | 32.7        | 30.7          |
| 1946        | 43.9        | 41.6          |
| 1953        | 58.8        | 57.5          |
| 1963        | 61.9        | 61.4          |
| 1967        | 64.8        | 66.9          |
| 1971        | 64.2        | 67.1          |
| 1981        | 67.1        | 71.7          |
| 1991        | 69.5        | 74.2          |
| 1996-2001   | 70.74       | 75.4          |

Source: Department of Census and Statistics

"The widening gap between the 2 figures reflects a dramatic improvement in survival of one of the most vulnerable groups exposed to high risk of mortality, mainly women in the child bearing age" (Ministry of Health).

### ***Crude Birth Rates and Death Rates***

The crude birth rate has declined from 40.6 in 1921 to 17.3 in 1998 (Registrar Generals Department). "The initial fertility decline was mainly due to the change in

female age structure and rising age at marriage, thereafter increased contraceptive practice became the dominant factor" (Department of Census and Statistics).

"The crude death rate too has declined over the years mainly due to eradication of malaria (1946-1949), extension of health services to rural areas, and improved nutrition" (Ministry of Health). In 1921 the crude death rate which was 31.1 declined to 5.9 in 1998 (Registrar Generals Department).

#### ***Percentage of Women Receiving Prenatal Care***

"Approximately 73% of pregnant women were registered for antenatal care before 4 months while 2.6% were registered only after the 6<sup>th</sup> month; the balance being registered between the 4<sup>th</sup> and 6<sup>th</sup> month. Since early commencement of antenatal care is vital, it is essential that at least 85% of pregnant women be registered before the 4<sup>th</sup> month". This means closer supervision is required especially in areas where incidence of late registration is high.

#### ***Percentage of Pregnant Women Receiving Trained Assistance at Delivery***

In 1999 almost 92.7% of deliveries took place in medical institutions (Medical Statisticians Unit). Of the total deliveries reported by public health midwives 2.5% were carried out at home. However it must be noted that 2200 of the reported 250,470 home deliveries did not have trained assistance at delivery. The proportion of untrained deliveries was high in areas exposed to conflict where transport is a major problem. "It is essential that programme managers make suitable arrangements for mothers to have access to medical institutions for delivery" (Family Health Bureau).

#### ***Post-natal Care***

"Approximately 83% of the reported deliveries received post natal care at least once by the area Public Health midwife within the first 10 days of delivery, and an average of 2.7 visits per mother during the first 10 days after delivery. This showed a marked improvement in the postnatal visits by Public Health Midwife during 1998 as compared to the previous year" (Family Health Bureau).

#### ***Well Women Clinics***

Due to the increasing population of women in the older age groups and high incidence of malignancies of the reproductive system, approximately 300 Well Women Clinics

have been established by the Government Sector. These clinics are located in Government medical institutions and conducted by the Medical Officers of Health. Screening for Hypertension, Diabetes, breast examination and Pap smears are undertaken at these clinics.

### ***Family Planning***

The average age at marriage is 24.6% years and contraceptive prevalence rate has risen to 71%.

**Table 6**  
**New acceptor rates per 1000 married women 1986-1998**

| <b>Year</b> | <b>Permanent methods</b> | <b>Temporary methods</b> | <b>All methods</b> |
|-------------|--------------------------|--------------------------|--------------------|
| 1986        | 22.0                     | 37.6                     | 59.6               |
| 1987        | 16.9                     | 38.9                     | 55.9               |
| 1988        | 9.2                      | 39.3                     | 48.5               |
| 1989        | 7.8                      | 41.1                     | 48.9               |
| 1990        | 12.1                     | 45.5                     | 57.6               |
| 1991        | 16.0                     | 48.5                     | 64.5               |
| 1992        | 16.4                     | 53.3                     | 69.7               |
| 1993        | 14.8                     | 50.7                     | 65.5               |
| 1994        | 14.4                     | 52.7                     | 67.1               |
| 1995        | 12.6                     | 56.6                     | 69.3               |
| 1996        | 13.8                     | 60.8                     | 74.6               |
| 1997        | 9.8                      | 68.8                     | 78.6               |
| 1998        | 7.2                      | 72                       | 79.3               |

Source: Annual Report on Family Health 1998, Family Health Bureau

The pattern as shown in table 6 (for the last 10 years) indicates an increasing trend in acceptance of all family planning methods by eligible couples. There is a significant increase in the acceptance of modern temporary methods during the last 10 years, whilst acceptance of permanent methods recorded a significant decrease since 1992. The injectable was the most widely accepted contraceptive in 1998. The pill and the IUCD accounted for 22.0% and 12.1% respectively during the same period (Family Health Bureau). Although injection is generally preferred it is not always freely available in the State medical sector and women have had to seek private resources.

"Permanent methods accounted for only 9.5% of the new acceptors. This shows a decrease of 6.2% over that of the previous year. Only 340 vasectomies were performed in 1998 in contrast to the large numbers performed in the early eighties. Of

the sterilisations performed in 1998, 50% were performed by Non Governmental organisations. Many of the government institutions that are equipped for sterilisation are not functioning due to lack of trained personnel. This is an area which needs urgent attention" (Family Health Bureau). Male participation is poor, sterilisation has declined to 3% and use of condoms to 5%.

It is also important to identify reasons for poor male participation as seen by the very low acceptance of vasectomy, when developing strategies to further increase contraceptive prevalence in Sri Lanka. Although not legally mandatory, husband's consent for sterilisation is still required.

According to the family planning feed back report of 1995, the contraceptive prevalence rate is approximately 62%.

### ***Laws and Policies Regarding Family Planning Measures***

The State does not have any laws or policies that require family planning measures. Family planning in Sri Lanka is not done for population control, but for the health of the mother and child. That is why it is integrated into the maternal and child health services of the State. There is no coercion to accept family planning in Sri Lanka and it is entirely voluntary. Age of mothers and age of the last child, and number of children, are factors that are considered before sterilisation is performed.

The husband's consent or authority is not required by law before a married woman can receive health services or family planning. However in the case of accepting sterilization, the husband's consent is required in writing. The State does not have laws requiring sterilization, but has policies which favour a two child family. There is no punishment for failure to comply with government policy.

### ***Abortion***

Abortion is not legal in Sri Lanka, but can be performed to save the mother's life for health reasons. A mother's wishes are taken into consideration in such instances. Prenatal foetal testing is not available in Sri Lanka.

Rapid changes in social behaviour has indicated a rise in abortions taking place in the country. Though it is illegal, abortion is carried out privately; women with complications due to abortions are treated at government hospitals.

## **Sexually Transmitted Diseases**

### ***Public Awareness***

Public awareness programmes on the effects of sexually transmitted diseases particularly HIV/AIDS have been conducted by Non Governmental organisations, the Health Education Bureau and National HIV/AIDS programme through seminars, TV programmes, leaflets, newspapers, and radio. Most of these messages are aimed at the family and specifically at women.

The National Institute of Education has also introduced this subject into the school curriculum.

### ***Programmes to Combat Sexually Transmitted Diseases***

A five year program planned by the Ministry of Health with UNFPA funding has strengthened the screening of antenatal mothers at antenatal clinics for sexually transmitted diseases.

Women health care workers such as Public Health Nursing Sisters and nurses have been exposed to in-service training on sexually transmitted diseases, and HIV/AIDS.

Other control measures taken by the National STD/AIDS control programme are as follows:

- screening
- case detection
- partner notification
- contact tracing
- health education
- counselling
- condom promotion
- surveillance
- dissemination of information

- prevention of mother to child transmission of HIV by offering free anti retroviral drugs

***Incidence of Sexually Transmitted Diseases***

**Table 7  
Total number of episodes of STDS reported to STD clinics 1997-2000**

| <b>STD</b>                  | <b>1997</b> | <b>1998</b> | <b>1999</b> | <b>2000</b> |
|-----------------------------|-------------|-------------|-------------|-------------|
| Infectious Syphilis         | 512         | 272         | 243         | 274         |
| Late Syphilis               | 444         | 646         | 629         | 626         |
| Congenital Syphilis – Early | 7           | 11          | 20          | 68          |
| Congenital Syphilis - Late  | 9           | 12          | 05          | 10          |
| Gonorrhoea                  | 703         | 617         | 780         | 670         |
| Ophthalmia neonatorum       | 8           | 10          | 13          | 10          |
| Non Gonococcal infections   | 694         | 804         | 836         | 948         |
| Genital herpes              | 923         | 1085        | 1127        | 1327        |
| Genital warts               | 345         | 349         | 407         | 500         |
| Chancroid                   | 21          | 28          | 32          | 50          |
| Trichomoniasis              | 224         | 217         | 168         | 200         |
| Candidiasis                 | 669         | 718         | 774         | 1045        |
| Other venereal              | 308         | 411         | 501         | 677         |
| Total Venereal              | 4867        | 5180        | 5535        | 6345        |
| Non Venereal                | 2081        | 6084        | 3391        | 3511        |

Source: National STD/AIDS control programme

Table 7 shows that the incidence of almost all sexually transmitted diseases have increased over the years 1997 to 2000.

**Table 8  
Number of HIV and Aids cases by sex at the end of 2000**

|           |     |            |     |
|-----------|-----|------------|-----|
| HIV cases | 367 | AIDS cases | 120 |
| Male      | 230 |            | 86  |
| Female    | 137 |            | 34  |

Source: National STD/AIDS control programme

Male to female ratio of HIV cases is 1.7: 1 and Cumulative AIDS deaths reported as at the end of 2000 are 89.

**Care for the Elderly**

A Director in charge of programmes for the Elderly has been appointed by the Ministry of Health. An Active Ageing programme is being conducted in 50 Medical Officers of Health areas. This programme consists of screening for the elderly, Day Care Centers, etc, and is done in collaboration with the Social Services Department and Non Governmental Organisations such as Help Age.

### **Women Affected by Armed Conflict**

There are increasing numbers of women of all ages and all ethnic groups, who are exposed to the consequences of armed conflict. They comprise women widows of the war, the displaced, orphans, bomb blast victims etc. They have special needs as they suffer from psychosomatic complaints which are manifestations of psychological effects. At present Non Governmental Organisations such as the Family Rehabilitation Centre conduct programmes for such victims in collaboration with government medical and para medical personnel.

### **Women Workers in the Health Sector**

Women hold positions at all levels of the health sector as Directors, Doctors, Dental Surgeons, Statisticians, Nurses, Public Health Nursing Sisters, Public Health Midwives, Laboratory Technicians, Labourers and Attendants, etc. Women are also involved at all levels of the administration.

### ***Traditional Health Workers***

Sri Lanka has a small proportion of traditional health workers. Traditional birth attendants are all women. In the estate sector approximately 7.8% of births were conducted by traditional birth attendants who are untrained. Traditional birth attendants function mainly in very remote areas where services of a Public Health Midwife may not be available.

### **Recommendations**

1. Birth Weight Surveillance sentinell points need to be revamped to obtain accurate data in order to detect areas of high incidence of low birth weight, so that causes for same could be identified and necessary action taken to rectify the problems.

2. Closer supervision of field midwives is required especially in areas where incidence of late registration of pregnant women is high.
3. It is essential that the State ensures that programme managers make suitable arrangements for mothers to have access to medical institutions for delivery.
4. It is necessary to take action to improve the coverage and quality of postnatal care further, since post natal care is an important contributory factor for reduction of maternal and infant morbidity and mortality.
5. A programme for training of Medical Officers in Sterilisation needs to be undertaken and continued in the government hospitals which have already been equipped for sterilisation.
6. In order to develop strategies to further increase contraceptive prevalence in Sri Lanka, it is important to identify reasons for poor male participation as seen by the very low acceptance of vasectomy.
7. Awareness on family planning or lack of planning needs correction in view of the high incidence of septic abortions mostly among married women.
8. Programmes for the elderly, for women affected by the armed conflict and to combat sexually transmitted diseases, need to be expanded and institutionalised and made available to all those who require same.
9. It is relevant to provide training for untrained midwives especially in areas where incidence of untrained deliveries are high.
10. It is recommended that abortion be legalised at least in limited circumstances, such as in pregnancies due to rape and incest and when foetal abnormalities are detected.

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## Articles 15 and 16

### Article 15

1. *States Parties shall accord to women equality with men before the law.*
2. *States Parties shall accord to women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity. In particular, they shall give women equal rights to conclude contracts and to administer property and shall treat them equally in all stages of procedure in courts and tribunals.*
3. *States Parties agree that all contracts and all other private instruments of any kind with a legal effect which is directed at restricting the legal capacity of women shall be deemed null and void.*
4. *States Parties shall accord to men and women the same rights with regard to the law relating to the movement of persons and the freedom to choose their residence and domicile.*

### Article 16

1. *States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:*
  - (a) *The same right to enter into marriage;*
  - (b) *The same right freely to choose a spouse and to enter into marriage only with their free and full consent;*
  - (c) *The same rights and responsibilities during marriage and at its dissolution;*
  - (d) *The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount;*
  - (e) *The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights;*

- (f) *The same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation, in all cases the interests of the children shall be paramount;*
  - (g) *The same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation;*
  - (h) *The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.*
2. *The betrothal and marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.*

### **Personal and Family Laws**

Three distinct communities in Sri Lanka are governed by their personal laws – the Muslims by the Muslim law, the Kandyan Sinhalese by the Kandyan law and the Tamils of the north by the Thesawalamai law. Many of these laws contain provisions discriminatory of women or which have greater negative impacts on women.

The Thesawalamai law is discriminatory of women in regard to equality in legal capacity and violates Article 15 of CEDAW. Women governed by this system of law require the consent of their husbands to enter into contracts and to transfer immovable property, even their own.

Under Kandyan law a surviving spouse receives only a life interest in the property of the deceased spouse. Although this law does not appear to be discriminatory per se, in reality it has greater negative impacts on women who have less economic capacity. Under Muslim law, daughters are entitled to a lesser portion than sons, of their father's property.

The Muslim law does not make provision for a minimum age of marriage. There was a protection against child marriages of Muslims where the law on statutory rape

provided for 12 years as the age of consent. When the amendments to this law raised the age of consent to 16 years, Muslims were exempted from the provision in the face of protests from the Muslim community. As a result Muslim girl children as young as 12 years of age may be given in marriage without their consent.

Several anomalies exist in the case of divorce in the personal laws. In the Kandyan law, while a husband may sue for divorce on the grounds of adultery by the wife after marriage, the wife must prove adultery by the husband coupled with incest or gross cruelty (Section 32 of the Kandyan Marriage and Divorce Act of 1952). Under the Muslim law a man may divorce his wife without giving reasons. On the other hand a woman must prove ill treatment or any other accepted ground which amounts to a fault under the law governing the sect to which the parties belong (Sections 27 and 28 of the Muslim Marriage and Divorce Act of 1951).

### ***Reproductive Rights***

Abortion is illegal in Sri Lanka except where a medical practitioner recommends it on the grounds that the life of the mother is endangered by the continuing pregnancy. When the Penal Code amendments of 1995 were being drafted, a proposal was included to permit abortion in limited circumstances, in situations where pregnancies were caused by rape or incest. However, these proposals were not passed by Parliament.

Yet another administrative practice which is not based on any law or regulation is the insistence by medical practitioners that the consent of the husband is required in order for a woman to obtain permanent birth control.

### ***The Maintenance Act of 1999***

The Maintenance Act of 1999 is a positive development in making provision for the maintenance of children, adult offspring, disabled offspring and spouses unable to maintain themselves. However, questions have been raised as to whether the law is actually being widely implemented by the Courts. The awareness of the judiciary should be raised in this regard.

## **Recommendations**

1. Personal laws should be statutorily amended so as to conform to the constitutional provisions of equality and to international human rights standards. A uniform code of laws should be enacted which is made applicable to all communities.
2. While cultural diversity is an important aspect of Sri Lankan society, practices which are inconsistent with the constitutional provisions of gender equality need to be addressed.
3. Abortion should be legalised in Sri Lanka at least in limited circumstances of pregnancies due to rape and incest.
4. The practice of requiring a woman to obtain the consent of her husband in order to obtain permanent birth control should be eliminated. The medical profession and others involved in the procedure should be educated on this issue.

## **General Recommendation 19**

*Gender based violence is a form of discrimination that seriously inhibits women's ability to enjoy rights and freedoms on a basis of equality with men.<sup>i</sup>*

Despite reforms in the criminal law in 1995 which enhanced the punishment for sexual offenses such as rape, gang rape custodial rape and introduced new offences such as sexual harassment, incest and marital rape in circumstances of judicial separation; police statistics, NGO records and media reports indicate a serious and widespread prevalence of gender based violence in Sri Lanka.

The 1995 law introducing reforms to the Penal Code made changes in the substantive law. However corresponding changes in the procedural aspects of the law such as complementary changes in the Evidence Ordinance and the Code of Criminal Procedure were not effected. As Savitri W. E. Goonesekere and Camena Guneratne observe; the failure to address this very important and critical area of law reform is a manifestation of the tendency in Sri Lanka to introduce ad hoc rather than holistic and comprehensive regulatory controls.<sup>ii</sup>

A fundamental problem is in the implementation of the law and has to deal with judicial attitudes towards women victims of violence in areas relating to a woman victim's testimony, corroboration, sensitivity to hearing evidence and sentencing.

Another area of major concern is the nature of the legal system, which is often adversarial and hostile to women. It is also adept at trivializing women's concerns and problems and is extremely insensitive to gender concerns.

Another matter of grave concern is the attitude of law enforcement officers, medical professionals and lawyers towards gender-based crimes and towards women victims of violence.

Of equal concern is the lack of awareness among women themselves of their rights and the remedies available to them. As important is the fact that law enforcement officers, judges and lawyers are unaware of the full potential of the law and are hesitant to interpret the law in a manner that protects women from the consequences of discrimination.

Last but not least is the deep seated prejudice in society against women and in particular women victims of sexual violence, especially rape and incest and society's inability to deal with problems of domestic violence or take these offences seriously.

### **Violence Against Women**

There are no comprehensive statistics on the incidence of violence against women in Sri Lanka. Most attempts at data collection are ad hoc and sporadic in nature or have a limited and specific point of reference.<sup>iii</sup> There is nevertheless some information available in police reports, data gathering by Non Governmental Organisations and complaints received by State Agencies such as the National Committee on Women.

The National Committee on Women established a 'Centre for Gender Complaints in 1999. The Police Bureau for the Protection of Women and Children is another source of information. Complaints received by the Bureau are as follows:

### A selection of 'grave offences' of gender related violence reported to the police

|                | 1997   | 1998   | 1999 (Jan-Sept) |
|----------------|--------|--------|-----------------|
| Minor Offences | 50,893 | 52,408 | 38,467          |
| Grave Offences | 1,019  | 1,027  | 1,031           |
| Total          | 51,912 | 53,435 | 39,498          |

Source: The Police Bureau for the Protection of Women and Children, Castle Street, Colombo. (October 1999)

The lack of comprehensive data and a system of gathering data on an ongoing and regular basis are some of the major problems that have to be dealt with if the issue of violence against women is to be taken seriously by the State. Mechanisms have to be established in conjunction with the Police, the Attorney General's Department, Judicial Medical Officers, Medical Professionals, women's organisations, human rights organisations, the Child Protection Authority and the Human Rights Commission for the effective collection of data. Such data must be publicly available and must be analysed and used for policy and legal reform as well as for the better implementation of the law so that women can be better protected from violence.<sup>iv</sup>

#### **The Constitution**

The Sri Lankan constitution does not specifically address violence against women. However it specifically prohibits sex-based discrimination and contains guarantees on equality before the law and equal protection of the law.

Constitutional reform has been discussed since 1994, particularly in the context of the on-going ethnic conflict in the country. Special multi party consultations have discussed proposed drafts in 1997 and 2000. Both these drafts included an enhanced chapter on Fundamental rights and introduced children's rights and socio economic rights. The drafts also introduced a guarantee on the right to life.

#### **Rape**

Women's Rights Watch, which monitored rights violations perpetrated on women as reported in 30 newspapers published in Sri Lanka during the period July 1997 to June 1999, recorded a fairly high incidence of rape in its annual report covering the period January to December 1998. A breakdown of the figures is as follows:

#### **Reports of rape and attempted rape in the press from January to December 1998**

| Offence Type        | Domestic | Other | Total |
|---------------------|----------|-------|-------|
| Rape – Girls        | 45       | 184   | 229   |
| Rape - Adult Women  | 11       | 134   | 145   |
| Rape - Attempted    | 5        | 64    | 69    |
| Rape - Armed Forces | 1        | 36    | 37    |
| Rape and Murder     | 3        | 25    | 28    |
| Total               | 65       | 443   | 508   |

Break-down of the incidents of violence against women reported in the print media monitored in the period January to December 1998 - Women's Rights Watch<sup>v</sup>

**A selection of 'grave offences' of gender related violence reported to the police**

| Nature of Offence                 | Women<br>1997 | Children<br>1997 | Women<br>1998 | Children<br>1998 | Women<br>1999 | Children<br>1999 |
|-----------------------------------|---------------|------------------|---------------|------------------|---------------|------------------|
| Rape                              | 397           | 315              | 164           | 394              | 339           | 625              |
| Murder                            | 3             | 5                | 9             | 6                | 62            | 14               |
| Attempted Murder<br>with a Weapon | 0             | 0                | 1             | 0                | 4             | 13               |
| Sexual Harassment                 | 356           | 250              | 213           | 340              | 342           | 394              |

Source: The Police Bureau for the Protection of Women and Children, Castle Street, Colombo. (January 2000)

With the 1995 amendments to the Penal Code, criminal law perceives rape to occur when there is sexual intercourse with a woman **without** her consent. A new explanation was incorporated making it clear that evidence of physical resistance is not essential to establish absence of consent. However, as Dhara Wijayatilake notes, while the new explanation will offer guidance as to what should not be insisted upon for establishing the position of the woman that there was in fact no consent, the other question of whether corroboration is required in all sexual offences has not been dealt with by Statute law.<sup>vi</sup> This position is further strengthened by Goonesekere and Guneratne who record that judges, lawyers and medical professionals interviewed were inclined to accept that evidence had to be corroborated to prevent the risks of false allegations of rape and forced intercourse. They note that this insistence on proof of absence of consent and the need for independent corroboration made such lawyers and judges continue to look for evidence of rupture of hymen and other physical injuries. Thus the requirement that physical injuries are not necessary to prove nonconsensual intercourse may be ignored in court procedure and practice unless the current legal position as reflected in the Penal Code amendment is clarified and clearly understood by lawyers and judges.

There have been several cases in which the Supreme Court has recognized that corroboration of the victim's evidence is not a legal requirement and that a jury can convict on the uncorroborated testimony of the victim. [*Karunasena v Republic of Sri Lanka* (1978); *Punchibanduge Wijesinghe Rajaratne v A.G.* (1994)]. A leading human rights lawyer, Kalyananda Thiranagama, from the organization Lawyers for Human Rights and Development however notes that at present almost all rape cases are tried by a Judge without a Jury. Therefore the earlier requirement of Judge's warning to the Jury that it is unsafe to convict accused in a rape case without corroboration is a matter of academic importance. However judicial practice has required that women victims of sexual violence meet evidentiary requirements not required of other victims of violence. Although not required in law, often in practice, corroboration is required of the offence itself and of the identity of the offender, although there have been cases where the accused has been convicted on the sole testimony of the woman. There is an assumption here that in all cases involving sexual abuse a woman victim's evidence is unreliable and this is clearly discriminatory against women.

The other issue of contention is that of consent. This was explored in a 1997 judgement in the High Court involving a case in which a popular film actor, stood accused of raping a seventeen-year old school girl.<sup>vii</sup> The High Court Judge argued that 'passivity does not amount to consent'. The Judge went on to observe that:

Consent in this case legally means consent to the act of intercourse. The mere fact that a woman is willing to enter a room with a man does not itself mean that she was consenting to the act of intercourse. The fact that she entered the bedroom of a man may be an item of evidence to be considered in determining her consent but ultimately the specific issue that has to be decided was whether she gave her consent for the act of sexual intercourse.<sup>viii</sup>

The High Court judgement was however overthrown by the Court of Appeal and the accused was acquitted. The case is now before the Supreme Court on a petition filed by the Legal Aid Commission. During the seven years since the incident happened, the judicial pendulum swung in the Addararachchi case in a manner that first resolved the thorny question of consent in sexual violence allegations very much in the complainant's favour and then equally so in the defendant's favour. As Kishali Pinto

Jayawardene notes, it is perhaps, the extremity of both these swings that causes concern in an age where sexual violence comes in many shapes and forms and formal amendments to the law do not appear to have redressed the situation.<sup>ix</sup>

The burden of proof in cases of rape is on the prosecution, which must prove that there was non-consensual intercourse. Wijayatilake notes that as the prosecution of rape cases is also governed and influenced by the Evidence Ordinance, which was not amended in keeping with the Penal Code, the woman has to prove the absence of consent even in the case of custodial rape and past sexual history can be introduced into evidence.<sup>x</sup>

### **Sentencing**

Amendments to the Penal Code in 1995 enhanced the punishment for rape in aggravated circumstances such as gang rape, custodial rape, rape of a minor, rape of a pregnant woman and the rape of a woman who is mentally or physically disabled. Provision was also made for the imposition of a mandatory minimum sentence for rape preventing the imposition of suspended sentences. The same punishment provided for rape has been laid down for the lesser offence of grave sexual abuse (S.365B) - a minimum 7 years and a maximum 20 years. The Law has not taken into account the different degrees of gravity between different offences. Some legal practitioners are of the opinion that mandatory minimum sentences have failed to bring about the expected result of lessening the high incidence of sexual abuse and rape of women. They find that law enforcement authorities are becoming more reluctant to enforce the law and that judges are prone to acquit accused on flimsy grounds.<sup>xi</sup>

The enhanced sentencing schedule is given below:

| Section in Act | Offence                             | Imprisonment |          | Fine      | Compensation to Victim for Injuries |
|----------------|-------------------------------------|--------------|----------|-----------|-------------------------------------|
|                |                                     | Min. Yrs.    | Max Yrs. |           |                                     |
| 364 (1)        | Rape                                | 07           | 20       | Mandatory | Mandatory as Determined by Court    |
| 364(2)         | Rape Aggravated*                    | 10           | 20       | - do -    | - do -                              |
| 364(3)         | Statutory Rape which is also incest | 15           | 20       | - do -    | No                                  |
| 364A           | Incest                              | 07           | 20       | - do -    | No                                  |

\* Aggravated circumstances include gang rape, custodial rape, rape of a minor, rape of a pregnant woman, rape of a woman mentally or physically retarded.

However there is an exception to this policy on sentencing. In the case of statutory rape (of a girl under 16 years) although the act is an offence irrespective of whether the girl consented, a discretion is vested in the Court to award a lesser sentence in respect of offenders under 18 years where it can be proved that the act occurred with the consent of the girl. This negates both the principle that consent is irrelevant in cases of statutory rape and the reforms to establish mandatory minimum sentences to avoid the practice of awarding minimal sentencing and resorting to plea bargaining.

### **Statutory Rape**

The 1995 amendments to the Penal Code raised the age for statutory rape from twelve to sixteen. According to the new amendment where a woman under the age of sixteen is raped proof of consent is not necessary, proof of the act of intercourse is sufficient. The exception to this rule is where the woman is the man's wife and she is under the age of sixteen, but above twelve. This provision has caused much confusion in the minds of the Police. Police do not take action under this provision for statutory rape, where the girl is over 16 years of age, if the parties are married giving a false age. This provision was made to satisfy a strong Muslim lobby, which did not want this provision of statutory rape to preclude Muslim marriages where a woman was under sixteen. Muslim Law does not recognize a minimum age of marriage. Even those under 12 years can marry with the permission of the Quazi for the area.

The incidence of the rape of girls accounted for 21% of violent crimes against women reported in the press in 1998. Among the girls raped were those as young as three years of age.<sup>xii</sup>

### ***Age of Marriage***

Age of marriage has a bearing on statutory rape. Recent amendments to marriage laws have introduced conflicting standards in relation to the age of marriage.

The Marriage Registration Ordinance and Kandyan Marriage and Divorce Act were amended in 1995 to provide that both parties to a marriage should have completed eighteen years of age.<sup>xiii</sup> The age of marriage was raised by these amendments except for those governed by Muslim personal law.

The Marriage Registration Ordinance was amended in 1997 to provide that the father or mother of any person under eighteen years of age shall have the authority to give consent to the marriage.<sup>xiv</sup>

### ***Evidence***

In a very troubling opinion the Court of Appeal, in a recent judgement, made harsh strictures on certain steps taken by the High Court, including holding the trial in camera (in private) which, in the opinion of the Court of Appeal, amounted to "mollycoddling" the witness. The specific reason why the Court of Appeal opined that this should not have been done is because the witness had earlier given the same evidence in a crowded court before the Magistrate and that she was twenty years of age at that time.<sup>xv</sup> This is judicial reasoning that will undoubtedly deter women victims of sexual violence from going through a public and hostile criminal trial. It is also a sentiment that negates years of struggle to bring about more sensitive judicial practice in cases of sexual violence and reinforces judicial bias and practice that is prejudicial to women.

### ***Custodial Rape***

The Penal Code does not use the term custodial rape but recognizes the concept of custodial rape and the seriousness of the offence by enhanced punishment which ranges from a minimum sentence of 10 years to a maximum sentence of 20 years for

an offence where a public officer or a person in a position of authority takes advantage of his official position and commits rape.<sup>xvi</sup> In a similar manner a person on the management of a custodial home, or a women's or children's institution or hospital 'takes advantage of his position' and commits rape, he would also be guilty of custodial rape.<sup>xvii</sup>

There have been a series of high profile custodial rape cases reported in the press, particularly against girl children, and in relation to police and military personnel. In many of these cases there have been attempts at cover up and intimidation, some of which have succeeded. From July 1997 to June 1999, Women's Rights Watch Quarterly Reports recorded a number of instances of custodial rape reported in the press. A few of the reports related to sentences. The vast majority were pending. Many of the cases related to abuse in schools and children's homes.<sup>xviii</sup>

As recommended by Goonesekere and Guneratne, Constitutional standards on equality and torture that now permit public officials to be made liable for acts of abuse of power, and sexual harassment should be developed further, using current jurisprudential trends in the Supreme Court of Sri Lanka, so that a link is made between rape and gender discrimination and rape and torture.<sup>xix</sup>

### **Marital Rape**

The 1995 amendment to the Penal Code recognized marital rape as a crime in limited circumstances. According to the new amendment a man can be accused of raping his wife only where the couple is judicially separated.<sup>xx</sup> The law does not recognize unconditional marital rape although this was the original amendment put forward to Parliament. It only recognizes rape in situations where the parties are separated legally and does not recognize the possibility of rape when the spouses live together. This amendment is hardly worth noting since women rarely resort to the remedy of judicial separation. In many situations of domestic violence women complain of being forced into unwanted intercourse by husbands. The difficulty in getting the concept of marital rape recognized without condition reinforces the myth that rape within marriage is impossible and that a woman's body is her husband's property.

## **Incest**

Incest was recognised as an offence in the 1995 amendments to the Penal Code. It carries a maximum sentence of twenty years and a minimum sentence of seven years imprisonment and is also an offence that can be fined.<sup>xxi</sup> The steps taken to recognise incest as a crime are laudable. Despite incest being recognised as a crime it must also be recognised that incest occurs in a situation where power is abused, trust is broken and the victim is in a dependent and vulnerable position. There are also other factors such as social stigma, family reputation taking precedence over the crime and reluctance to believe the story of the victim over the denial of the offender that makes this a particularly difficult crime to deal with. Another factor is that children who are abused often end up in the protective custody of the State in probation homes, which are not very child friendly and have been likened to jails while the accused remains free and in the home till the case is concluded.

## **Domestic Violence**

Records of complaints to women's organisations assisting women affected by domestic violence, police statistics and newspaper reports allude to a high incidence of domestic violence in Sri Lanka although there is no comprehensive documentation available.<sup>xxii</sup> Women In Need a Non Governmental Organisation offering assistance to women subjected to domestic violence, report the following break-down of violations during the period January 1997 to September 2001.

### **Complaints of violence against women received by 'Women In Need'**

|                   | <b>1997</b> | <b>1998</b> | <b>1999</b> | <b>2000</b> | <b>2001 to Sept.</b> |
|-------------------|-------------|-------------|-------------|-------------|----------------------|
| Domestic Violence | 791         | 895         | 1020        | 1208        | 1514                 |
| Rape              | 8           | 23          | 27          | 40          | 17                   |
| Incest            | -           | 6           | 4           | 4           | 3                    |
| Sexual Abuse      | 7           | 4           | 2           | 30          | 12                   |
| <b>Total</b>      | <b>806</b>  | <b>928</b>  | <b>1053</b> | <b>1282</b> | <b>1546</b>          |

Source: Women In Need

291 incidents of violence within the home or 26% in a total of 1096 incidents of violence was recorded in The Women's Rights Watch Year Report which dealt with the press reportage of violence against women for the year 1998. Among this figure were 129 incidents of murder committed within the home with husbands allegedly responsible for 83 of the murders or 65% of the total.

Of 85 recorded incidents of assault committed within the home husbands were responsible for 46 or 54% and 57 incidents of rape were also committed by family members on women and girl children. There were only 11 reports of sentences among the 291 cases of violence in the home reported in the press during the year 1998. The sentences were for 7 murders, 2 assaults and 2 cases of incest.<sup>xxiii</sup>

In Sri Lanka domestic violence is not recognized as a specific crime in separate legislation. However a range of provisions in the Penal Code that deals with violence generally have been invoked to deal with domestic violence such as Hurt, Grievous Hurt, Assault and Attempted Murder.<sup>xxiv</sup>

According to Kamalini Wijayatilake and Camena Guneratne, seeking remedies for the crime of domestic violence under criminal law which deals with violence generally does not take into account the gendered nature of domestic violence where the specific situation of the woman in a domestic relationship and in the home makes her more vulnerable to violence, given the context of clear power relations and power imbalances in the home.<sup>xxv</sup>

It is recommended that the guidelines put forward by the UN Special Rapporteur for Violence Against Women should be studied carefully and legislation put in place to deal with domestic violence.<sup>xxvi</sup> This can be done either as an amendment to the Penal Code or as a combination of such an amendment and separate legislation that deals with both criminal and civil remedies which is a more holistic approach. There is no doubt that the act of violence should be viewed as criminal and treated as such. However women should also have easier access to civil procedures that will offer her protection and provide her with easy access to other remedies.<sup>xxvii</sup>

## **Sexual Harassment**

Sexual Harassment was introduced as an offence in the 1995 amendment to the Penal Code.<sup>xxviii</sup> Sexual harassment is also an offence under legislation introduced in 1998 to eliminate ragging and other forms of violence in educational institutions.<sup>xxix</sup>

Workplace or institution related sexual harassment often occurs in a situation where there is a definite power relationship between the two parties where the woman is more often than not in a situation of disadvantage. In such cases to be effective legal remedies should be coupled with policy initiatives.

To be effective these remedies should be coupled with employers being compulsorily required to put in place internal mechanisms and guidelines that deal with sexual harassment and complaints of sexual harassment.

Interestingly, in a High Court case decided in 1994 (and presently on appeal to the Court of Appeal), a prosecution under the Bribery Act was upheld on the grounds that the accused had “ solicited an unlawful gratification in soliciting sex from a woman employee in return for a transfer” (Republic of Sri Lanka Vs Abdul Rashak Kuthubdeen / B 839/93) In a noteworthy judgement, the judge refused to accept the contention of counsel for the accused that the complainant woman was an untrustworthy witness, remarking that “ she was a young married woman...testifying about embarrassing circumstances....even in camera....and (that she had).. embarked on a journey which many other women would dread to undertake”. This is a liberal judicial interpretation of the existing law which is an indication that women can allege sexual harassment under statutes such as the Bribery Act if judicial attitudes are sympathetic. Unfortunately, this judgement remains the sole example of such judicial liberality.

## **Murder**

Murder is sometimes followed by offenses of sexual or physical abuse. Often these offences are rape followed by murder or a repeated history of domestic violence, which ends in the death of the victim.<sup>xxx</sup> In a recent Trial at Bar a three judge bench hearing a murder case convicted the accused of rape as well, even though the victim’s body was in an advanced state of decay when it was exhumed. The conviction was

based on the confessions made by accused to the Military Police which the High Court deemed to be admissible as proof of rape.<sup>xxxii</sup> There is a need to study the incidence of violence in the home to determine the extent to which domestic violence plays a role in resulting in the death of women.<sup>xxxiii</sup>

### ***Procedures***

Many of the procedures associated with the criminal justice system such as the requirement of proof beyond reasonable doubt, difficulty to find witnesses for corroboration, lengthy non-summary inquiries in rape cases, social stigma, delay and trauma in courts do not encourage the woman victim of violence to use the legal system. Where the act of violence has a sexual dimension there is even less incentive for the victim to access the system.

### ***Samatha Mandalaya (Mediation Board)***

Mediation Boards appointed by the Ministry of Justice under the Mediation Boards Act work throughout the country to act as mediators in cases that have the potential to be settled out of court. The members of a Samatha Mandalaya vary in number depending on the area it is located in and have a diverse group of community representatives. Most of the members are men. The two categories of offences that come before the Boards are civil disputes and criminal offences. Family disputes, particularly in relation to domestic violence tend to be mediated at this level. The Samatha Mandalayas are not empowered to deal with cases of murder, divorce, sexual harassment and rape and with grave crimes, matrimonial disputes or civil disputes over the value of Rs. 25,000.

Ameena Hussein in her study on Domestic Violence and Rape in Sri Lanka records that the general consensus among members of Samatha Mandalayas is that they are very rarely unable to settle disputes between husband and wife and that the parties are reconciled without resorting to court action. However she notes the statements of a number of individual members of the Samatha Mandalayas which are extremely moralistic, promote sexual stereotypes and are laced with bias against women. Hussein also records the statements of the President of the Anuradhapura Samatha Mandalaya who admits to being asked by the police and the courts to mediate in rape cases. She quotes the President as saying, "if both parties are willing to get married,

we encourage them to go ahead. Because the insult and the bad name will come to the woman. What we do is send the woman to a doctor first, and if she is willing to get married to that person we let them do so, otherwise some women want to get compensation from the rapist and we'll get this arranged".<sup>xxxiii</sup> The Samatha Mandalayas therefore obviously circumvent the law and women are also obviously pressurized into compromise by family and social peers. Women do complain of being forced to settle their disputes; feel disadvantaged and feel that men do not understand their situation – of course due to the fact that, sometimes, all members of the Samatha Mandala are males.

### *Delay*

One of the most important deterrents to women seeking redress from the law, especially in cases of sexual violence is the length of time it takes for a case to be concluded. In a study on gender violence in Sri Lanka the authors, Shyamala Gomez and Mario Gomez cite a number of cases with delays of between nine and twelve years before the cases were concluded.<sup>xxxiv</sup>

In cases of rape, a reason given for long delays is the time taken by the non summary inquiry which is conducted by the Magistrate at which the Police lead evidence. Now the evidence is led by special prosecuting counsels appointed by the Attorney General's Department. The non summary inquiry decides if there is prima facie evidence to indict the accused and try the case in the High Court. There is no justification for continuing with non-summary inquiries. Non-summary inquiries are conducted only in respect of three offences: murder, attempted murder and rape. From 1974 – 1978 under the Administration of Justice Law, accused were straight away indicted without non-summary inquiries and cases were speedily disposed of. No injustice was caused to the accused. Even where the Magistrate holds that there is no prima facie case against the suspect and discharges the suspect, there is no bar for the Attorney General to indict a suspect. These inquiries are supposed to conclude in three months. However most take months if not years and some have taken as long as three years.<sup>xxxv</sup>

It is recommended that the non summary inquiry should be abolished. However an argument is made against this position by lawyers who consider the powers of the

Attorney General to follow the inquiry a vital safeguard. They suggest that if non-summary inquiries are done away with safeguards should be built into the procedure so that the vital scrutiny of the Attorney General is not dispensed with.

It could also be suggested that trials dealing with sexual offences and offences against children should be given priority. Such a provision exists to cover offences relating to damage of public property and this can be extended to cover trials dealing with sexual offences. There is a provision enacted in 1998 – Criminal Procedure Code Amendment Act No. 28 of 1998 – that Courts should give priority to trials and appeals in child abuse. Similar provisions are found in many statutes. But the situation remains the same.

This situation cannot be improved by enacting procedural laws alone without taking necessary administrative steps.

The non summary inquiry also puts the complainant at a disadvantage because it relies on the inferior forensic skills of the police who represent her while the accused may engage the services of an experienced defence lawyer. The Attorney General's Department engaged the services of a group of lawyers to help prosecute a backlog of non summary inquiries. However no systematic data collection is available to determine if the backlog has been cleared.

In her study on domestic violence and rape in rural Sri Lanka, Ameena Hussein records the comments of a number of lawyers who admit that the legal system is time consuming and fraught with delay. Some of the lawyers spoken with, recommended special courts with retired judges to try cases of violence against women.

### ***Medical Examination***

The medical examination is crucial in the case of rape and sexual violence. This medical report forms a vital part of the prosecution's case. However the level of forensic expertise around the country is unequal. Very few hospitals have medical officers designated to examine violations of sexual abuse and a victim may have to wait long hours before she is examined. All medical officers are not skilled to detect signs of rape unless there are signs of violence or examination is done shortly after the

incident. Only Judicial Medical Officers (JMOs) have the necessary skill, training, expertise and qualifications to express a definite opinion as to whether a person has been subjected to sexual abuse or not. District Medical Officers (DMOs) do not have these qualifications. There are many instances where JMOs found evidence of sexual abuse in cases where DMOs reported there was no evidence of sexual abuse. However in Sri Lanka, according to practicing lawyers, there are less than 10 JMOs working in Colombo, Galle, Kandy, Kurunegala, Ratnapura and Jaffna Hospitals. They note that victims have to wait not for hours, but for several days in hospital till they are examined by the JMO.

### ***The Trial***

All criminal trials in Sri Lanka adopt the adversarial system of court procedure, which is not at all victim friendly. The experience of going to court can be frightening and humiliating and this can be a difficult, traumatic and painful experience for a victim of violence, especially victims of domestic violence and sexual violence. Cross-examination is often hostile and humiliating and destroys the self-confidence of the complainant. Courts are often perceived of as wholly alienating and unjust.

It is suggested that more trials are held in camera and that a victim's testimony could be video recorded as is currently done in some cases of child abuse.<sup>xxxvi</sup> There should also be the possibility for the submission of written testimony in the form of affidavits.

### ***Shelters***

There are very few centres, which provide shelter and counseling to women victims of sexual violence and domestic violence in Sri Lanka. A few women's organisations such as Women in Need and the Women's Development Centre in Kandy run private shelters, and offer counseling and legal assistance to women affected by violence.

It is recommended that the government looks at the possibility of establishing multi disciplinary crisis centres at all leading base hospitals where a victim of violence can be examined by specially trained doctors and the police can be called in to record statements with a volunteer counselor present to assist the woman. It is also

absolutely necessary that the state sets up shelters that can offer refuge to women seeking to escape violence.<sup>xxxvii</sup>

### ***Training***

Special desks dealing with complaints from women and children have been established at 34 police stations in different parts of the island.

The existing desks should be expanded and officers stationed at them should be trained in recording and handling complaints of violence against women so that the records can be effectively used in Court cases.

The desks should be kept open and accessible in a climate of security and safety 24 hours a day.

Women and Children's Desks should be opened in all police stations in major towns.

Both male and female officers, serving at all police stations and at all levels of service should be more effectively trained and sensitized to handle complaints of violence by women.<sup>xxxviii</sup> This should be a permanent composition of initial training as well as supplementary training and not ad hoc and sporadic in nature.

### **The Ethnic Conflict and Violence Against Women**

Women living in areas of the country affected by armed conflict face a spate of specific problems. Among them are frequent check point searches, cordon and search operations and detentions for questioning by military and police personnel often without the presence of female officers. Such instances have also resulted in sexual abuse and rape. Women from minority ethnic groups – Tamil and Muslim women from the North East of the country and Tamil women from the hill country have been particularly vulnerable. The conflict has also resulted in large-scale arrests, detentions and disappearances and there have been reports of women being held hostage till a male member of her family wanted by the military or the police is arrested. There have also been reports of women refusing to make complaints of rape

or illegal detention for fear of reprisals. Another fall out of the conflict has been the increasing number of early marriages, increased reports of domestic violence and violence against women in camps for the displaced and the recruitment of children into militant groups.

Another situation faced by women has been the increasing lack of employment opportunities in the areas affected by the conflict including the villages along the border of the North East Province, the lack of state sponsored services such as health, education, electricity, water and resulting poverty. This situation is further aggravated by the presence of large numbers of military personnel and military camps in these areas making women particularly vulnerable and increasing the prevalence of prostitution.

There have been a number of reports of sexual violence against women where the alleged perpetrators have been armed forces personnel and the police. The Women's Rights Watch Annual Report recorded 37 sexual offences allegedly committed by armed forces personnel or by deserters in the year 1998. Eight were under investigation by the Police while 22 were being inquired into by the Magistrate's Courts, 2 cases were being heard before the District Courts and 2 were before the High Court. Three of the reports dealt with sentences. 18 of the cases being investigated related to offences committed in the conflict affected areas of the North East of the country while 19 of the cases were reported from elsewhere.<sup>xxxix</sup>

A number of these incidents have been reported at checkpoints or when women have been taken in for questioning by the armed forces. Presidential directives were issued in July 1997 for the welfare of detainees and these included safeguards to protect women in custody. It is essential that these safeguards are adhered to. All of the cases of rape and sexual violence have taken place in situations where there have been no female guards present during interrogation of female detainees.

Among the cases reported are those of two women who were gang raped after being arrested by members of the navy and police in Mannar on 19 March 2001.

The pace of investigations into several other cases of alleged rape, including the case

of Juda Kamelita who was raped and murdered in Mannar in July 1999, is proceeding very slowly. Other cases, such as the murder and alleged rape of Koneswary in Amparai in 1999 have collapsed because the victims or the witnesses were threatened or feared reprisals.

### **Trafficking in Women**

There appears to be no systematic studies or data available on the incidence of internal or external trafficking of women in Sri Lanka. However there are verbal reports and stories, sometimes in the press and sometimes among community based NGOs, of women being trafficked internally for sex work in areas surrounding military encampments and into areas of high tourist presence. There are also allegations that some women workers seeking employment as migrant workers are duped into sex labor overseas by illegal job agencies and contractors. There is therefore an urgent need to engage in study and research so that data and information is available to combat trafficking.

### **Recommendations**

1. Changes in the substantive law should be coupled with corresponding changes in the procedural aspects of the law such as complementary changes in the Evidence Ordinance and the Code of Criminal Procedure.
2. Law reform should encompass holistic and comprehensive controls rather than be limited to ad hoc and piecemeal measures.
3. There is a need to develop systematic and comprehensive awareness-raising among women themselves on their rights and the remedies available to them.
4. The lack of comprehensive data and a system of gathering data on an ongoing and regular basis are some of the major problems that have to be dealt with if the issue of violence against women is to be taken seriously by the State. Mechanisms have to be established in conjunction with the Police, the Attorney General's Department, Judicial Medical Officers, Medical Professionals, women's organisations, human rights organisations, the Child Protection Authority and the Human Rights Commission for the effective collection of data.

5. Such data must be publicly available and must be analysed and used for policy and legal reform as well as for the better implementation of the law so that women can be better protected from violence.
6. The fundamental rights chapter of the Constitution can be further expanded to recognize that violence against women constitutes a human rights violation, so that important changes in international human rights law can be incorporated in the new Constitution.
7. The current legal position as reflected in the Penal Code amendments of 1995 in relation to consent and collaboration in respect of sexual offences need to be clarified in Statute Law and clearly understood by lawyers and judges.
8. There has to be an uniform policy on sentencing sexual offences.
9. There should be an uniform minimum age of marriage
10. Constitutional standards on equality and torture that now permit public officials to be made liable for acts of abuse of power, and sexual harassment should be developed further, using current jurisprudential trends in the Supreme Court of Sri Lanka, so that a link is made between rape and gender discrimination and rape and torture.
11. Marital rape should be recognised as a crime with no limiting circumstances.
12. Cases of incest need to be handled very sensitively from the beginning of the investigation till a case is concluded and the medical exam and court environment should be victim friendly and as private as possible. This should be applicable not only in cases of incest, but in all cases involving sexual abuse of women and specially of children. It is also essential that family counseling and therapy be made compulsory requirements in cases of incest.
13. Guidelines put forward by the UN Special Rapporteur for Violence Against Women should be studied carefully and legislation put in place to deal with

domestic violence. This can be done either as an amendment to the Penal Code or as a combination of such an amendment and separate legislation that deals with both criminal and civil remedies which is a more holistic approach.

14. The State should ensure that police officers are gender sensitized and will take the crime of domestic violence seriously by responding to calls of domestic violence both when the offence is imminent as well as when it is in progress.
15. The police should be educated with regard to proper procedures to be followed in intervening and handling the complaint.
16. The Attorney General should develop and adopt guidelines for officials prosecuting domestic violence cases.
17. The State should ensure the provision of emergency services which should include crisis intervention centres, safe and secure shelters; immediate medical attention and emergency legal counseling for offences of domestic violence and rape.
18. The State should introduce compulsory long term rehabilitation of victims and abusers.
19. To be effective legal remedies dealing with sexual harassment, especially sexual harassment in the workplace should be coupled with employers being compulsorily required to put in place internal mechanisms and guidelines that complements and enhances the implementation of the law.
20. Samatha Mandalayas (Mediation Boards) should constitute of persons who are gender sensitive and conversant with the law. They should also comprise of at least 40% women. Their work should be monitored and evaluated on a regular basis.
21. It must be ensured that the services of the Samatha Mandalayas are not used in the investigation or settlement of criminal offences such as rape or incest and that the Mandalayas are not used to bring pressure on women to marry their rapists.

22. Non-summary inquiry in cases of rape should be abolished.
23. Legal practitioners, human rights and women's rights activists, policy makers, etc. should have access to a comprehensive set of statistics from the Attorney General's Department so that an analysis can be made of the number of rape indictments that result in convictions, those that don't and the time taken to conclude a case.
24. Trials dealing with sexual offences and offences against children should be given priority.
25. In the interest of expediting the hearing and conclusion of cases dealing with violence against women, special courts could be set up with retired judges to try these cases and address the problem of delays in the law.
26. A concerted programme should be got underway to ensure that a sufficient cadre of Judicial Medical Officers (JMO) are trained and put in place in all districts.
27. DNA profiling and toxicological tests could be used more frequently in cases of sexual violence. Such tests have been used in a murder trial currently heard before the High Court.
28. There is a need to train medical officers who are called upon to examine rape victims, since doctors are often not aware that the statements made to them could have very important legal significance, especially if the victim identifies the alleged rapist to the doctor. Medical officers require adequate and relevant training to perform this task. They should also be trained to identify victims of domestic violence and be trained to deal with the specific needs of such women.
29. More trials, dealing with sexual offences should be held in camera and a victim's testimony could be video recorded as is currently done in some cases of child abuse.

30. There should also be the possibility for the submission of written testimony in the form of affidavits.
31. The government needs to look at the possibility of establishing multi disciplinary crisis centres at all leading base hospitals where specially trained doctors can examine a victim of violence and the police can be called in to record statements with a volunteer counselor present to assist the woman. It is also absolutely necessary that the State set up shelters that can offer refuge to women seeking to escape violence.
32. Women and Children's desks at police stations should be expanded to cover all major towns and officers stationed at them should be trained in recording and handling complaints of violence against women so that the records can be effectively used in Court cases.
33. The desks should be kept open and accessible in a climate of security and safety 24 hours a day.
34. Both male and female officers, serving at all police stations and at all levels of service should be more effectively trained and sensitized to handle complaints of violence by women. This should be a permanent composition of initial training as well as supplementary training and not ad hoc and sporadic in nature.
35. Special women and children's desks should be set up at police stations in conflict areas constituting of personnel who speak the language of the area, are conversant with the problems of the area and are gender sensitive. These desks should work in collaboration with recognised women's groups and citizen's committees so that women and children feel secure to make use of their facilities.
36. The guideline that female service personnel should be present to carry out body searches of women, particularly at checkpoints, is often flouted. These should be strictly adhered to.

37. It is necessary that swift action is taken both to stop rape and sexual offences committed by armed forces personnel and deserters from the armed forces and perpetrators are brought to justice.
38. There is an urgent need to engage in study and research so that data and information is available to combat trafficking.
39. All necessary measures should be taken to protect the victims and witnesses and any security officer found to be responsible for rape, sexual abuse or other torture, or for encouraging or condoning them, should be brought to justice.

## End Notes

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<sup>i</sup> Committee on the Elimination of all forms of Discrimination Against Women, 16th Session, General Recommendation N.19, CEDAW/C/1992/L.1/15 (1992).

<sup>ii</sup> Savitri W. E. Goonesekere, Camena Guneratne, *Women, Sexual Violence and the Legal Process in Sri Lanka, a Study on Rape*, Centre for Women's Research, Sri Lanka, 1998.

<sup>iii</sup> Kamalini Wijayatilake, Camena Guneratne, *Monitoring the Progress of the Elimination of Discrimination against and the Achievement of Equality for Women – Sri Lanka Report on Domestic Violence*, Centre for Women's Research, Colombo 2001

<sup>iv</sup> *ibid*

<sup>v</sup> Kumudini Samuel, *Women's Rights Watch Year Report 1999*, Women and Media Collective, Colombo

- <sup>vi</sup> Dhara Wijayatilake, Abuse of Women and Children Recent Amendments to the Law in Sri Lanka to meet the situation - The Bar Association Law Journal Vol.VI Part II, 1996
- <sup>vii</sup> Kamal Addararatchi v The Republic, Case No. 7710/96, Decision of the High Court of the Western Province, 22nd December 1997.
- <sup>viii</sup> Ibid. p 16.
- <sup>ix</sup> See Kishali Pinto Jayawardene in 'Focus on Rights', The Sunday Times, January 2, 2001.
- <sup>x</sup> Dhara Wijayatilake, Abuse of Women and Children Recent Amendments to the Law in Sri Lanka to meet the situation - The Bar Association Law Journal Vol.VI Part II, 1996
- <sup>xi</sup> Comments made by Mr. Kalyananda Thiranagama of Lawyers for Human Rights and Development at the preliminary discussion on the Shadow Report at the Centre for Women's Research, October 2001
- <sup>xii</sup> Women's Rights Watch Year Report 1999
- <sup>xiii</sup> Section 15 of the Marriage Registration Ordinance, as amended by the Marriage Registration (Amendment) Act, No. 18 of 1995.
- <sup>xiv</sup> Section 22 (1) of the Marriage Registration Ordinance, as amended by the Marriage Registration (Amendment) Act, No. 12 of 1997.
- <sup>xv</sup> Kamal Addararatchi v The Republic, Case No. 7710/96, Decision of the High Court of the Western Province, 22nd December 1997.
- <sup>xvi</sup> Section 364 (2) (a) of the Penal Code.
- <sup>xvii</sup> Section 364 (2) (b).
- <sup>xviii</sup> Women's Rights Watch Monthly Reports July to December 1997 and Quarterly Reports January 1998 to June 1999.
- <sup>xix</sup> Savitri W. E. Goonesekere, Camena Guneratne, Women, Sexual Violence and the Legal Process in Sri Lanka, a Study on Rape, Centre for Women's Research, Sri Lanka, 1998.
- <sup>xx</sup> Penal Code (Amendment) Act No. 22 of 1995, Section 363 (a).
- <sup>xxi</sup> Section 364 A of the Penal Code.
- <sup>xxii</sup> Kamalini Wijayatilake, Camena Guneratne, Monitoring the Progress of the Elimination of Discrimination against and the Achievement of Equality for Women – Sri Lanka Report on Domestic Violence, Centre for Women's Research, Colombo 2001.
- <sup>xxiii</sup> Women's Rights Watch Year Report 1999.
- <sup>xxiv</sup> Kamalini Wijayatilake, Camena Guneratne, Monitoring the Progress of the Elimination of Discrimination against and the Achievement of Equality for Women – Sri Lanka Report on Domestic Violence, Centre for Women's Research, Colombo 2001.
- <sup>xxv</sup> *ibid.*
- <sup>xxvi</sup> Report of the Special Rapporteur on Violence Against Women, "A framework for model legislation on domestic violence", E/CN.4/1996/53/Add.2.
- <sup>xxvii</sup> Kamalini Wijayatilake, Camena Guneratne, Monitoring the Progress of the Elimination of Discrimination against and the Achievement of Equality for Women – Sri Lanka Report on Domestic Violence, Centre for Women's Research, Colombo 2001.
- <sup>xxviii</sup> Section 345 of the Penal Code.
- <sup>xxix</sup> Prohibition of Ragging and Other Forms of Violence in Educational Institutions Act No. 20 of 1998, Section 2(2).
- <sup>xxx</sup> Kamalini Wijayatilake, Camena Guneratne, Monitoring the Progress of the Elimination of Discrimination against and the Achievement of Equality for Women – Sri Lanka Report on Domestic Violence, Centre for Women's Research, Colombo 2001.
- <sup>xxxi</sup> See the Trial of the rape and murder of Krishanthi Kumaraswamy decided by the High Court on 3 July 1998 and Women's Rights Watch Quarterly Reports.
- <sup>xxxii</sup> Kamalini Wijayatilake, Camena Guneratne, Monitoring the Progress of the Elimination of Discrimination against and the Achievement of Equality for Women – Sri Lanka Report on Domestic Violence, Centre for Women's Research, Colombo 2001.
- <sup>xxxiii</sup> Ameena Hussein, Sometimes there is no Blood, Domestic Violence and Rape in Rural Sri Lanka, International Centre for Ethnic Studies, Colombo, 2000.
- <sup>xxxiv</sup> Shyamala Gomez and Mario Gomez, Gender Violence in Sri Lanka From Rights and Shame to Remedies and Change, Shakti, Colombo 1999.
- <sup>xxxv</sup> *ibid.*
- <sup>xxxvi</sup> The Child Protection Authority has been recording such evidence.
- <sup>xxxvii</sup> Kamalini Wijayatilake, Camena Guneratne, Monitoring the Progress of the Elimination of Discrimination against and the Achievement of Equality for Women – Sri Lanka Report on Domestic Violence, Centre for Women's Research, Colombo 2001.
- <sup>xxxviii</sup> *ibid.*

