

ENDING SEXUAL BRIBERY IN SRI LANKA



Compilation of Centre for Equality and Justice
Sri Lanka Advocacy Documents | 2016-2022

- **Law and Policy Reform to Prevent Sexual Exploitation of Women:**

FOKUS WOMEN is in the process of engaging with relevant stakeholders with the aim of sensitizing them (policy makers, law makers, and independent commissioners) to have appropriate state mechanisms and procedures in place to prevent sexual exploitation of women. This includes initiatives such as engaging with media to introduce the issue of sexual bribery, amending existing guidelines to address sexual harassment in the state to deal with sexual bribery, including sexual bribery inquiry mandate into Independent Commission (in collaboration with CIABOC), develop and submit draft circular to the Ministry of Public Administration on adopting zero tolerance policy on sexual bribery and conduct district level consultations with government officers to draft code of conduct on sexual bribery. This process will be supplemented by research studies commissioned by FOKUS WOMEN to assess the impact of the issue among Tamil, Muslim and Sinhala Military widows across various districts.

As discussed at the meeting, we would be grateful if you could kindly connect us with an officer at CIABOC in order for us to gather necessary information which would feed into the above mentioned interventions and research initiatives.

- **Workshop organized by CIABOC:**

Thank you for keeping us informed about the workshop you will be organizing in the near future. As suggested at the meeting, a session on women and corruption would be useful to give visibility to women's issues. We also welcome your idea to instruct the facilitator at each breakout session to ensure that women's issues are taken into consideration in the deliberations of the workshop.

We appreciate your support in order to continue to partner with CIABOC and other relevant ministries, TI and likeminded organizations to address the issue of bribery and exploitation faced by women.

I look forward to your early response.

Sincerely,



Shyamala Gomez

Country Director, FOKUS WOMEN.

Cc:

Mr. Asoka Obeyesekere, Executive Director, Transparency International Sri Lanka.

Dr. Deepika Udagama, Chairperson, Human Rights Commission of Sri Lanka.

3.2 | Letter and email sent to CIABOC on the inclusion of sexual bribery



Clerk, Quazi, Justice of Peace, Officer from the Ceylon Electricity Board, Post Master, Secretary of a Provincial Minister, Provincial Councilor and Probation Officer. Please refer to the annexed briefing papers which provides an overview of the three detailed studies.

2. Proposed legislative and policy framework: In the above context, CEJ has devised a legislative and policy framework in collaboration with likeminded organizations and individuals. This lobby document has been prepared with input from the lobby group and has been endorsed by the following organizations and individuals: **Organizations:** Chrysalis (formerly CARE International), Family Rehabilitation Centre, International Centre for Ethnic Studies, Suriya Women's Development Centre, The Grassrooted Trust, Transparency International Sri Lanka, Viluthu, Centre for Human Resource Development.

Individuals: Asma Edris (Activist), Balasingham Skanthakumar (Researcher), Dinushika Dissanayake (Attorney-at-Law), Dr. M. Ganesan (Consultant Psychiatrist, National Institute of Mental Health, Sri Lanka, Gehan Gunatilleke (Attorney-at-Law), M. Mangaleswary Shanker (Attorney-at-Law), Prof. Camena Guneratne (The Open University of Sri Lanka), Shamara Wettimuny (Researcher), Udeni Thewarapperuma (Attorney-at-Law).

The document seeks to address sexual bribery in the public service. As requested by you at the meeting in May 2017, we have included international standards on sexual bribery and comparative best practices from other countries. The lobby paper also recommends interventions to strengthen Sri Lanka's legislative and policy framework on sexual bribery. Please find enclosed a copy of the draft lobby document.

3. We also note the proposed work CIABOC will undertake to create awareness and work on preventive measures to be taken to combat bribery and corruption. CEJ has already begun to create awareness among grassroots communities, religious leaders and government officials on sexual bribery. We hope CIABOC will partner with CEJ and other organizations working on sexual bribery on these important interventions to combat bribery and corruption.

We appreciate your support to continue to partner with CIABOC and other relevant ministries, TISL and other likeminded organizations to address the issue of sexual bribery and sexual exploitation faced by women from all three ethnic communities. This letter and attached documents is copied to relevant ministries and Ministers, independent commissions, non-governmental organizations and State institutions that we will continue to work with in our advocacy to bring in sexual bribery as a serious form of violence against women into existing legal framework.

Sincerely,



Shyamala Gomez
Executive Director
Centre for Equality and Justice

Cc:

Hon. Mangala Samaraweera, Minister of Finance & Mass Media
Hon. Thalatha Athukorale- Minister of Justice and Buddha Sasana
Madam Chandrika Bandaranaike Kumaratunga (Her Excellency the Former President of Sri Lanka),
Chairperson, ONUR
Mr. M. S. Jayasinghe, Director General, ONUR
Mrs. W.M.M.R. Adikari, Secretary, Ministry of Justice
Mrs. Rosy Senanayake, Mayor, Colombo District
Hon. Mano Ganesan, M.P., Minister of National Integration, Reconciliation and Official Languages
Hon. (Dr.) Haesha De Silva, M.P., State Minister of National Policies and Economic Affairs
Mr. Austin Fernando, Secretary to the President
Hon. Eran Wickramaratne, M.P., State Minister of Finance
Ms. Ashoka Alawatte, Secretary, Ministry of Women's Affairs
Mr. J.J. Rathnasiri, Secretary, Ministry of Public Administration and Management

Chairperson, Commission to Investigate Allegations of Bribery or Corruption
Chairperson, Human Rights Commission of Sri Lanka,
Chairperson, Law Commission of Sri Lanka
Commissioner, Official Languages Commission
Chairperson, University Grants Commission
Chairperson, National Procurement Commission
Chairperson, Delimitation Commission
Chairperson, Finance Commission
Chairperson, Public Service Commission
Chairperson, Election Commission
Chairperson, Police Commission

Ms. Wasantha Perera Director General, Sri Lanka Institute of Development Administration
Mr. Asoka Obeyesekere, Executive Director, Transparency International Sri Lanka
Ms. Simrin Singh, Country Director, ILO Sri Lanka
Ms. Ritsu Nacken, Representative, Sri Lanka & Country Director, the Maldives, UNFPA
Juan Fernandez-Jardon, Senior Human Rights Advisor, OHCHR
Mr. Giuseppe Crocetti, Chief of Mission, IOM Sri Lanka
Ramaaya Salgado, Programme Analyst - UN Women Sri Lanka

3.3 | Amending the Bribery Act and other related Acts to expressly include sexual bribery as an offence

1. The need for an express offence of Sexual Bribery

1.1 The offence of Sexual Bribery is fundamentally different to the other forms of bribery in the Bribery Act. It is more than a law dealing with corruption, as it has an element of gender-based violence as it is related to the concept of consent. When a sexual act is demanded by a person in authority or holding out to being in authority, in exchange for some favour or the vindication of some right, the person performing the sexual act is coerced into performing the same, and cannot thus have consented to the Act. While other acts of corruption are criminalized because they involve an abuse of power, sexual bribery involves an abuse of power coupled with sexual violence.

2. Inclusion of Sexual Bribery as Part II(A) of the Act

2.1 It is suggested that ‘Sexual Bribery’ be included as a new Part to the Bribery Act, immediately following Part II which is ‘Offences of Bribery’.

2.2 The offence of Sexual Bribery is limited to the soliciting or accepting of a sexual bribe, and does not encompass the act of offering sexual bribes, as it is only in the former that a question of consent arises. It is important that the victim of sexual bribery is not themselves found guilty of an offence, and thus the offence of sexual bribery needs to be structured differently from the other offences of bribery under the Bribery Act. Most of the offences under Part II of the Bribery Act follow a similar structure, wherein each case first describes the offence of offering gratification, and thereafter describes the offence of receiving gratification.

3. Difference between sexual bribery and other forms of bribery

3.1 It is important to specifically differentiate sexual bribery from other forms of bribery so that the distinction between the two can be properly and clearly drawn. For the purpose of clarity, it can be explicitly mentioned that the person from whom the sexual bribe is solicited is the victim, or that they have not committed an offence, which will prevent misinterpretation of the section.

3.2 The categories of persons who would and would not be guilty of an offence of sexual bribery are demonstrated below;

Ordinary forms of Bribery	
Authority soliciting the bribe - OFFENCE	Person providing the bribe solicited - Not an offence
Person offering the bribe, unsolicited - OFFENCE	Authority accepting the bribe - OFFENCE
Sexual Bribery	
Authority soliciting the bribe - OFFENCE - Sexual bribery	Person providing the bribe solicited - Not an offence
Person offering the bribe, unsolicited - NOT SEXUAL BRIBERY (This may fall within the scope of other offences of bribery)	Authority accepting the bribe - OFFENCE - Sexual Bribery

3.3 The existing provisions of the Bribery Act are insufficient to protect the victim. Section 79(1) of the Bribery Act already provides that:

“in any proceedings for bribery before a court or commission of inquiry, the giver of a gratification shall be a competent witness against the person accused of taking the gratification and shall not be regarded as an accomplice, and the decision or finding of the court or commission shall not be illegal merely because it proceeds upon the uncorroborated testimony of such giver”.

3.4 However;

- i The section only relates to Court proceedings and is for the purpose of leading evidence, and
- ii The section is limited to saying that the giver of the gratification is not an accomplice, and does not state that such a person is not guilty of a crime.

4. Necessary elements of the section

4.1 It is important that the following elements are included into the section, for the reasons described below;

4.2 *“Not just a person in power or authority, but also a person holding out to be in a position of power or authority”*

4.2.1 It is recommended that persons who don't in fact have the power or authority to do the things they promise or offer in exchange for receiving sexual gratification should be brought within the ambit of the Section.

4.2.2 Section 24 of the Act criminalizes the accepting of a bribe even when the person who accepted such a bribe did not, in fact, have the power, right or opportunity to carry out the act for which the bribe was intended for.

However, this applies to the specific categories of officers in Part II of the Act, such as a judicial officers, Members of Parliament, and police and peace officers. If sexual bribery is included as a separate part of the Act, this would not be applicable to it, and so it should be explicitly mentioned.

4.2.3 Alternatively, Section 24 can be amended to read *“Where in any proceedings against any person for any offence under any section in this Part, or Part II(A) of this Act...”*

4.3 Nature of the coercion/solicitation

4.3.1 It must be explicit that it is not necessary for there to have been physical coercion in order for an act to amount to solicitation of a sexual bribe, and that it is even an offence for a public officer to solicit a sexual bribe verbally or by way of implication.

4.4 What has to be given/promised in return for performing the sexual act

4.4.1 All the situations covered in the Bribery Act which criminalize the demanding or acceptance of non-sexual gratification, should also be criminalized in the event that the gratification demanded or accepted is sexual in nature.

4.4.2 What the accused has to offer the victim in return for the sexual act should not be limited to 'a benefit', especially one determined based on financial benefit. Instances could arise in which a sexual bribe is solicited for reasons that would not fall within the definition of conferring a benefit or favour, but rather where the person in authority requests such a bribe in order to allow the victim to vindicate their rights, or in order to vindicate another person's rights.

4.4.3 For instance, a person may be told that they may be able to bypass

bureaucratic steps if they provide a sexual bribe. Similarly, a victim may be asked to perform a sexual act in order for bail to be granted to them or a loved one, or for them or a loved one not to be charged with an offence. In such instances the victim cannot be said to get some benefit or advantage which they would otherwise not have been entitled to, but rather to vindicate a right they are already entitled to, which through an abuse of power is being denied.

4.4.4 Such a situation is in fact more serious than when a sexual bribe is solicited in exchange for a favour as it exploits the desperation and urgency which the victim may be acting under, and so the wording of the section should not be vague with regard to such instances coming within its ambit.

4.4.5 Thus, ideally a wide phrase should be used that will allow any relevant action to fall within the scope of the section, such as ‘...as a condition for doing anything or forbearing from doing anything’.

4.5 Definition of sexual favour/gratification

4.5.1 The following is also proposed to be included in section 90, ‘Meaning of Expressions’;

Explanation - A

“sexual gratification or favour” for the purposes of section ... above, shall be;

- a *sexual intercourse, or*
- b *any act that would not amount to sexual intercourse, but will amount to or constitute physical, verbal or nonverbal conduct of a sexual nature, including the exposure of a private body part.*

Provided that it shall not be necessary for a sexual favour to be performed

physically and may include a sexual favour performed over the use of information and communication technology or any other means.

4.5.2 *In the context of increased use of ICT and mobile phones it may be important to explicitly highlight that the sexual act solicited or demanded may include an act to be performed over ICT or any other means. Victims may be requested to perform acts such as sending nude pictures of her/himself or any other pornographic materials to the offender.*

4.6 Punishment

4.6.1 *The punishment for the offence should be sufficient in consideration of the fact that this constitutes not just an act of corruption but also a case of sexual violence.*

4.6.2 *Under the Bribery Act, the offences of Bribery carry with them a sentence of up to 7 years, and a fine of up to five thousand rupees. The punishment attached to some sexual offences in the penal code are as follows;*

Offence	Penal Code Section	Punishment
Sexual harassment	S. 345	Imprisonment up to 5 year and/or a fine up to Rs. 5,000/- Compensation to be paid to the victim.
Rape	Ss. 363 and 364	Imprisonment between 7 to 20 years and a fine. Compensation to be paid to the victim.
Rape (aggravated circumstances)	S. 364	Imprisonment between 10 to 20 years and a fine. Compensation to be paid to the victim.
Incest	S. 364A	Imprisonment between 7 to 20 years and a fine.
Unnatural offences	S. 365	Imprisonment up to 10 years and a fine.
Grave sexual abuse	S. 365B	Imprisonment between 7 to 20 years and a fine. Compensation to be paid to the victim.

4.6.3 When deciding on the quantum of punishment for the offence of sexual bribery, comparison can be drawn to the offences of rape as described in S. 363(b) and grave sexual abuse as described in section 365B (b) of the penal code.

4.6.4 S. 363(b) states that a man is said to commit rape when he has sexual intercourse with a woman with her consent while she is in the lawful or unlawful detention, or when her consent has been obtained by the use of force or intimidation, or by threat of detention or by putting her in fear of death or hurt. S. 365B (b) states that one of the instances in which a person commits grave sexual abuse is when, even with consent – in similar circumstances, they do any sexual act which would constitute grave sexual abuse.

4.6.5 While these sections of the Penal Code use the phrase ‘with her consent’, when the victims consent has been obtained in these specified contexts, the law criminalizes these acts based on the rationale that in such a situation the victim cannot really consent due to the pressure that would sway their decision. This is similar to sexual bribery, as a person cannot really consent to the sexual act or gratification provided, when such contextual pressures exist.

4.6.6

When a person holding authority solicits a sexual act, the act of solicitation itself is an offence. However, for the purpose of sentencing, there are certain instances in which the law may provide for certain aggravated offences, which attach to them stricter punishments, such as;

- When the victim has carried out the act in response to the solicitation, as in such instances the damage to the victim is greater.
- When the sexual act is solicited from a person when they are in the lawful or unlawful detention, or when there has been the use of force or intimidation, or threat of detention or by putting the victim in fear of death or hurt. (The situations applicable to rape under section 363(b) and grave sexual abuse under section 365B (b))

4.6.7 In the case of the instances of the aggravated offence of sexual bribery, a minimum sentence can be set as in the case of some of the sexual offences. Minimum sentences are however not desirable in ordinary instances of sexual bribery, as a judge who feels the minimum sentence is excessive based on the facts of the case, when there has not been severe harm to the victim, may resort to suspending the sentence of the offender as a result.

4.6.8 Similar to the punishment in some of the sexual offences, provision should be included for compensation to be paid to the victim as well.

4.7 Retrospective application

4.7.1 Unless it is specified that the section will have a retrospective effect, it will not be possible to prosecute acts of sexual bribery already carried out under this section. These offences would however be punishable as gratification as per the definition in the Kathubdeen case¹, but this would carry with it the lesser punishment. It can also result in the victim also being accused of an offence, as would be the case in an ordinary offence of bribery.

¹ Kathubdeen v Republic of Sri Lanka [1998] 3 Sri LR 107 available at <https://www.lawnet.gov.lk/1998/12/31/kathubdeen-v-republic-of-sri-lanka/>

4.7.2 To retrospectively punish an act under the new section to be introduced may affect the Constitutionality of the Amendment in terms of Article 13(6) of the Constitution². However, this Article only prevents the imposition of a sentence which is more severe than the sentence in force at the time the offence was committed. It does not impose a bar on retrospectively specifying that categories of persons are not to be considered guilty of an offence. As such, the law may specify that a person from whom a sexual bribe has been solicited or demanded shall not be considered guilty of an offence if they have provided such bribe, with retrospective effect.

4.7.3 An additional problem that may arise is that because sexual bribery will be included under the new section, judges may interpret 'gratification' under the other provisions of the Bribery Act to exclude sexual gratification, an interpretation contrary to the Kathubdeen case. A suggested provision to prevent this would be as follows;

Nothing in this act shall prevent the prosecution and/or conviction of a person who has solicited or accepted forms of sexual gratification prior to the enactment of this amendment under the definition of 'gratification' under the Act.

5. Necessary amendments to the Bribery Act

5.1 there are several changes that should be made to the Bribery Act in order to accommodate the provision on Sexual Bribery;

5.2 There are several instances in the Bribery Act where provisions are said to apply to other sections in Part II of the Act. This should be amended to include sections in Part II (A) of the Act as well, or the Part of the Act containing sexual bribery.

The said references are contained in the following sections;

- Section 24 - Acceptor of gratification to be guilty notwithstanding that purpose not carried out.
- Section 25 (1), (2) and (3) - Attempt to commit, and abetment of, an offence under this Part.
- Section 30 - Offences under this Part to be cognizable.
- Section 90 - Meaning of expressions - definition of 'bribery'.

5.3 First proviso to Section 19 states that;

"Provided, however, that it shall not be an offence for a public officer to solicit or accept any gratification which he is authorized by law or the terms of his employment to receive;"

While the laws under which the soliciting or accepting gratification are not specified, it could be included here that this does not include sexual gratification. This could be by way of a further proviso, which is suggested to read as follows;

Provided further that such gratification shall not include any form of sexual gratification falling within section _____ of the Act.

² Article 13(6) - No person shall be held guilty of an offence on account of any act or omission which did not, at the time of such act or omission, constitute such an offence and no penalty shall be imposed for any offence more severe than the penalty in force at the time such offence was committed.

5.4 Protection of the identity of victims

- 5.4.1 It is important that the privacy of the victim is protected, as the victim could be subject to stigma. In contexts where the bribery has taken place in relation to employment, this stigma may have long lasting repercussions that negatively impact the victim's career. Further, a fear of the publicity and humiliation may prevent victims from making a complaint if this privacy is not guaranteed.
- 5.4.2 Section 78(3) provides that *'upon application made on that behalf by the Attorney-General or any officer authorized by him, the whole or any part of the proceedings in any court for bribery may be held in camera'*.
- 5.4.3 Section 78(3)(A) may be inserted thereafter to either make it mandatory that offences of sexual bribery must be held in camera, or that a judge should ascertain from a victim of sexual bribery if they wish for the proceedings to be held in camera.
- 5.4.4 Section 77 of the Act provides for restriction on the publication of details of proceedings before a Commission of Inquiry under the Act, and makes the contravention of such restrictions an offence. No such restriction is imposed on publication of details of other proceedings under the Act, even when held in camera. A section should be included similar to sections 77(1) and 77(3) in the case of proceedings relating to sexual bribery which take place in camera.
- 5.4.5 Such provision may be similar to section 365C (1) of the Penal Code which makes it an offence to print or publish the name or any matter which may make known the identity of any person against whom various sexual offences have been committed. The sentences in the penal code section may be used in this instance as well, i.e. 'imprisonment of either description of a term which may extend to two

years or a fine or with both'.

- 5.4.6 It can also be specifically provided that the provisions of the Assistance to and Protection of Victims of Crime and Witnesses Act, No. 4 Of 2015 shall apply.
- 5.5 Due to the sensitive nature of the offence of Sexual Bribery, provision can be included in the Bribery Act for specially trained officers to conduct the investigations into the offence.

6. Sexual Bribery by persons other than Public Officers

- 6.1 When viewed from a corruption standpoint, the State aims to prosecute those who commit acts of bribery for the reason that it relates to the abuse of power. However, the underlying rationale for the criminalization of sexual bribery goes above and beyond this, and is based on the idea that there cannot be proper consent to a sexual act in certain situations. The person in authority or holding out to be in authority uses the said authority to coerce the victim into performing a sexual act.
- 6.2 For this reason, it is not only sexual bribery that is committed by Public Officers which must be criminalized, any person who holds some authority over another in any other context too can in principle commit this offence, e.g., an employer or superior officer in the private sector.
- 6.3 As the Bribery Act is in principle an act based on combating corruption, and deals solely with public officers, a general provision dealing with sexual bribery not limited to public officers may be better included in the Penal Code. It should ideally be included with the other sexual offences, i.e., between sections 345 and 356C. This would make it clear that it is to be viewed as a sexual offence and not just from a corruption standpoint.
- 6.4 The section should be wide enough to encompass situations in which persons holding authority over, holding out to have

authority over, or in a fiduciary relationship with another demands or accepts any sexual gratification as a condition for doing or forbearing from doing any act.

7. Amendments to laws other than the Bribery Act

7.1 Commission to Investigate Allegations of Bribery or Corruption Act (CIABOC Act), No. 19, of 1994

7.1.1 Section 28 of this Act defines bribery as “the offer, solicitation or acceptance of any gratification in contravention of any provision of Part II of the Bribery Act, or any other act in contravention of any such provision.” This should be amended to include the solicitation or acceptance of sexual bribery under the Bribery Act as well.

7.1.2 This Act should also be amended to provide for the following;

- Mandatory inclusion of a female officer trained on the concept of gender with whom victims can choose to lodge their complaints.
- Training on the concept of gender, and on sexual forms of bribery for officers who are designated to investigate allegations of sexual bribery.
- Ensuring confidentiality in the case of sexual bribery.
- Express provision to specify that the provisions of the Assistance to and Protection of Victims of Crime and Witnesses Act, No. 4 Of 2015 (victim and witness protection Act) applies to investigations and prosecutions under the CIABOC Act.

7.2 Penal Code

7.2.1 Sections 158, 159 and 160 of the penal code criminalize a Public servant taking a gratification other than legal remuneration in respect of an official act, any person taking a gratification in order by corrupt or illegal means, to influence a public servant, and any person taking a gratification for the exercise of personal influence with a public servant respectively.

7.2.2 The term ‘gratification’ is explained in the explanations to Section 158 as follows;

“Gratification”: The word “gratification” is not restricted to pecuniary gratifications or to gratification estimable in money.

7.2.3 While this explanation should allow the section to be interpreted to include sexual gratification, for further clarity this explanation should be amended to specify that this includes sexual gratification.

7.3 Establishments Code

7.3.1 Amendment should be brought to Volume II of the Establishments Code (1999)³ to impose disciplinary action on public officers who are found guilty of sexual bribery. This may include express provision that an officer convicted for sexual bribery will not be eligible for promotions, or that they must compulsorily be interdicted.

7.3.2 Rule 28 of chapter XLVII of Volume II of the Code will also be applicable to sexual bribery. The rule deals with ‘Disciplinary Action against a Public Officer in view of orders issued against him by a Court of Law or Statutory Authority’.

³ [http://www.pubad.gov.lk/web/images/contents/e_code/establishments-code-volume-ii-1999\(e\).pdf](http://www.pubad.gov.lk/web/images/contents/e_code/establishments-code-volume-ii-1999(e).pdf)

7.3.3 According to Rule 28:3 a disciplinary order can be made against a Public Officer who has been found guilty of an offence by a court or statutory authority, even without a formal disciplinary inquiry. However, according to Rule 28:6 being acquitted, discharged or found not guilty for an offence does not mean disciplinary action cannot still be taken against a Public Officer in terms of the code.

7.3.4 It has been judicially recognized that this is because disciplinary proceedings under the Establishments Code require a different standard of proof that court proceedings.⁴

The Schedules of the Establishment Code should be suitably amended to ensure that sexual bribery is encompassed within, including the 'First Schedule of offences committed by Public Officers'⁵ and Appendix 1, 'Definition of Offences caused or committed by Public Officers'.⁶

8. Comparative Provision: Jammu and Kashmir

8.1 Jammu and Kashmir became the first State in India to include a specific offence of sextortion, by way of an amendment brought about to the State Penal Code through The Jammu and Kashmir Criminal Laws (Sexual Offences) (Amendment) Bill 2018⁷. The section can be used as a guide when drafting a law for Sri Lanka, but there are several shortfalls in this provision which would need to be changed if doing so.

8.2 The section reads as follows;

354E – Sextortion

1. Whoever –

- a Being in a position of authority; or
- b Being in a fiduciary relationship; or
- c Being a public servant;

Abuses such authority or fiduciary relationship or misuses his official position to employ physical or non physical forms of coercion to extort or demand sexual favours from any woman in exchange of some benefits or other favours that such person is empowered to grant or withhold, shall be guilty of offence of sextortion.

Explanation :- 'Sexual favour' shall mean and include any kind of unwanted sexual activity ranging from sexually suggestive conduct, sexually explicit actions such as touching, exposure of private body parts to sexual intercourse, including exposure over the electronic mode of communication.

2. Any person who commits the offence of sextortion shall be punished with rigorous imprisonment for a term which shall not be less than three years but may extend to five years and with a fine.

8.3 While this is a wide section which will encompass a wide range of situations, it has several shortfalls which should not be duplicated if a similar section is enacted in Sri Lanka;

- It limits sextortion to an offence which can be committed against women only, while there should be no specification of gender as all persons can become victims of this offence.
- It requires that in order to have committed the offence, a person was in fact empowered to grant or withhold the favour or benefit, while section 24 of the Sri Lankan Bribery Act extends to persons

⁴ D.M. Anura Mangala v Inspector General of Police SCFR 273/2014, S.C.M 04.06.2015, at page 5. Available at http://www.supremecourt.lk/images/documents/sc_fr_273_2014.pdf

⁵ Page 59

⁶ Page 65

⁷ Available at <http://kashmirpolice.jk.gov.in/pros5>

who held out to have such authority when making the demand but did not in fact have such authority.

- It is limited to using forms of coercion to extort or demand the sexual act, and doesn't include the act of 'accepting' sexual gratification. Thus simply proving that such sexual activity had taken place in exchange for a benefit will be sufficient and the prosecution will have to prove that the accused used some form of coercion to extort or demand the same.
- The phrase 'benefits or other favours' may be narrowly interpreted to mean a thing which the victim was not in the ordinary course entitled to, such as when the sexual act is demanded as a condition for vindication of a right or entitlement.

8.4 *There are however several components of this section which can be used when drafting a provision to criminalize sexual bribery in Sri Lanka;*

- The section does not limit the offence to public officers, but includes anyone in a position of authority or in fiduciary relationship to the victim. Thus it will include persons from the private sector as well, which is essential as this offence is not just an offence related to corruption but a sexual offence based on the concept of consent.
- The explanation as to what constitutes a 'sexual favour' is wide, and includes exposure over forms of electronic communication.

3.4 | International practices on tackling sexual bribery - Desk research compiled by CEJ 09th Nov 2018 - Revised in November 2021

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INTERNATIONAL PRACTICES

Sexual Bribery in International Conventions

- Under the Declaration on the Elimination of Violence against Women, (DEVAW) Article 1, 1993 (A/RES/48/104), the definition of “violence against women” encompasses the kind of psychological harm and coercive pressure that characterizes sexual bribery.¹
- Similarly, Article 4 of the African Union Convention on Preventing and Combating Corruption defines corruption to include not only “goods of monetary value,” but also other types of “benefit,” “favour,” or “advantage” – terms that could be construed to cover the non-monetary, sexual benefit in a sexual bribery case.

Comparative Laws on sexual bribery being implicitly addressed in a country’s Anti Corruption Statute

Canada	Section 122 of Canada’s Criminal Code criminalizes the breach of trust by a public officer, and has had the most application in sexual bribery cases. Section 122 holds that every official who, in connection with the duties of his office, commits fraud or breach of trust is guilty of an indictable offense. The purpose of this provision is to prohibit, among others, the use of one’s position of power in the public service, for the promotion of private ends or to obtain some benefit. ²
Federation of Bosnia and Herzegovina and the Republika Srpska	The Criminal Codes of the Federation of Bosnia and Herzegovina and the Republika Srpska include the offense of ‘Sexual Intercourse by Abuse of Position and states that ‘whoever, by abusing his position, induces into sexual intercourse or equivalent sexual act a person who is in a dependent position in relation to him due to the person’s financial, family, social, health or other condition or straitened circumstances’ is punishable under the law. ³ Similarly, the Criminal Code of the Republika Srpska also criminalizes the same offence. ⁴

¹ Please note that the term ‘sextortion’ has been replaced with the term ‘sexual bribery’ in this entire document as this is a preferred and more suitable term within the Sri Lanka context.

² International Association of Women Judges, Marvail O’Farrell Mairal and Thomson Reuters Foundation, Combating Sextortion: A comparative study of laws to prosecute corruption involving sexual exploitation <<http://www.trust.org/contentAsset/raw-data/588013e6-2f99-4d54-8dd8-9a65ae2e0802/file>> accessed 11 November 2021

³ Article 205, Criminal Code of the Federation of Bosnia and Herzegovina

⁴ Article 168, Criminal Code of Republika Srpska

India	The Prevention of Corruption (Amendment) Act, 2018 incorporates the umbrella term ' undue advantage ', which is defined as 'any gratification other than legal remuneration'. The Act also specifies that 'the word gratification is not limited to pecuniary gratifications or to gratifications estimable in money'. ⁵
Kenya	The Interpretation Clause of Kenya's Bribery Act defines "advantage" to mean and include "any other service, favour or advantage of any description whatsoever..." ⁶ and "any offer, undertaking or promise of any gratification" ⁷ . Kenya's Anti-Corruption and Economic Crimes Act interprets the term "benefit" to include "any gift, loan, fee, reward, appointment, service, favour, forbearance, promise or other consideration or advantage" ⁸ .
Singapore	The Prevention of Corruption Act of Singapore broadly defines the term ' gratification ' to include 'any other service, favour or advantage of any description whatsoever' and 'any offer, undertaking or promise of any gratification' ⁹ which could be construed to include sexual favours.
Taiwan	Taiwan's Anti-Corruption Act prohibits anyone from demanding, agreeing to accept or accepting a bribe or other unjust enrichment. ¹⁰ The anti-corruption legal framework requires a bribe or " unjust enrichment ", with the latter interpreted by the Supreme Court to mean "any tangible and intangible interests that can meet one's needs or satisfy one's desire", which could be interpreted to include sexual favours.
USA	Under Chapter 41 of the US Code, there have been instances where crimes that would have amounted to sexual bribery have been prosecuted under 'extortion'. Similarly, Chapter 11 of the US Code includes the term ' anything of value ' under Section 201 - Bribery of public officials and witnesses. Several Court of Appeals judgments have defined the same to mean 'an intangible consideration' generally, and a 'sexual act' specifically, when charged for bribery under the aforesaid Section. As such, the said Section could provide for sexual bribery cases to be tried under a bribery charge, provided that other elements encapsulated in the offence are met. ¹¹
Vietnam	Vietnam's Criminal Code ¹² includes ' intangible benefits ' under 'Taking bribes'.

⁵ Amendment of Section 2, Prevention of Corruption (Amendment) Act, No. 16 of 2018

⁶ Section 2 (d), Bribery Act of 2016 - Kenya

⁷ Section 2 (e), Bribery Act of 2016 - Kenya

⁸ Section 2, Anti-Corruption and Economic Crimes Act of 2003

⁹ Prevention of Corruption Act, Ordinance No 39 of 1960 <<https://sso.agc.gov.sg/Act/PCA1960>> accessed 23 October 2018; also see Chapter on Singapore by IL Yang and T wang in 'Bribery and Corruption' in Global Legal Insights (eds J Pickworth and D Williams)(First Edition)

¹⁰ Article 4(1)(5) of the ACA and Article 5(1)(3) of the ACA

¹¹ <https://www.ibanet.org/MediaHandler?id=E5E451C2-A883-4518-B0ED-5AAAEBCCDD5AA>

¹² Article 354, Criminal Code of the Socialist Republic of Vietnam (2015)

Comparative law on sexual bribery being addressed in the legal and policy framework in a country

Country	Statute	Provision addressing Sexual Bribery
Australia	Sexual Assault Laws ¹³	Jurisprudence in Australian States and Territories may also contain counts of sexual bribery under sexual assault laws. For example, under Subsection 61HE(8)¹⁴ of the Crimes Act 1900 of New South Wales , ‘intimidation or coercion, or the use of any other threat which does not involve a threat of force ¹⁵ , or ‘the abuse of the authority of position or the trust conferred thereof ¹⁶ are stated to be grounds on which it may be established that the victim/survivor had not consented to sexual intercourse.
Australia	Tribunals that adjudicate corruption offences ¹⁷	A number of tribunals and judicially pronounced corruption offences in Australia have included offences of sexual bribery in the general prohibition on corrupt conduct and breach of public trust by officials serving the public, by abusing their official positions.
Brazil	Law on the Abuse of Authority ¹⁸	The Law on Abuse of Authority holds public officials accountable for the abuse of their powers vested by their positions, in such a way that it would afflict a victim/survivor. This provision is worded in a manner that it captures the scope of sexual bribery offences that would otherwise be excluded from anti-corruption laws that require an element of financial harm or benefit.
Canada	The Immigration and Refugee Protection Act 2001	Section 129(1)(a) encapsulates the term ‘other benefit’, and Canadian courts have prosecuted offenders for sexual bribery under this Statute by construing its language to include sexual activity. ¹⁹
China	Criminal Law of the People’s Republic of China	The judicial interpretation on bribery, corruption, and misappropriation of official funds (2016) which provides clarity to the 9th amendment to the PRC Criminal Law, expands the scope of bribes to include certain intangible benefits. ²⁰
Kenya	Employment Act. ²¹ , Cap 226	Sexual bribery cases that occur within employment relationships are prosecuted under Section 6 - Sexual Harassment, which contains the words ‘directly or indirectly requests that employee for sexual intercourse’.
New Zealand	Crimes Act 1961	The Crimes Act defines a bribe as “any money, valuable consideration, office, employment, or any other benefit, whether direct or indirect”

¹³ Ibid 2. Page 57.

¹⁴ 61HE - Consent in relation to sexual offences - Crimes Act 1900 No 40 - NSW, Australia

¹⁵ 61HE(8)(b), ibid 18

¹⁶ 61HE(8)(c), ibid 18

¹⁷ Ibid 2. Page 56.

¹⁸ Abuse of Authority Law, Statute: Law No 4,898/65, Articles 4-6 - Brazil

¹⁹ Ibid 2

²⁰ https://www.cov.com/-/media/files/corporate/publications/2016/04/judicial_interpretation_on_criminal_law_2016_04_en.pdf

²¹ Chapter 226, Employment Act No 11 of 2007 (Kenya)

Country	Statute	Provision addressing Sexual Bribery
New Zealand	Secret Commissions Act 1910	It is considered an offence to “corruptly give a gift to an agent (and for an agent to accept such a gift) without the consent of the principal where the gift (or other consideration) is an inducement or reward for doing or forbearing to do something in relation to the principal’s affairs or business;”
Norway	The Penal Code 2005 ²²	Section 295 of the Act ²³ criminalizes the offence with a penalty of upto six years of imprisonment, especially under subsection (a), which specifically provides for obtaining ‘sexual activity for themselves or another person, or makes a person perform acts corresponding to sexual activity on themselves by abusing a position, dependent relationship or relationship of trust.’
South Africa	Prevention and Combating of Corrupt Activities Act, 2004 (PCCAA)	The PCCAA refers to corruption as “Any person who directly or indirectly, accepts or gives or agrees or offers to accept or give, any form of gratification from any other person, whether for the benefit of themselves or for the benefit of another person in order to act personally or by influencing another person to act,…”
Taiwan	Criminal Code ²⁴	Article 228 of Chapter 16 of the Criminal Code of Taiwan, expressly provides that one taking advantage of their authority to abuse the relationship and have sexual intercourse shall be punishable. Circumstances of familial, educational, occupational and professional nature are stated explicitly, however with the inclusion of other similar relationships.
Taiwan	Sexual Harassment Prevention Act ²⁵	Article 2A of the Act addresses situations at work, education, training, services, plans or activities, notably extending to include conditions in which “a person’s obedience to or rejection of another’s sexual advances become a condition of obtaining, losing or reducing their rights and interests”, in the said atmospheres. Furthering the same, Article 21 ²⁶ specifies a heavier penalty to be imposed on a person who uses their ‘power, influence or opportunity’ to sexually harass another, implying particular recognition to this aspect.
Uganda	Penal Code Act	Even though Uganda does not have specific legislation addressing sexual bribery, it is indirectly prosecuted mainly through the Penal Code. Section 123 of the Act defines ‘rape’ such that ‘a person having unlawful carnal knowledge of a woman or a girl with consent’ and ‘if the consent is obtained by force or by means of threats or intimidation of any kind or by fear of bodily harm’ amongst other cases.

²² Lov om straff (straffeloven)(Penal Code) - Norway.

²³ Section 295. Abuse of unequal power relationship, etc., Ibid 29.

²⁴ Chapter 16 - Sexual Offenses, Criminal Code of the Republic of China

²⁵ Sexual Harassment Prevention Act, The Republic of China

²⁶ Article 21, Chapter Five - Penalty, Sexual Harassment Prevention Act of The Republic of China.

Country	Statute	Provision addressing Sexual Bribery
United Kingdom	Protection of Harassment Act 1977 ²⁷	Section 2 of the Act ²⁸ provides harassment to be a criminal offense which would convict a guilty party to imprisonment upto six months or impose a fine, or both, while Section 3 of the Act ²⁹ provides for civil proceedings, covering a broader range of actual harassment or apprehension of harassment, with remedies of claiming damages and/ or injunctions against the perpetrators. Even though the definition of harassment is not spelled out in the statute, case law interprets harassment to be, as per the objective perspective of a reasonable man, "repeated attempts (at least two attempts by the same person or group of people) to impose unwanted communications and contact upon a victim in a manner that could be expected to cause distress or fear in any reasonable person", and include sexual harassment, unwelcome sexual advances, requests for sexual favors and other verbal or physical harassment of a sexual nature. ³⁰
United Kingdom	Common Law offense of misconduct in public office.	Considered to be a strictly confined charge to only be executed on indictment, as per case law, "The criminal offence of misconduct in public office may be committed by a public office holder who, while acting as a public office holder, wilfully neglects to perform his or her duty or wilfully misconducts him or herself, to such a degree as to amount to an abuse of the public's trust in that office." ³¹ Where there is clear evidence of one or more statutory offences, "where either there is no relevant statutory offense, or where sentencing powers for the relevant statutory offense are insufficient to reflect the gravity of the misconduct", ³² the offence carries a maximum sentence of life imprisonment. ³³

²⁷ Protection from Harassment Act 1997 - England and Wales, UK.

²⁸ Section 2 - Offence of harassment, Ibid 23.

²⁹ Section 3 - Civil remedy, Ibid 23.

³⁰ Ibid 2. Page 174.

³¹ Law Commission - Misconduct in Public Office: Summary. Page 2. <<https://s3-eu-west-2.amazonaws.com/lawcom-prod-storage-11jxou24uy7q/uploads/2020/12/MIPO-final-summary.pdf>> accessed on 19th Nov 2021.


³² Ibid 2. Page 170.

³³ Ibid 14. Page 13.


3.5 | Inclusion of CEJ's proposed definition into the National Action Plans


4
HANDBOOK

**POLICY SUGGESTIONS
FOR PROPOSED
LEGISLATIVE AMENDMENTS**



A lion's paw is a mark of certainty. The cub follows in his father's paw prints. Thus, is the law. If the law is to be amended, it should be for sustainable accuracy. The lion cub's right to explore new avenues cannot be taken away. Yet it is conditioned by the guidance of his forefathers' steps.





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COMMISSION TO INVESTIGATE ALLEGATIONS OF BRIBERY OR CORRUPTION

Scope and content of the proposed legislative framework

The proposed legislative framework, while retaining the existing offences of bribery, corruption, and other related offences, will introduce a set of new offences to expand the scope of the Act.

The following provisions are proposed to be included in the new legislation in light of the above;

10. Long title to the Law:

It is proposed to amend the long title to the existing Act to reflect the contemporary rationale of the legislation including reference to international obligations.

11. Purpose/Objectives clause:

It is proposed to introduce a preamble or a “purpose/objectives clause” reflecting the importance and relevance of the law. The purpose clause is proposed to include the objectives and purposes listed above.

12. Substantive offences:

In addition to existing substantive offences, certain new offences are proposed to be introduced to respond to contemporary realities and to give effect to international obligations which require Sri Lanka to criminalize certain conduct within its’ anti-corruption regime.

The following substantive offences are proposed to be included;

- Bribery Offences- retained from the existing Act
- Accumulation of wealth by bribery- retained from the existing Act

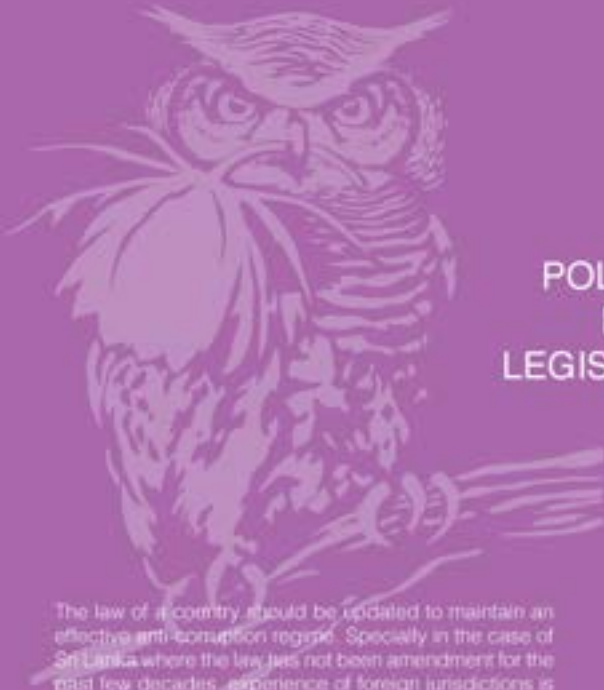
- Sexual Bribery
- Bribery of foreign public officials
- Bribery in the private sector
- Failure to declare Conflicts of interest- applies only to public sector employees
- Offences relating to sporting events
- Money Laundering- in so far as it is in relation to a predicate offence stipulated in this Act
- Corruption- retained from the existing Act

Following is a synopsis of the content of the offences proposed to be included in the Bribery Act;

(a). Sexual Bribery

‘Sexual bribery’ is proposed to be defined as a form of ‘gratification’.

Sexual bribery is defined as sexual favours solicited and received by persons in power or authority, in the exercise of that power or authority. Such favours are solicited as a condition for giving employment, a promotion, a right, a privilege or any other service, favour or advantage. A “sexual favour” could be sexual intercourse, or any act that would not amount to sexual intercourse, but will amount to or constitute physical, verbal, or non-verbal conduct of a sexual nature.



4

HANDBOOK

POLICY SUGGESTIONS FOR PROPOSED LEGISLATIVE AMENDMENTS

The law of a country should be updated to maintain an effective anti-corruption regime. Specially in the case of Sri Lanka where the law has not been amended for the past few decades, experience of foreign jurisdictions is pivotal in amending the country's laws. The law pertaining to bribery in Sri Lanka has not been amended for the past 25 years. Now it has come to a point where such amendments are indispensable. As such, this handbook introduces a policy framework amending the law of bribery, Commissions Act and Asset Declaration law. Furthermore, the recovery of lost revenue due to bribery and corruption must also be ensured. The unregulated expenditure on political campaigns during election times taint the good reputation of institutions whereby implementation of Whistleblower laws will enable integrity and transparency. A draft including all these aspects have been thus formulated which incorporated suggestions made by the public. When the necessary amendments are completed, the law will be strengthened as a Lion's Paw.

1 INTEGRITY HANDBOOK

2 GIFT RULES

3 CONFLICT OF INTEREST



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 Bribery and Corruption Investigation Commission
 COMMISSION TO INVESTIGATE ALLEGATIONS OF BRIBERY OR CORRUPTION

CIABOC

4 | DEVELOPMENTS WITH MINISTRIES / OTHER INSTITUTIONS

CEJ conducted six meetings with key individuals, including representatives from the Ministry of Women's Affairs, independent commissions, and a representative from a state institution. The meetings provided CEJ with the opportunity to share details of our ongoing work to address sexual bribery in Sri Lanka and to distribute the lobby document, with recommendations on law and policy reform and other relevant documents directly to individuals with the power and mandate to bring about change. Overall, the meetings yielded positive outcomes and added value to CEJ's ongoing lobbying efforts.

Meeting with the Commission to Investigate Allegations of Bribery or Corruption (CIABOC)

CEJ held several meetings with the Commission to Investigate Allegations of Bribery or Corruption (CIABOC) to present research findings on sexual exploitation and sexual bribery and discuss the next steps to address this issue in Sri Lanka. Following an initial meeting with a representative from Transparency International Sri Lanka and the Director General of the Bribery Commission, Mr. Sarath Jayamanne, in 2017, CIABOC expressed interest in tackling sexual bribery by focusing on prevention and awareness measures. Following this meeting, CEJ submitted a formal request letter and shared the lobbying document containing comparative research on sexual bribery. CEJ re-submitted the lobby document and sent a letter with relevant documents to 30 ministries, Ministers, independent commissions, non-governmental organizations, and State institutions. Later, in response to a request from Ms. Subashini Siriwardhena, Assistant Director General of CIABOC, CEJ prepared and submitted a research document on comparative law on sexual bribery in anti-corruption statutes and other legal and policy works in other countries. The discussions are continuing, and CEJ hopes

to further lobbying efforts in the future.

Meeting with the Law Commission of Sri Lanka

CEJ met with Mr. Sanjeewa Jayawardena, President's Counsel and member of the Law Commission, following his presentation of the lobbying document and proposed law reform to the members of the Law Commission. CEJ discussed the proposed definition of 'bribery' with Mr. Jayawardena, who agreed to move ahead with the proposed reform. Subsequently, the Law Commission appointed a subcommittee to follow up and support the drafting of the law and CEJ is working in close collaboration with the subcommittee to take this matter forward.

Meeting with the Public Services Commission

CEJ met with Ms. Dhara Wijayatilake, a member of the Public Service Commission of Sri Lanka, to discuss CEJ's initiatives to end sexual bribery in Sri Lanka. Ms. Wijayatilake was appreciative of the work being conducted and saw the value and importance of reforming the laws in Sri Lanka and enforcing prevention measures. Ms. Dhara Wijayatilake connected CEJ with the Director General of the Sri Lanka Institute of Development Administration to discuss how to raise awareness amongst key public sector officials.

Meeting with the Sri Lanka Institute of Development Administration (SLIDA)

Following the referral from Ms. Dhara Wijayatilake, CEJ met with Ms. Wasantha Perera, Director General of the Sri Lanka Institute of Development Administration (SLIDA). SLIDA is the premier public-sector training organization in Sri Lanka for the development of knowledge and improvement of skills in Public Administration

and Management. All Sri Lankan administrative service officers undergo the SLIDA training programme before commencing work. Following discussions with the Director General, the CEJ Executive Director, a lawyer by training with over twenty-five years of experience in teaching, was invited to give a three-hour lecture session on sexual bribery as part of their module on Good Governance and Anti-Corruption. CEJ's Executive Director also developed a module on sexual bribery that was incorporated into SLIDA'S general training. Therefore, all public sector administrative officers in Sri Lanka will receive information on sexual bribery and how to reduce/ address it before entering the workforce.

Meeting with the Deputy Chief of Staff of the Prime Minister's office

CEJ also met with the Deputy Chief of Staff of the Prime Minister's Office, Ms. Rosy Senanayake, in 2017 to present research study findings and find avenues for collaboration with relevant ministers to address sexual bribery in Sri Lanka. Ms. Senanayake was supportive of the ongoing efforts and urged CEJ to engage the relevant line ministries to raise awareness and advocate for change at ground level. She further requested CEJ to present the study findings and recommendations to the Prime Minister, assuring her support in the process.

Meeting with a Member of Parliament (MP)

CEJ held a meeting with MP Hon. (Dr.) (Mrs.) Thusitha Wijemanna to present the research study findings and seek her support and recommendations to address the issue of sexual bribery in Sri Lanka. Hon. MP Wijemanna requested CEJ to submit a letter addressed to the Sectoral Oversight Committee on Women and Gender of the Sri Lanka Parliament and pledged her support to take the issues forward.

Anti Corruption Bill

CEJ was also provided with the opportunity to input into a new draft Anti - Corruption Bill that seeks to consolidate and bring in amendments to provisions in three existing laws- the Bribery Act, The Declaration of Assets and Liabilities Act and

the CIABOC Act. CEJ's input was shared with the Ministry of Justice and sought to bring in express terminology of sexual bribery into the draft Bill and to flesh out and amend existing provisions to include and address sexual bribery, and to bring in enhanced penalties.

4.1 | Anti-Sexual Harassment Committee Meeting, 24th Oct 2019, Ministry of Women & Child Affairs and Dry Zone Development - Minutes

ANTI-SEXUAL HARASSMENT COMMITTEE MEETING

24TH OCT 2019, MINISTRY OF WOMEN & CHILD AFFAIRS AND DRY ZONE DEVELOPMENT

In attendance:

Additional Secretary -Admin/ Finance,
Ministry of Women and Child Affairs
Ms. Swarna Sumanasekara,

National Committee on Women
Ms. Sujeewa Palliyaguruge, Director
(Development), Ministry of Women & Child
Affairs and Dry Zone Development

Ms. Saduni Rajapaksha, Assistant Secretary
(Development), Ministry of Women & Child
Affairs and Dry Zone Development

Ms. Roshini - Development Officer

Ms. Bimali Ameresekere,
Gender Specialist, UNDP

Ms. Lihini Ratwatte,
Project Officer - Peacebuilding, UN Women

Ms. Shyamala Gomez, Executive Director, CEJ

Ms. Ando Anthapan - Project Manager, CEJ

Ms. Naduni Madumali - UNV with UNDP

Discussion:

The meeting began with Ms. S. G. Palliyaguruge, Director (Development), Ministry of Women and Child Affairs and Dry Zone Development (MWCADZD) briefing the new Additional Secretary on the work that has taken place so far through the Committee in minimizing sexual harassment

in workplaces. In explaining the objective of the meeting, she mentioned that although ministries have been requested to set up committees to inquire on sexual harassment at workplaces and the composition has been specified, no guidelines on the functions of the committee has been issued.

It was informed to the committee members that only 10 ministries - namely: Ministry of Lands and Parliamentary Reforms, Ministry of Internal & Home Affairs and Provincial Councils & Local Government, Minister of Plantation Industries, two departments in the Uva Provincial Council, ministries in the North Central Province - have set up internal committees to inquire into the complaints. However, it was added that 19 ministries have been successful in appointing gender focal points within their workplaces. The Additional Secretary added the need to call for a common meeting with the chairpersons, secretaries of these harassment committees at the Ministry of Women in order to obtain the consensus of the scope and roles. Further, he added that a two week time period is to be given to the other ministries to set up the committees.

A copy of the guidelines to these harassment committees, developed by the Ministry of Women, was shared among the attendees; however, the further need to refine them and to translate the guidelines into English and Tamil was raised by the members.

After the initial discussion, it was unanimously agreed by the members present that the above anti-harassment committee is to function as a 'Support Group' to assist victims of sexual harassment within workplaces, as the powers of the anti-sexual harassment committee to take decisions on remedial action was limited and dismissal of public sector officers was in the hands of the Public Administration that would follow the current accepted process. Hence several points were discussed in relation to the nature of the committee to be set up so that there will be no harm done to victim-survivors.

These include:

1. The composition of the 'Support Group' to be a total of 6 members (comprising of one additional secretary, a director, a development officer and a representation from the management assistant level) including an additional independent member from an outside entity
2. Of the initial 5 members, a minimum of 3 members to be female
3. No trade unions to be represented within the composition of the membership
4. Confidentiality, integrity and high ethical standards and individuals with good character to be taken into consideration in appointing the members
5. Focal points to be appointed from all hierarchies of the organizations to receive complains
6. An ombudsman/ two ombudsmen to be appointed in addition to the membership of the support group
7. The code of conduct of the members should include mechanisms and guidelines on ways to maintain confidentiality, privacy and documentation of complaints
8. Guidelines to be drafted separately for committee members and for staff
9. To set up a 'buddy mechanism' to enable the staff of the lower ranks to reach out for support in an event of victimisation
10. To encourage other forms of reporting in addition to written submissions

Finally, the need to obtain advice from Dr. Deepika Udagama – Chairperson of the Human Rights Commission of Sri Lanka and key official of the Public Administration on the proceedings and powers of the Anti-sexual harassment committee / Support Group was highlighted.

Action points:

A soft copy of the existing guidelines to be shared with the other member organizations by the Ministry of Women & Child Affairs.

Ministry of Women & Child Affairs and Dry Zone Development to schedule a meeting with the Human Rights Commission and the Public Administration as a matter of priority to obtain their feedback on the possible powers of the anti- SH committees.

Ministry of Women to circulate a note to all the 31 ministries instructing them to set up the support groups/ anti-sexual harassment committees

A list of names of possible persons who could sit in the support group/ committee as the 6th independent member to be compiled with inputs from the organizations/ CSOs working in the areas of addressing SH.

4.2 | Letter sent to the Ministry of Justice

05 November 2021

Shyamala Gomez
Executive Director
Centre for Equality and Justice
No 325 A 1, Thimbirigasyaya Road,
Colombo 05.

Hon. M. U. M. Ali Sabry P.C.
Minister of Justice
Ministry of Justice,
Superior Courts Complex,
Colombo 12.

Hon. M.U.M. Ali Sabry P.C.,

Law Reform to Address Sexual Forms of Bribery in Sri Lanka

We write with reference to the statement made by you at the State Ministry of Reforms and Prisoners Rehabilitation on the 13th of October 2021 concerning the need to amend sixty laws which have not been amended in the last 20 years.

The Centre for Equality and Justice (CEJ) welcomes this initiative to update laws in order to make them more relevant in the current context. We also welcome the comments made by you at the Consultative Committee on the Ministry of Justice held on the 11th of February 2021 confirming that the process of reforms will be carried out in a consultative manner. In this context, we wish to draw your attention to the ongoing discussions CEJ has spearheaded on the issue of sexual bribery and reforms to the Bribery Act.

CEJ is a women's organization based in Colombo working primarily on the rights of war-affected women from the Sinhala, Tamil and Muslim communities and the rights of those affected by political violence and other forms of civil unrest. CEJ engages with policymakers, government officers and strengthens grassroots level women's capacities to claim their rights.

A lobby group consisting of like-minded organizations, and representatives from civil society organisations, academia, legal and health sectors was formed by CEJ in 2018 to lobby and advocate for law and policy reforms to address sexual bribery.

CEJ, with the support of the lobby group and other like-minded organisations, has been advocating to address the issue of sexual bribery through law and policy reforms in Sri Lanka since 2016. CEJ and the lobby group have had many consultations with the Commission to Investigate Allegations of Bribery or Corruption (CIABOC), prominent senior lawyers that are members of the Law Commission and the Ministry of Justice in this regard.

CEJ's work in this area includes comprehensive research studies on sexual bribery, the inclusion by CIABOC of CEJ's working definition of 'sexual gratification' into the National Action Plan on Corruption (launched in March 2019), a module on sexual bribery to be included in the Sri Lanka Institute of

Development Administration (SLIDA) curriculum on corruption, raising awareness on mainstream media and social media on sexual bribery, raising awareness among the public and government officials using creative means such as puppetry.

We are pleased to share further details of the progress to date concerning our work on preventing and addressing sexual bribery in Sri Lanka. We hope these developments will be taken into consideration as the Ministry of Justice moves forward to amend the relevant laws. Please find attached the following documents for your kind attention.

1. Research briefing papers of 45 case narratives on sexual bribery of women from various districts representing the Sinhala, Tamil and Muslim communities.
2. Lobby document on amending Law and Policy to address sexual bribery in Sri Lanka.
3. Proposal on amending the Bribery Act (Draft),
4. A module on sexual bribery (Draft),
5. Code of conduct on sexual bribery and sexual harassment within the public sector (Draft),
6. Proposed amendments to the Human Rights Commission's sexual harassment policy (Draft),
7. Public administration circular to prohibit sexual harassment and sexual bribery in the public sector (Draft),
8. Desk research on international practices tackling sexual bribery.

This call for reform has been endorsed by like-minded organisations and the lobby group formed by CEJ to advocate for the amendment of laws and policies to address sexual bribery in Sri Lanka. This letter is copied to relevant ministries and ministers, independent commissions, non-governmental organizations and State institutions that are stakeholders in this much needed reform process. Our advocacy efforts will continue to include sexual bribery as a grave form of violence against women into the existing legal and policy framework.

As a women's organization committed to this cause for several years, we earnestly seek your support in bringing about amendments to the Bribery Act that expressly include the offence of sexual bribery. The lobby group members that endorse these amendments are given below.

We would appreciate an opportunity to meet with you and the relevant consultative committee established by the Ministry of Justice to discuss the above further, at a time and date convenient to you. We look forward to hearing from you.

Sincerely,

Shyamala Gomez
Executive Director
Centre for Equality and Justice

Like-minded organisations and lobby group members who have endorsed this letter:

1. Aritha Wickramasinghe, Director
2. Equality Law, iProbono
3. Ashika Gunasena, CEO, Chrysalis (CARE)
4. Dinushika Dissanayake, Attorney at Law
5. Dr. Jehan Perera, Chairperson, National Peace Council (NPC)
6. Dr. Joe William, Director, Centre for Communication Training
7. Juwairiya Mohideen, Muslim Women's Development Trust
8. K. M. M. Nawaz, Country Director, Search for Common Ground
9. Dr. M. Ganesan, Consultant Psychiatrist, National Institute of Mental Health (NIMH)
10. M.A. Lahiru Perera, Executive Director, Family Rehabilitation Centre (FRC)
11. Maithreyi Rajasingam, Executive Director, VILUTHU
12. Dr. Mario Gomez, International Centre for Ethnic Studies (ICES)
13. Nadishani Perera, Executive Director, Transparency International Sri Lanka (TISL)
14. Rupa Gamage, Senior Program Coordinator, Rajarata Praja Kendraya (RPK)
15. S. C. Asoka Obeyesekere
16. Sabreena Niles
17. Saroja Sivachandran, Executive Director, Centre for Women and Development
18. Shreen Saroor, Women's Action Network
19. Sonali Gunasekara, Director Family Planning Association Sri Lanka (FPASL)
20. Sumika Perera, Executive Director, Women's Resource Center
21. Thiyagaraja Waradas, SOGIESC Activist
22. Visaka Dharmadasa, Association of War Affected Women (AWAW)

**CC:
State Ministries:**

- Mr. M.M.P K Mayadunne, Secretary, Ministry of Justice (MoJ)
- Mr. Madhushanka Dissanayake, Director-Reforms Division, MoJ
- Mr. D. Thushara F. Suraweera, Additional Secretary- Reforms Division, MoJ
- Mrs. Piyumanthi Peiris, Additional Secretary, MoJ
- Mrs. L.M.M Jayawickrama, Additional Secretary, MoJ
- Mr. Shamir Zavahir, Coordinating Secretary, MoJ
- Mr. Rohana .S. Hapugaswatte, Additional Secretary- Administrative Division, MoJ
- Mr. Kamal Piries, Additional Secretary- Administrative Division (Judicial Service), MoJ
- Mrs. S.M.L.P. Kumari, Additional Secretary- Development Division, MoJ
- Mrs. R.P.S. Samankumari, Additional Secretary- National Integration Division, MoJ
- Hon. Piyal Nishantha De Silva, M.P, State Minister, State Ministry of Women and Child Development, Pre-Schools & Primary Education, School Infrastructure & Education Services. (SMoW)
- Ms. K.M.S.D. Jayasekara, Secretary, SMoW
- Hon. Shehan Semasinghe, M.P., State Minister of Samurdhi, Household Economy, Micro Finance, Self Employment, Business Development. (MoS)
- Mr. H.K.D.W.M.N.B. Hapuhinna, Secretary, MoS
- Hon. Janaka Bandara Tennakoon, M.P., Minister of Public Services, Provincial Councils and Local Government (MoPC)
- Mr. J.J. Rathnasiri, Secretary, MoPC

Commissions

- Hon. Justice Deepali Wijesundara, Commissioner, Commission to Investigate Allegations of Bribery or Corruption.
- Hon. Justice Jagath Balapatabendi, Chairperson, Public Service Commission.
- Mr. S.C.S. Fernando, Chairperson, National Police Commission.
- Dr. Jagath Balasuriya, Chairperson, Human Rights Commission of Sri Lanka (HRC)
- Dr. M.H. Nimal Karunasiri, Commissioner, HRC
- Dr. Vijitha Nanayakkara, Commissioner, HRC
- Ms. Anusuya Shanmuganathan, Commissioner, HRC
- Mr. Romesh De Silva, P.C., Chairperson, Law Commission of Sri Lanka.
- Senior Prof. Sampath Amaratunge, Chairman, University Grants Commission
- Dr. Priyantha Premakumara, Secretary, University Grants Commission
- Mr. Nimal G. Punchihewa, Chairman, Election Commission

Mr. C.D. Wickramaratne, Inspector General of Police, Sri Lanka Police

4.3 | Cabinet Decision - December 2022

CEJ's collective advocacy efforts with the Ministry of Justice have led to the inclusion of sexual bribery as an offence in the Justice Minister's proposal to criminalize sexual assault, all forms of sexual harassment and sexual bribery. CEJ's Executive Director, Shyamala Gomez, has been in communication with Piyumanthi Peiris, Assistant Secretary (Legal) of the Ministry of Justice, who discussed the aforementioned reform over the telephone.

<https://www.dailynews.lk/2022/12/14/local/293066/laws-make-sexual-bribery-offence>

Extracted from the release by the Department of Government Information on the cabinet decision taken on 12th December 2022:



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அரசாங்க தகவல் திணைக்களம்
Department of Government Information

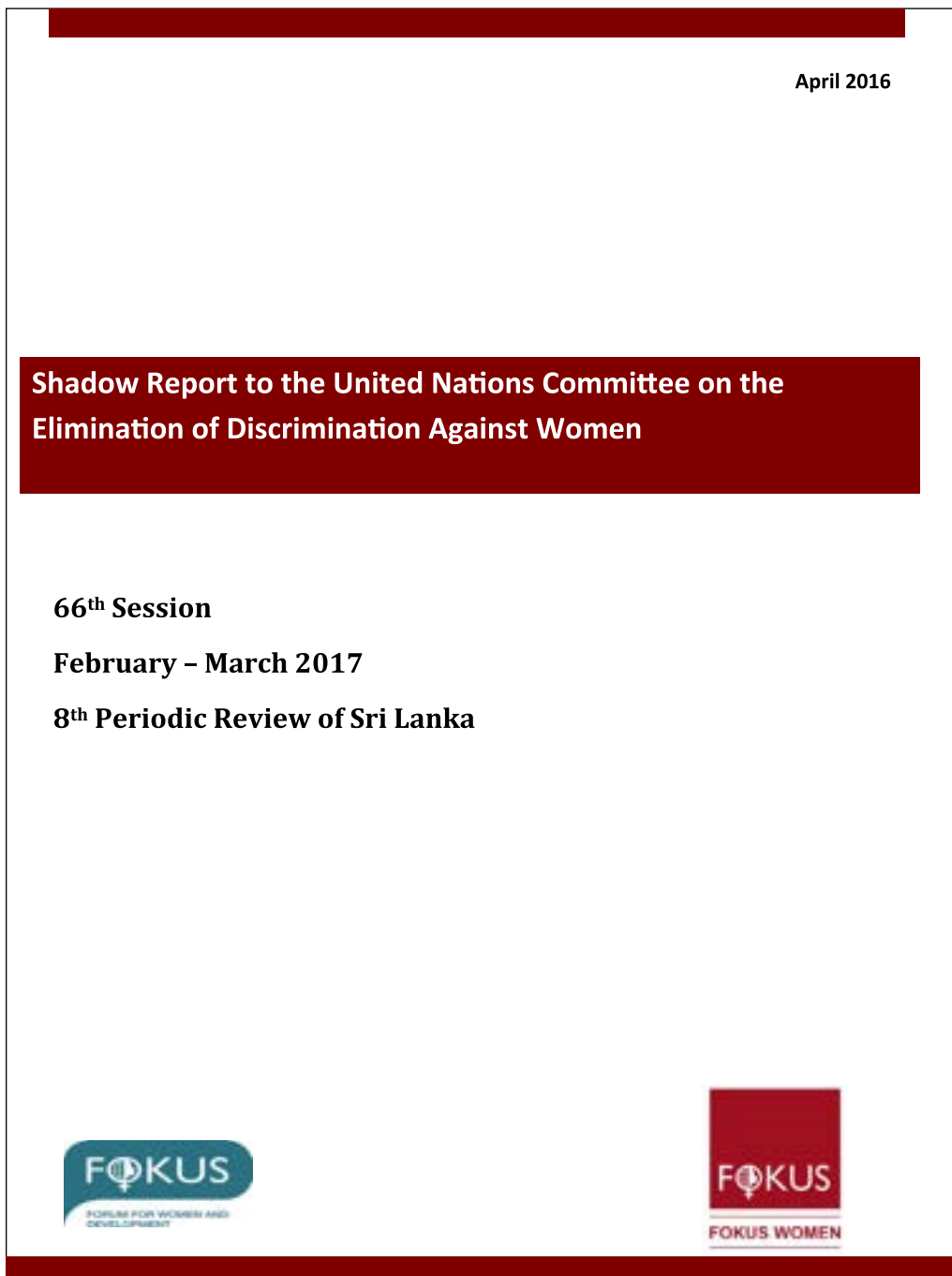


05. Strengthening existing legal provisions prohibiting sexual assault, sexual harassment, sexual bribery and to punish those found guilty of such criminal acts.

Sexual harassment is a violation of fundamental human rights and is mentioned in Section 345 of the Penal Code. It is observed that this problem continues even though there are legal provisions to set the punishment for those crimes. Accordingly the proposal, presented by the Minister of Justice, Prison Affairs and Constitutional Reforms to instruct legal draftsman to prepare a bill to include articles in the Penal Code criminalizing sexual assault and all forms of sexual harassment and to introduce a new section to give severe punishment for that and to make sexual bribery an offence, was approved by the Cabinet of Ministers.

5 | INTERNATIONAL LOBBYING

5.1 | CEDAW Shadow Report



Submitting Organization

FOKUS WOMEN is the Sri Lanka Country Office of FOKUS Oslo. FOKUS, Forum for Women and Development is a knowledge and resource center for international women's issues with an emphasis on the spreading of information and women-centered development cooperation. FOKUS' primary goal is to contribute to the improvement of women's social, economic, and political situation internationally.

FOKUS partners with several organizations based in Sri Lanka on a programme that focuses on women, peace and security. FOKUS has supported this programme in Sri Lanka since 2012.

This shadow report has been prepared by FOKUS WOMEN. The report includes the findings of several research studies conducted by FOKUS WOMEN and desk research. FOKUS partner organizations and other organizations that engage with FOKUS WOMEN working with female heads of households affected by the war listed below were also consulted. They provided valuable input to the report based on their experiences of working at grassroots level.

The shadow report is supported by: (in alphabetical order)

1. Eastern Social Development Foundation (ESDF)
2. Home for Human Rights (HHR)
3. Muslim Women Development Trust (MWDT)
4. National Peace Council (NPC)
5. Rajarata Praja Kendraya (RPK)
6. Suriya Women's Development Centre (SWDC)
7. Viluthu-Centre for Human Resource Development
8. Women Action Network for Transformation (WANT)

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Shadow Report on Female Heads of Households affected by the Armed Conflict in Sri Lanka

1. OVERVIEW

The internal armed conflict of 30 years has had a disproportionate impact on female heads of households (FHH) in Sri Lanka and has resulted in an increase in the numbers of FHH. Currently, one in every five households in Sri Lanka is headed by a female.¹ These FHH have been unable to enjoy their right to equality due to intersecting forms of discrimination arising out of the law; national policies; administrative practice; and due to actions of non-state actors.

This Report will deal with violations of the rights of FHH under Articles 2, 5, 7, 10 – 14 of CEDAW as interpreted in the General Recommendations (GR) 19, 30 and 33 in particular. In its previous Concluding Observations (CO) on Sri Lanka's state report, the Committee specifically recognised the impact of the armed conflict on women and made several recommendations to the state including recommendations to ensure respect for their economic and social rights; to protect Tamil women IDPs and ex-combatants; and to include women in transitional justice processes.² The Lessons Learnt and Reconciliation Commission too identified FHH as a specific category of war affected women whose human rights have been violated.³

The Government of Sri Lanka (GoSL) in its 2015 State Report, except in the provision of limited livelihood support, has not recognised or addressed the human rights violations experienced by FHH as a group that has been adversely affected by the armed conflict. In its 2015 Report, the GoSL states for instance that it has provided livelihood and vocational training to 'single parents' and 'women headed families' respectively and also reports on two other programmes.⁴ It further reports that 'conflict affected widows' and 'disabled women' are prioritised in rehabilitation projects.

This Shadow Report demonstrates that these interventions have been both inadequate and ineffective. FHH in Sri Lanka continue to experience grave violations of their human rights; particularly FHH affected by the armed conflict. Substantive equality is a significant challenge to Sri Lanka's women in general: particularly in relation to the right to be free from gender based violence; gender stereo typing; political representation⁵ and the right to employment.⁶ Within this broader context FHH form a specific group that require the immediate and focused attention of the GoSL. FHH, particularly in war affected and rural Sri Lanka, experience discrimination in relation to applicable laws; the implementation of welfare programmes; due to gender based violence, within the family and in the community; due to the lack of access to justice; and also due to the lack of inclusivity in transitional justice and peace building. Factors that contribute to this situation include gender stereo typing; lack of gender mainstreaming in the development of state policies; a state centred approach to welfare; and the lack of awareness of state obligations under CEDAW by public servants, the police and the armed forces.

2. METHODS AND LIMITATIONS

This Report is based mainly on eight studies concluded recently, by FOKUS WOMEN, on the status of FHH and their access to economic, social and cultural rights. These studies were carried out in partnership with community-based organizations that are working with FHH and collaborate with FOKUS WOMEN. Four of these reports study the state of FHH in geographical locations affected by the war and rural living.⁷ The other four reports study the themes of sexual exploitation; child marriage; language as a barrier in the criminal justice system (focusing on violence against women);⁸ and military widows. This Shadow Report also incorporates the findings and data gathered by FOKUS WOMEN partner organizations and other grassroots women's organizations that work on FHH issues with FOKUS WOMEN.⁹ Based on these studies and other evidence, this Report calls on the CEDAW Committee to identify the FHH in Sri Lanka as a specific affected group of women and make recommendations to the GoSL to immediately address their human rights violations.¹⁰

The impact of the armed conflict on FHH was island wide. The primary limitation of this Report is that it focuses mainly on selected types of FHH: FHH who live in the Northern and Eastern provinces in which the hostilities took place; FHH who live in villages bordering those areas in the North Central province; FHH from the Muslim community that was forcibly evicted by the Liberation Tigers of Tamil Eelam (LTTE) in Puttalam; and military widows living in the South.

3. ARTICLE 2: PROHIBITION ON DISCRIMINATION

3.1. LAW AND POLICY MEASURES

A. Who is an FHH?

The GoSL has no official definition for FHH. The FOKUS WOMEN studies reveal that inclusion or the exclusion of FHH from different welfare programmes depends on the varied definitions and terms that are used. The terms include war widows; female headed household; and a single parent family. It is not clear as to how inclusive these terms are. For instance whether women whose partner is missing and women whose husbands are in detention are included in these definitions is unclear. Consequently the actual number of FHH is unknown and there is no disaggregated data that recognises the diversity among FHH. This was affirmed in the interviews conducted at the Ministries in charge of Women and Resettlement respectively. Moreover what is meant by a 'household' is also unclear and is defined by the 'social structures in practice.'¹¹ The official definitions for a household and a head of the household in Sri Lanka are those employed by the Department of Census and Statistics which are notably gender neutral.¹²

Certain policy initiatives have been made recently by the GoSL to address some of the needs of some FHH. They include: a Secretariat for widows and FHHs; a Special Task Force for FHHs and widows; commissioning the drafting of a national policy on FHHs; and the allocation of Rs 50 million (USD 357,143) for implementation of programmes for FHH.¹³ However, FHH state that the funds allocated are inadequate; and that policies are designed ad hoc and are revised arbitrarily. Specific details of

these programmes or the rationale for the implementation of these programmes are not readily accessible to the public.

The GoSL is currently developing a policy on FHH. Consultations have been held with civil society, academia and government officials working at district level. A National Centre for Empowering Widows and Women Headed Families was established in *Killinochchi* (Northern Province) in November 2015.¹⁴ However, the name of the centre itself suggests that the intervention focuses on the families headed by women rather than on the woman who heads the family. Even though the Ministry has assigned two officers to this Centre they are not available at the Centre: moreover, as admitted by the Ministry, the actual mandate and work plan of the Centre has not been determined yet. This approach is reflected in the latest state report of 2015 as well. Furthermore the reference to widows is confusing. The justification for distinguishing between widows and FHH is unclear as a widow falls within the categorization of a FHH.

Defining FHH is challenging given the heterogeneity within the category. For instance 'unmarried women, married with husband remaining in the household without any economic contribution, widows, grandmothers, divorced, separate/deserted women, women whose husbands have been absent for more than five years for economic reasons and women whose husbands have disappeared' were identified in one study as the categories of FHHs.¹⁵ Additionally, some FHH were formerly LTTE combatants; some FHH have disabilities and/or have acquired disabilities due to the war; and some are military widows.

Question: On what basis does the GoSL target FHH for specific welfare programmes? What data is available on FHH and the classification of FHH?

Recommendation

- : Develop a national policy on FHH within a rights based framework**
- : Adopt clear and inclusive categorizations of FHH that will be used uniformly in welfare and resettlement policies and programmes. Use 'women responsible for the household' instead of 'Female Heads of Households' as a means of avoiding the discriminatory consequences that arise due to terminology**
- : Maintain a disaggregated database on FHH in Sri Lanka which reflects the heterogeneity within the group.**

B. Applicable Law

The Constitution

The scope for seeking a remedy for the violation of the right to equality of a FHH under the Constitution is narrow. The Sri Lankan Constitution recognises the right to equality as a fundamental right and includes sex as a prohibited ground of discrimination.¹⁶ The violation or imminent violation of a fundamental right by executive or administrative action or omission can be challenged before the Supreme Court within 30 days of such violation.¹⁷ To date however, the Supreme Court has not made a pronouncement on gender discrimination under this right. The fundamental rights chapter does not recognise economic and social rights.¹⁸ The fundamental rights jurisdiction is vested

exclusively in the Supreme Court, which makes it inaccessible for women from rural and war affected communities. The right to information was recently recognized and a bill for the implementation of the right has been presented in Parliament.¹⁹

Existing written and unwritten laws that are in violation of the chapter on fundamental rights is declared to be valid by the Constitution.²⁰ Thereby personal laws that include discriminatory provisions against women namely the *Muslim law*; *Tesawalamai law*; and *Kandyan law* are given constitutional recognition²¹. Furthermore, the Constitution does not guarantee remedies for the violation of the right to equality by non-state actors. The Women's Charter, a non-binding policy declaration remains the only state commitment to the respect of women's rights in Sri Lanka²². A Commission on Women has been proposed but remains as a draft law that has not been adopted.

Legislation

While certain provisions in the personal laws in Sri Lanka discriminate against women in general, FHH are further discriminated due to specific provisions and practices under these laws. *Tesawalamai*, the law applicable to Tamils that inhabit the Northern Province, discriminates against the married woman by requiring her husband's consent for all transactions related to her immovable property.²³ Where consent cannot be obtained where husband is missing; is imprisoned for more than 2 years; or where he is of 'unsound mind' the District Court is authorised to 'supply consent'. The Court is authorised to include 'conditions and restrictions as the justice of the case may require'.²⁴ The woman, in such instances, is required to make an application to Court every time such consent is required. The married FHH under *Tesawalamai* is therefore faced with an excessive and unacceptable burden in dealing with her own immovable property (see section on Tamil FHH below).

Laws that regulate grants of state land are also discriminatory of women with regard to intestate succession, which gives preference to the male heir.²⁵ FHHs experience numerous challenges in claiming the land that belonged to their spouse; in receiving land from the state; and also in relation to intestate succession. Furthermore due to prevailing practices of granting a dowry to a daughter upon marriage, FHH are under pressure to provide a daughter entering into marriage a house or a plot of land. These challenges are compounded in the case of FHHs affected by the armed conflict. Displacement; lack of education; lack of access to state run welfare programmes; the discriminatory provisions of *Tesawalamai* law, add several layers of complexity to their plight thereby effectively undermining their right to land. The CEDAW Committee in its COs to Sri Lanka's report in 2011 has recommended to the GoSL that these laws be revised to reflect among other things, gender equality. Moreover, single ownership is the current state practice in the granting of state land. Following the patriarchal interpretation given to the term 'Head of the Household' state land is vested with the male spouse. As evidenced in the work of *Rajarata Praja Kendraya* (RPK), in situations where the female subsequently assumes headship, she is effectively prevented from ownership rights to such land. Where the permit had been issued in the name of the husband and he had not nominated a successor in title, a wife succeeds to the permit. However, the spouse is required by law to possess the land within six months of the demise of the husband.²⁶ FHH face numerous barriers in meeting this legal obligation due to security concerns, the demands of caring for the family and also due to

other men in the community who compete with her for the land in question. For instance in a recent Supreme Court determination, a widow who could not demonstrate possession of the land within six months of her husband's death was denied legal ownership of the land.²⁷ If land is granted on the basis of joint or co-ownership, the surviving spouse is able to continue to enjoy legal ownership to such land.

These findings were confirmed in the studies undertaken by FOKUS WOMEN. Majority of the participants - 64% (sample of 500) of the participants in the *Ampara* study,²⁸ 80% from *Puttalam*²⁹ (sample of 1000) and 53% from *Anuradhapura*³⁰ (sample of 351) claimed that they owned land. Particularly in the Northern and Eastern Provinces, among the Tamil and Muslim communities, land is passed from mother to daughter. However, several issues were raised by these FHHs regarding land ownership. They included the lack of legal documentation establishing land ownership; and delay by administrators in providing documents for state land.³¹ In addressing issues related to land, FHH are required to negotiate with government officers, some of who are often reported to be insensitive to the particular vulnerabilities of FHH and also seek sexual favours in return. Such women often require counselling and assistance in dealing with administrative regulations, completing application forms and in attending to their documentation needs. Such assistance is not formally available.

The CEDAW Committee's repeated calls for the repeal of these laws, including the call for abolishing the use of the concept of 'Head of the Household' are yet to be implemented by the GoSL.³²

Question: what measures have been taken to reform the personal laws and land law to ensure compliance with Sri Lanka's obligations under CEDAW?

Recommendations

- : Adopt a comprehensive clause on the right to equality and non-discrimination in the proposed new constitution. Prohibited grounds of discrimination should include maternity; gender; rural living; marital status; and disability
- : Introduce judicial review of legislation to ensure a mechanism for striking down legislation that is discriminatory of women
- : Establish the proposed Commission on Women according to Paris Principles and provide the Commission with constitutional recognition
- : Recognise joint or co-ownership in the grant of state land
- : Ensure effective and full implementation of the right to information

Administrative Practice

The implementation of welfare programmes for the FHH is ad hoc and the criteria for selecting beneficiaries are often unknown. The GoSL emphasises on income generation in designing programmes for FHHs. This 'welfare' approach assumes that ensuring income generation would lead to the resolution of the other challenges experienced by FHHs. Such an ad hoc and narrow approach leaves patriarchal structures and discriminatory practices untouched and is therefore ineffective.

Furthermore the methods of income generation introduced by the state have not been suited to ground realities.

The Women's Ministry states that it can only empower up to 300 women through financial assistance per year due to financial restrictions. The Women's Bureau conducts a loan program which gives Rs. 20,000 (USD 121, interest free) to widows. Discussions had with officials of relevant ministries suggest that these programmes are designed based on available funds rather than based on needs that are identified through a systematic assessment. The implementation of the programmes is heavily reliant on the reasonable exercise of administrative discretion.

A rights based approach is notably absent in these programmes. For instance, under the 100 Day plan of the incumbent President, 320 widows were given a grant of Rs. 30,000 (USD 214). The Programme was focused on women in the Northern and Eastern Provinces and adjoining districts. These grants were made through the Women Development Officers (WDO) in Divisional Secretariats. The grant program gave preference to income level (lowest); age of the widows (with preference for the younger FHH); number of dependents; and was based on whether they are self-employed or not.

FHH state that the implementation of these programmes is problematic. They state that information is often not made available to them; that reasons are not given on administrative decisions; and particularly at the village level, administrative power is abused to demand favours from FHH.

In the *Ampara* district, the participant FHH stated that they received monthly financial support ranging from Rs 140 – Rs 560 (USD 1 - 4).³³ There is both uncertainty and unpredictability in how these grants are administered. Women in *Ampara* had stated that though they receive Rs 140 (USD 1), Rs 40 (USD 0.3) is invariably deducted for an unknown reason.³⁴ Another woman, in the same district, was promised Rs 100 000 (USD 714) as a loan but was only paid Rs 82 000 (USD 586) and was told that the remainder was deducted for costs including for insurance.³⁵ At a consultation in Jaffna it was stated that Rs 400 (USD 3) was given monthly to FHH whereas the monthly allowance for elders over the age of 70 was Rs 2000 (USD 14).³⁶ It was further noted that women 'were reluctant to share their experiences about *Samurdhi* due to the fear of repercussions.'³⁷ (*Samurdhi* is the welfare programme of the state for the poorest of the poor).

With regard to state pensions for widows of members of the armed forces and civil defence forces, of the FHH interviewed in *Anuradhapura*, 24% (sample of 351) received a salary or pension of the deceased husband.³⁸ Another 23% (sample of 351) stated that since their husbands were working in these services only on a temporary basis, they received no support. Some others stated that they received only a onetime payment. Some others claimed that though they had received payments, that they were subsequently withdrawn. Several others were waiting for an extended period of time for their applications to be processed.

In the absence of clear guidelines requiring a rights-based approach, administrative practices are often informed by patriarchal notions that subject FHHs to discrimination. Women from *Ampara* district for instance pointed out that FHHs who wish to be employed in the Middle-East as migrant workers are unable to do so due to regulations that prevent women with children below 5 years from migrating for work.³⁹ Moreover, these women had no access to information on these policies

and were dependent on hearsay or what officials themselves verbally state to them. Attempts to challenge the circular that allegedly prevents women with young children from migrant work was denied leave to proceed by the Supreme Court and dismissed.⁴⁰

Question: What is the state mechanism for communicating information pertaining to programmes for FHH? Why is it that FHH claim that the information pertaining to these programme are not accessible?

Recommendation:

- : Establish accessible grievance mechanisms at the lowest administrative levels to address issues related to discrimination against FHH in the implementation of welfare policies and programmes
- : Improve accessibility to the Human Rights Commission and the Legal Aid Commission by establishing branches in every administrative district and by providing information on services provided by these institutions
- : Establish a method of communication between the community and public officials that can feed into the review of the implementation of welfare programmes

3.2. ACCESS TO JUSTICE

FHHs have minimal awareness of whether there are any local remedies and/or mechanisms that they can resort to if they experience discrimination at the hands of the state or by non-state actors. For instance, none of the women interviewed for the study in the *Ampara* district were aware of the remedies available to them through the Human Rights Commission. Due to intersecting factors such as lack of access to education and patriarchal customs, the majority of FHH have minimal legal literacy.⁴¹

As noted by the CEDAW Committee where FHH have sought to access justice they were faced with numerous discriminatory practices including language barriers; discriminatory religious courts and cultural stereotyping.⁴² Due to the lack of Tamil speaking officers at police stations, and lack of translators during court proceedings, Tamil speaking FHH claim that they are discouraged from seeking legal remedies and also discouraged from pursuing litigation.⁴³

Muslim FHH are subject to the jurisdiction of the *Quazi Courts*. *Quazi's* are required to be 'any male Muslim of good character and position and of suitable attainments' and are appointed by the Judicial Service Commission.⁴⁴ Furthermore on the basis that proceedings are not adversarial in these Courts, representations by a lawyer are expressly prohibited.⁴⁵ As pointed out by the Muslim Women Development Trust (MDWT), lack of gender sensitivity and the prevailing patriarchy within the community results in undermining the access to justice of Muslim FHH before the *Quazi Court*.⁴⁶ The Legal Aid Commission, with 76 branches island-wide, provides legal aid based on income but only in civil matters.⁴⁷ The Human Rights Commission has only ten regional offices and one sub office across the island. In comparison there are 103 judicial divisions in Sri Lanka.

Laws, regulations, circulars are not available in all three languages island-wide. Even the laws that are accessible cannot be understood easily. Consequently FHH are unable to learn of their legal

rights or entitlements. As per the Constitution and policy, Sinhala and Tamil are official languages.⁴⁸ The Official Languages Commission in Sri Lanka is mandated to monitor adherence to the Languages Policy. However, the Commission can only make recommendations and therefore is unable to enforce compliance with the Policy.

Questions: What measures are in place to effectively monitor the implementation of the Official Languages policy in the war affected areas?

: What measures has the GoSL taken to ensure women's access to justice particularly in the post war context?

Recommendation:

: Immediately ensure that police stations are serviced with male and female officers who speak Tamil, particularly in the North and in the East

: Ensure that administration of justice complies with the official language policy. A complaints mechanism should be available in every court to receive complaints regarding the violation of the policy by a judicial officer, police officer or any other officer of the court.

: Undertake a country-wide needs assessment study to systematically identify the access to justice issues experienced by women, including FHH

: Ensure that police, lawyers particularly the state prosecutors, judiciary are gender-sensitive and that they are briefed about the prevailing state of human rights of FHH

: Ensure that laws, regulations, policies and other documentation relevant to FHH are accessible in all three languages

: Reform the *Muslim Marriage and Divorce Law* to include minimum qualifications for appointment as a *Quazi* and to remove any restrictions for women being appointed as a *Quazi*. As a temporary special measure, the law must allocate a quota for women *Quazis*. A *Quazi* should preferably be a lawyer or at least trained in the law, including in human rights law. Legal representation should be permitted before the *Quazi* court.

3.3. SEXUAL EXPLOITATION

FHH report that they are subjected to sexual exploitation and are solicited for sexual bribes. 25 such cases of serious and repeated experiences of sexual exploitation of FHH, including sexual bribery have been documented by FOKUS WOMEN.⁴⁹ FOKUS WOMEN partners working in the region, such as WANT (Women's Action Network for Transformation), and FHH living in the Northern Province state that they are under surveillance and are subjected to sexual exploitation when they are ordered to report to an army camp.

According to the case studies FHH are subjected to sexual exploitation by public servants and those in charge of public security; health care workers; and employers of civil society organizations. Offenders act with impunity and target FHH who are vulnerable due to several factors. For instance where the spouse is detained or is missing, FHH are dependent on the military and the police to investigate into the matter. Due to poverty FHH seek employment and assistance to meet their financial needs. Due to the impact of the armed conflict FHH are in need of access to land, documentation and housing. In the words of an FHH interviewed for the study:

We live in a society that looks upon women as sexual objects and if we are not protected or guarded by men, then we the single women, can be used in any way the men want. I feel after the end of the war this trend of exploiting single women has increased. This is due to these women being poor, and needing material and financial assistance and they are malnourished and vulnerable to exploitation.⁵⁰

Sri Lankan law prohibits the offer or the solicitation of any gratification but it does not specifically penalise sexual bribery.⁵¹ Furthermore, the Commission to Investigate into Allegations of Bribery and Corruption is located in Colombo which requires victims to complain either in writing or by way of telecommunication. The impunity with which offenders target and approach FHH and the lack of accessible and effective remedies for FHH subject to sexual exploitation was described by an FHH in the following words:

Well laws can be brought about but poor people like me can't use them, no? From where will we get money to hire a lawyer and then how do we face society? Do we have any evidence to prove these things? Can I just tell the court he showed me bad pictures and touched me? And what would be the punishment then? Even rapists are roaming around freely on the streets these days. When he gets out and wants to hurt me who will protect me? I can't even run.⁵²

The failure of the state in this regard is a violation of its obligation to ensure non-discrimination and where the offender is a non-state actor, the state is in violation of its due diligence obligation to prevent sexual exploitation.⁵³

Question: What are the measures the GoSL has taken to ensure that FHH are not subject to exploitation, particularly sexual exploitation, in the delivery of government services?

:How many cases of sexual exploitation have been prosecuted and perpetrators punished?

Recommendations: Immediately investigate and prosecute perpetrators of sexual violence including sexual bribery

: The Bribery Act should be amended to include 'sexual gratification' as a specific form of gratification with enhanced penalties for sexual gratification. This law should be accessible in Sinhala and Tamil

: Guidelines to address sexual harassment in state sector institutions developed by the Human Rights Commission of Sri Lanka should be amended to deal with sexual bribery complaints and the HRC should create a special complaint procedure to deal with it.

: A sexual bribery inquiry mandate should be added into existing independent commissions, such as the Police Commission, Election Commission, Bribery Commission, and Public Service Commission. Each of these Commissions should have a gender sensitive and trusted procedure to investigate and handle cases of sexual bribery.

: A wide public awareness campaign must be initiated on laws prohibiting sexual exploitation and bribery and on available redress mechanisms.

: A Code of Conduct must be put in place for officers that directly deal with FHH like *Samurdhi* Officers, *Grama Sevakas*, Development Officers, Public Health Officers and other government officers, in relation to sexual bribery.

: It should be made mandatory that all government departments and institutions maintain records and databases of instances of sexual bribery.

3.4. VIOLENCE AGAINST WOMEN

As observed by the UN Secretary General, violence against 'women at risk, including war widows and female heads of household' in Sri Lanka is an area of serious concern.⁵⁴ Sexual violence against women continues to be reported from the war affected community and has been documented internationally.⁵⁵ As a group of women who are in general subject to social stigma and other challenges including poverty, FHHs are vulnerable to violence. However, due to the lack of enforcement of laws and the absence of support networks, women who experience violence do not necessarily report it even within the community. For instance, 88% (sample of 1000) of Muslim women interviewed for one of the studies reported domestic violence while 49% of Muslim FHH in the same study stated that they chose to remain silent about the violence they had experienced.⁵⁶ In the *Ampara* study it was revealed that only 3% (sample of 500) of the women who had experienced violence had complained to the police.⁵⁷ The absence of an adult male gives rise to a perception that they are physically weak and makes them targets for sexual violence. Psychological violence has been raised as a concern by FHH. As described below, this form of violence is both difficult to identify and to address.

When we are talking about violence, we talk only about or mainly about the physical violence. Women like us are dying daily due to emotional violence. If we go to a public place, our villages speak bad of us as we are separated. They are teasing our emotions. We can't tell this to others. Even our children face problems in schools due to our broken family life. They too are suffering silently.⁵⁸

Question: What are the measures the GoSL has taken to address the psycho social needs of women affected by conflict? What kind of training is undergone by counsellors appointed by the state?

: What specific accountability mechanisms have been introduced to end impunity and ensure accountability for sexual violence against women in the context of the armed conflict and post conflict?

Recommendation: Ensure that adequately trained and ethically committed women police officers, Judicial Medical Officers, Magistrates and counsellors are available to enforce the legal guarantees provided under the *Prevention of Domestic Violence Act* and other relevant penal laws prohibiting sexual violence. These public officers and judiciary should be able to communicate directly with victims of gender-based violence or through independent translators provided by the state.

: ensure accountability for sexual violence committed in the context of the armed conflict against women

3.5. SPECIFIC GROUPS OF FHH

Within the heterogeneous group of FHH, this Report highlights the state of human rights of five specific sub groups of FHH due to the grave nature of the violations of their human rights and due to the lack of attention by the GoSL thus far to their specific circumstances.

A. Muslim FHH

Muslim FHH are subject to discrimination due to the application of the *Quazi* Court system; early marriage; and due to stigma.⁵⁹ The *Quazi* courts enforce the Muslim law which applies in relation to marriage, divorce, custody and maintenance of Muslim women.⁶⁰ All *Quazis* are required to be male by law and there are no specific qualifications or requirements for their appointment. The Muslim Women's Development Trust (MWDT) has come across numerous instances where judgements that are discriminatory towards Muslim FHH are issued by the *Quazi* courts and where the FHH do not have access to advice on how those decisions could be challenged.⁶¹ These issues are compounded by the prohibition of legal representation in proceedings before the *Quazi* court. These findings have been confirmed in another recent study on the *Quazi* court system.⁶²

Early marriage among the Muslim protracted IDP community has resulted in young FHH.⁶³ From the 1000 surveyed for the study on Muslim FHH, 42% had married under 18.⁶⁴ Such FHH experience several barriers in enjoying their economic and social rights. For instance most have not completed their education or received vocational training and consequently enjoy minimal opportunity for formal or informal employment.⁶⁵ 74% (sample of 1000) of these Muslim FHH stated that they experience discrimination. Of them 34% (from 740 FHH) stated that such discrimination was due to their FHH status and 23% (from 740 FHH) because they are IDP.⁶⁶

B. Tamil FHH

Tamil FHH are another group who experience specific forms of discrimination due to intersectionality of their ethnicity; psycho-social trauma; application of *Tesawalamai* law; and language.⁶⁷

FHH affected by the war predominantly speak Tamil, the minority language. The study by FOKUS WOMEN on language demonstrates that FHH are unable to access the criminal justice system due to the language barrier.⁶⁸ Experiences of such discrimination of 15 FHH from the Northern and Eastern Provinces have been studied for this report. These FHH report that at the police stations, including the Police Bureaus for Prevention of Abuse of Children and Women; at Prisons; during court proceedings including accessing translations provided by male translators; and in accessing state funded medical services that FHH experience discrimination. Due to lack of information in the Tamil language Tamil FHH are made vulnerable and are unable to seek justice.

Tamil FHH are subjected to sexual violence including sexual bribery. Where the spouse or child of the FHH is missing, the FHH are denied their right to truth; they are faced with cumbersome administrative and legal procedures in obtaining certificates of death; and they experience severe

forms of psycho-social trauma for which adequate counselling services have not been made available thus far.⁶⁹ *Viluthu* reports that FHH who were formerly combatants of the LTTE state that they are ostracised and stigmatised by their own community. Consequently, they are unable to engage in any livelihood even though they have been trained in relevant skills during their rehabilitation by the GoSL.

C. Military Widows

As per official records there are 9681 military widows in Sri Lanka.⁷⁰ Military widows are understood to include spouses of members of the armed forces, police and civil defence forces (an auxiliary unit) who died in action. It does not include spouses of armed forces who acquired disability due to the armed conflict. The Military widows are another specific group of FHH who experience discrimination due to administrative policies; and social stigma.

According to a study on 292 military widows (220 widows and including 49 with disabled spouses) by FOKUS WOMEN, prevailing policies regarding salary and pension payable to a military widow are discriminatory. Where a member of the armed forces dies in action or a police officer dies while on duty, his salary is payable up to the year on which such person would complete his 55th birthday.⁷¹ Thereafter, a pension is payable. The entire amount was payable to the widow and is within the range of Rs 35 000 – Rs 55 000 (USD 250 – 393). For those military widows whose spouse died after 2007, 25% of this benefit is paid to the parents of the deceased if living and only 75% goes to the widow and children. Widows of members of the Civil Defence Forces receive much less, Rs 2700 (USD 19). Compensation is paid additionally to the family members as follows: Rs. 25,000 (USD 179) for his wife; Rs. 25,000 (USD 179) to each parent; Rs. 18,500 (USD 132) to each child, up to a maximum of Rs. 75,000 (USD 536).⁷² However, it was evidenced that the actual amounts received by the family members vary and the FHH are unaware of the reasons for such variation.

Prior to 2010, a remarrying military widow was not entitled to receive the salary or pension of the deceased. This discriminatory practice was changed in 2010, to a policy whereby a remarrying widow receives 50% of the salary for ten years as a lump sum. Military widows have stated that this policy discourages remarriage and additionally make them targets of men who sexually exploit them and wish to benefit from the lump sum grant.

The GoSL requires the *Grama Niladhari* to report annually on the marital status of military widows and of widows of police officers every three months. This requirement places a private aspect of the life of a military widow, their family life and sexuality, under public scrutiny and also leads to the compounding of the social stigma associated with remarriage by a military widow. The FHH feel that their personal lives are constantly under scrutiny by the state and by the community.⁷³

D. Elderly FHH and FHH with Disability

Age and disability, particularly disability acquired due to the armed conflict,⁷⁴ are two other factors that further undermine the dignity of FHH in the Sri Lankan context. The laws regulating rights of elders and of persons with disability are inadequate and ineffective.⁷⁵ Lack of adequate social

security services; disruptions in the social fabric due to the war; lack of accessible environments are additional barriers that such FHH are faced with.⁷⁶

Question: How will the national policy on FHH recognise the heterogeneity among FHH? In what ways will the policy ensure targeted interventions to address the specific human rights violations experienced by different types of FHH?

Recommendation: Ensure that the policy currently being drafted on FHH identifies the specific concerns among the different types of FHH

: Initiate and facilitate a dialogue within the community on culture, religion and gender equality particularly to ensure the integration of military widows and ex-combatants into communities

: The design and implementation of welfare and livelihood training programmes must take into account specific vulnerabilities among the FHH population

4. ARTICLE 5: SEX ROLE STEREOTYPING AND PREJUDICE

FHH are subjected to gender stereotyping due to prevailing cultural and religious worldviews. Consequently they face barriers in the enjoyment of their human rights including their right to access to justice. Previously the CEDAW Committee has recommended to the GoSL to implement a 'comprehensive strategy' to address gender stereo-typing.⁷⁷ The problem however, persists. Dominant patriarchal values on the one hand characterises FHH as vulnerable victims who are in need of patronage and protection. On the other hand, their perceived vulnerability make them targets for sexual and other forms of violence. Widow FHHs are stigmatised in certain cultures and are considered as bad omens. Consequently they are marginalised and are prevented from actively participating in the social and cultural life of the community including weddings; coming of age ceremonies; and house-warming ceremonies. FHH, particularly military widow FHH, and FHH who are ex-combatants, state that their bodies, their conduct and their social interactions are heavily regulated by the community and come under scrutiny by.

Many FHH have sought to challenge these stereo-types by asserting their independence and by defying discriminatory cultural norms.⁷⁸ However FHH state that prevailing cultural norms continue to constrain and stigmatise them within the community.

Question: what measures have been introduced in primary and secondary education to address issues pertaining to gender stereo-typing including the stereo-typing of FHH?

Recommendation: Ensure that education, particularly the education of professionals (especially legal education) sensitises society on gender equality

: Raise awareness on the negative consequences of gender stereotyping through cultural and religious practices

5. ARTICLE 7: POLITICAL AND PUBLIC LIFE

FHHs face barriers in the political and public life of the community. The low visibility of women in its public and political life is, in general, a grave concern in Sri Lanka which has replicated itself in the areas of reconstruction and resettlement in war affected areas and in transitional justice and in peace building.⁷⁹ In one study it was noted that they felt 'humiliated, threatened and discriminated by the local politicians.'⁸⁰ In the absence of adequate political representation of their interests FHH are compelled to engage with existing patriarchal power structures which often address their issues and needs on the basis of political expediency. FHH whose spouses and/or children are missing are particularly vulnerable in this context. As a response, *Viluthu* has established *Amara* fora for FHH in the Northern and Eastern Provinces. Through these fora, FHH are organised and mobilised to act collectively in seeking remedies for violations of their human rights but also to act collectively to claim their right to be active in the community.

5.1. TRANSITIONAL JUSTICE

FHH have not been included in transitional justice initiatives. Thus far, national policy in the post conflict period had focused on the development of infrastructure. The recently elected government has indicated that it would adopt a more holistic approach to transitional justice and reconciliation. To date, there have been no specific state led transitional justice or peace building initiatives in which FHHs could participate and be involved in.

In 2011, the CEDAW Committee recommended the inclusion of women in the 'country's post-conflict, reconstruction and peace building process.'⁸¹ Among women, FHH should be recognized as a specific group, given the specificity of the forms of discrimination experienced by them.⁸² FHH state that they are marginalized in resettlement programmes; that they are targeted for sexual violence by state and non-state actors and therefore fear for their safety; that they experience trauma due to disability acquired due to the conflict and widowhood due to the conflict; and that they experience compounded trauma due to enforced disappearances that occurred both during and after the armed conflict.

FHH who assumed leadership of the family due to the disappearance of her spouse is compelled to support the family; seek her missing partner; engage with the cumbersome bureaucratic process in applying for the death certificate and/or compensation; and cope with conflict related trauma and the trauma of being a family member of a missing person. Up to 2013, the only remedy available to FHH was to apply for a certificate of death under a temporary law.⁸³ In September 2015, the GoSL has committed before the UN Human Rights Council to issue Certificates of Absence to missing persons and also to ensure accountability for enforced disappearances.⁸⁴ However as pointed out by *Viluthu*, FHH are unable to assert their right to truth due to the continued surveillance of the North and East. They state that due to prevailing conditions even fact finding cannot be carried out effectively among FHH.

Question: What steps has the GoSL taken to ensure that women and FHH are represented in discussions regarding the establishment of Transitional Justice mechanisms for Sri Lanka?

Recommendation: Ensure that FHH are specifically included in any transitional justice initiatives.

: Establish specialized and targeted transitional justice initiatives that address the specific human rights violations experienced by FHH, including the recognition of the right to truth by law

: Use the 'immediate aftermath' of the armed-conflict as a 'strategic opportunity' to 'adopt legislative and policy measures to eliminate discrimination against women'⁸⁵

: Fifty per cent or more female representation (at all levels; top to bottom) should be ensured in all post-war service delivery structures and proposed transitional justice mechanisms.

: While the decision of the GoSL to issue Certificates of Absence to missing persons is commended, in the implementation of this measure the GoSL must be sensitive to the particular challenges that a FHH may face in obtaining such a document. The option of obtaining this Certificate should not compromise the right of the family of a missing person to truth or to accountability. Nor should it deprive the rights of the missing person.

: FHH must be ensured the right to freely participate in the public and political life of the community without being stigmatised or exploited for political gain

: Adopt temporary special measures to increase women's political representation

6. ARTICLE 11: EMPLOYMENT

FHH in particular are vulnerable to economic hardship and lack of employment. In the post conflict context FHHs have been provided with livelihood support both by the GoSL and by civil society organizations. However, evidence from the communities suggests that this support has not been effective. The studies carried out by FOKUS WOMEN point to the need for a holistic and sustainable approach in this regard. For instance a woman from *Ampara* district stated that she was provided with a three wheeler but that due to the gender stereo-typing of the driving of three wheelers she was subject to discrimination in her attempt to work as a three wheeler driver.⁸⁶ Another woman from the same district had been provided training on shoe making but she claims that she does not have a market for selling shoes.⁸⁷ In the first example, the socio-cultural context has not been duly considered and in the second the economic viability of the support provided has been ignored.

According to information gathered, the design of livelihood support by the state is driven primarily by availability of resources. No effort seems to be made to balance the needs of proposed beneficiaries with available resources. Furthermore, at present there are no mechanisms to ensure the sustainability of the support given. The lack of structured and continuous assessment of these programmes seems to result in each intervention being ad hoc and ineffective.

Question: What is the basis on which livelihood assistance for FHH are designed and implemented by the GoSL?

Recommendation: Ensure that livelihood support is provided according to a needs assessment and that such support is sustainable and is subject to periodic assessment. Livelihood

interventions must be part of a broader programmatic intervention that ensures viability and profitability of the livelihood activity

: Economic opportunities must be made available on the basis of equality of opportunity

7. ARTICLE 12: HEALTH

Specific forms of psycho-social trauma is experienced by war affected FHH. The Committee has recognised that state obligations to respect the right to health include the obligation to ensure trauma treatment and counselling.⁸⁸ All the studies conducted by FOKUS WOMEN highlights psycho-social issues and trauma as a serious concern in relation to FHH. Factors that contributed to trauma include the loss of a spouse and parent; armed-conflict related trauma, resulting in interruptions to education etc; trauma related to loss of property and income; loss of a sense of security due to absence of the adult male; due to threats to security by members of the armed forces and police; and in some cases due to acquiring disability during the armed conflict.⁸⁹ Furthermore, it has been established that the war-affected communities in Sri Lanka have been subjected to collective trauma in addition to their individual experiences of trauma.⁹⁰⁻⁹¹

The Ministry of Women's Affairs has placed Relief Sisters and Women Development Officers at Divisional Secretariats to address concerns of this nature.⁹² Counsellors are available at the local authority level (*Pradeshiya Sabha*).⁹³ However, whether they have been given suitable training and are equipped to counsel women who experience trauma, is questionable. Civil society organizations have attempted to meet the need for psycho-social counselling among war affected women. For instance, the National Peace Council (NPC) has conducted some workshops for women in *Trincomalee* and *Mannar* at which women have been encouraged to speak freely and openly about the trauma they have experienced and also about the difficulties they experience. Many FHH who participated in these workshops have reported that sharing their stories with other women had been an empowering experience.

Question: What is the GoSL policy for addressing psycho-social trauma of war affected communities, especially the FHH?

: What specific programmes are currently being implemented to address war related psycho-social trauma?

Recommendation: Guarantee access to FHH to mental health care through the state funded health care system

: ensure availability of Tamil speaking, well trained female counsellors in Tamil speaking war affected areas and for Sinhala speaking military widows

: implement community based programmes to improve the mental health of war affected women including truth telling and the sharing of memories

: encourage and facilitate aesthetic and art based forms of expression among the war affected communities including FHH

8. ARTICLE 14: RURAL WOMEN

War affected FHH in Sri Lanka are located primarily in the rural context. In the Sri Lankan context rural living often means poverty; inadequate enjoyment of economic and social rights; and lack of access to effective remedies. 80% of Sri Lanka's population is rural.⁹⁴ Given that financial assistance offered to FHH is meagre and not on par with assistance offered under other categories rural FHH are particularly vulnerable.⁹⁵

As pointed out by the *Rajarata Praja Kendraya* (RPK) FHH in the former 'border villages' (primarily Sinhalese villages that are located along the borders of the Northern and Eastern Provinces) endure discriminatory practices including lack of opportunity for employment; and sexual violence and exploitation.⁹⁶ FHH in these communities do not receive sufficient benefits from post conflict reconstruction programmes conducted by the state and by Non-Governmental organizations. They experience severe hardships in realising their economic and social rights and of their dependents. These challenges faced by the rural FHH can translate into long-term vulnerabilities for them and for their dependents.

Underage Marriage

Underage marriage and cohabitation on the one hand has resulted in young FHH with dependents in rural communities. On the other hand, increase in FHH has contributed to underage marriage due to difficulties experienced by FHH in caring for their dependent children. Under age marriage of girls is reported to have increased in Sri Lanka particularly in the North, East and among the rural communities.⁹⁷ Eighteen is the minimum age of marriage, except in the case of Muslims.⁹⁸ The *Muslim Marriage and Divorce Act* does not prescribe a minimum age of marriage. In practice 12 years is considered to be the minimum age of marriage for Muslim girls. Moreover, except for a Muslim woman of the *Hanaffi* sect, Muslim women are not required by law to sign at the registration of the marriage. The guardian of the woman signs on her behalf.⁹⁹ The official marriage ceremony often takes place in the absence of the Muslim woman.

Registration of marriage is not mandatory (except under the *Kandyan* law) and the law recognises marriage by habit and repute and customary marriage.¹⁰⁰ Girls below eighteen enter into de facto marriages in the rural communities for several reasons. These reasons include concerns for the physical safety of young girls; destabilisation of community life due to the armed conflict; poverty; discontinuation of education due to the armed conflict; unemployment; romantic relationships resulting in elopement; and due to prevailing cultural norms. As stated by RPK, the practice of underage marriage continues in rural communities even though the initial and armed-conflict related factors that led to the practice have ceased to exist.

Question: How does the GoSL ensure that communities in border villages, especially FHH and their dependents, are included as beneficiaries in post-war reconstruction and development programmes?

: What mechanisms are in place to prevent underage marriages?

Recommendation: Facilitate economic development and employment opportunities that would benefit FHH in rural areas particularly border villages

: Provide opportunities for vocational training, especially for those who have not completed their secondary education

: Prescribe a minimum age of marriage including for Muslims

: Registration of marriages by the parties to the marriage must be made mandatory by law

: Conduct an awareness raising campaign through the public service regarding the minimum age of marriage and the consequences of underage marriage

¹ The number of FHH has increased from 19.2% in 2001 to 23% in 2010. Dept of Census and Statistics

² *Concluding Observations of the Committee on the Elimination of Discrimination against Women: Sri Lanka*, 8 April 2011, CEDAW/C/LKA/CO/7, ¶ 41

³ Report of the Commission of Inquiry on Lessons Learnt and Reconciliation (November 2011), ¶¶ 5.103, 6.92

⁴ State Report 2015, para 100, the other two programmes are the 'Single Parent Families Development Programme and the 'Divi Neguma' programme para 120; *Divineguma Act*, No 1 of 2013.

⁵ According to the Inter-Parliamentary Union, only 5.8% of Sri Lanka's parliament comprises of women.

⁶ The female participation in the labour force of Sri Lanka is 36.7 % of the economically active population in the First quarter 2015. However out of the economically inactive population 74.1 % are females, Department of Census and Statistics, *Sri Lanka Labour Force Bulletin*, ISSN 1391-3050, Issue No. 68; *Maternity Benefits Act*, No 26 of 1952

⁷ These three studies were commissioned by FOKUS WOMEN. The studies are based on interviews conducted with female heads of households: 500 from *Ampara*; 351 from *Amuradhapura*; and 1000 from *Puttalam*. *A Report on the Status of Female Heads of Households and their Access to Economic, Social and Cultural Rights: Amuradhapura District* (FOKUS WOMEN 2015); *A Study on the Status of Female Heads of Households and their Access to Economic, Social and Cultural Rights: Ampara District* (FOKUS V2015); *Survey on the Status of Muslim Female Heads of Households and Their Access to Economic, Social and Cultural Rights* (FOKUS WOMEN 2015); *Post War Trends in Child Marriage Sri Lanka* (FOKUS WOMEN 2015).

⁸ *Language as a Barrier in Accessing the Criminal Justice System in cases of Violence Against Female Heads of Households (FHH) in the North and East* (FOKUS WOMEN 2016); *Sexual Exploitation of Female Heads of Household Affected by War in Sri Lanka: twenty-five case studies* (FOKUS WOMEN 2016).

⁹ The partners are: National Peace Council; Home for Human Rights; *Rajarata Praja Kendraya*; *Viluthu*; Muslim Women Development Trust; Women Development Centre, *Akkaraipattu*; Women's Action Network for Transformation, *Jaffna*; and the Centre for the Study of Human Rights, University of Colombo.

¹⁰ It should be noted that in the jurisprudence of CEDAW recognition for FHH and the specific nature of the violation of their right to equality is still an emerging issue.

¹¹ *Survey on the Status of Muslim Female Heads of Households and Their Access to Economic, Social and Cultural Rights* (FOKUS WOMEN 2015) 5.

¹² Definitions employed by the Department of Census and Statistics are as follows: 'A household may be (i) a one – person household or (ii) multi-person household. A one-person household is one where a person lives by himself and makes separate provision for the food. A multi-person household is one in which a group of two or more persons live together and have common arrangements for provision of food. Household includes not only members of the family such as husband, wife and children but also others such as relatives, boarders, domestic servants etc. who live with the family and share the same common arrangements of cooking and partaking of food with them. Lodgers of a household, who have their own separate arrangements for meals are considered as a separate household.' and 'Head of a household is the person who usually resides in the household and is acknowledged by the other members of the household as the head.' Available at <http://www.statistics.gov.lk/PopHouSat/CPH2011/index.php?fileName=ConceptsandDefinitions&gp=StudyMaterials&tpl=2>

¹³ Discussions with officials from the Ministry of Women's Affairs (14 August 2015).

¹⁴ See for instance, *A New Intervention for the Socio – Economic Empowerment of Women Headed Households*, Ministry of Women and Child Affairs (20th May 2015), <http://www.childwomenmin.gov.lk/English/news/ministry-news/intervention-socioeconomicempowermentof>

¹⁵ *Survey on the Status of Muslim Female Heads of Households and Their Access to Economic, Social and Cultural Rights* (FOKUS WOMEN 2015) 4.

¹⁶ The Constitution of the Democratic Socialist Republic of Sri Lanka (1978), Article 12 (the Constitution).

¹⁷ Article 17 read with Article 126 of the Constitution.

¹⁸ The right to access to education has been recognized by the Supreme Court within the right to equality. See for instance: *The Z Score case S.C. (FR) Application No 29/2012*

¹⁹ The Nineteenth Amendment, § 2; and Article 14A to the Constitution

²⁰ Article 16 of the Constitution.

²¹ Muslim Marriage and Divorce Act, No 13 of 1951; Kandyan Marriage and Divorce Act, No 44 of 1952; and Jaffna Matrimonial Right and Inheritance Ordinance of 1911. Roman Dutch Law is the common law of Sri Lanka and is the general law applicable to women who do not fall under the personal laws.

²² The Women's Charter was approved by the Government of Sri Lanka on 3rd March, 1993.

²³ Matrimonial Rights and Inheritance (Jaffna) Ordinance, No 1 of 1911, §6; Also applies to women who marry a man to whom *Tesawalamai* applies.

²⁴ *Supra*, § 8

²⁵ Land Development Ordinance, No. 19 of 1935 (LDO), §§ 48(A) & (B).

²⁶ Section 48A read with section 61 of the LDO.

²⁷ *Leelawathie v Perera* SC Appeal 166/2010 SC Minutes 15th November 2012.

²⁸ *A Study on the Status of Female Heads of Households and their Access to Economic, Social and Cultural Rights: Ampara District* (FOKUS WOMEN 2015) 18

²⁹ *Survey on the Status of Muslim Female Heads of Households and Their Access to Economic, Social and Cultural Rights* (FOKUS WOMEN 2015) 13

³⁰ *A Report on the Status of Female Heads of Households and their Access to Economic, Social and Cultural Rights: Anuradhapura District* (FOKUS WOMEN 2015) 10

³¹ *Supra* 16.

³² *Concluding observations of the Committee on the Elimination of Discrimination against Women : Sri Lanka*, 8th April 2011, CEDAW/C/LKA/CO/7, ¶45

³³ These payments are made every 3 to 4 months and are subject to reductions. See in this regard: *A Study on the Status of Female Heads of Households and their Access to Economic, Social and Cultural Rights: Ampara District* (FOKUS WOMEN 2015) 21

³⁴ *Supra* 16.

³⁵ *Supra* 17.

³⁶ District level consultation with public officials by FOKUS WOMEN, conducted in Jaffna on the 29th of January 2016.

³⁷ *A Study on the Status of Female Heads of Households and their Access to Economic, Social and Cultural Rights: Ampara District* (FOKUS WOMEN 2015) 17.

³⁸ *A Report on the Status of Female Heads of Households and their Access to Economic, Social and Cultural Rights: Anuradhapura District* (FOKUS WOMEN 2015) 13.

³⁹ *A Study on the Status of Female Heads of Households and their Access to Economic, Social and Cultural Rights: Ampara District* (FOKUS WOMEN 2015) 18.

⁴⁰ *Migrant worker challenges Govt over restrictive rule* (Business Times, 1 September 2013), available at <http://www.sundaytimes.lk/130901/business-times/migrant-worker-challenges-govt-over-restrictive-rule-59771.html>.

⁴¹ *A Study on the Status of Female Heads of Households and their Access to Economic, Social and Cultural Rights: Ampara District* (FOKUS 2015) 19.

⁴² CEDAW) *General Recommendation No. 33 on women's access to Justice*, 23 July 2015, CEDAW/C/GC/33, ¶9.

⁴³ *Whither Justice? The Language Barrier in Accessing the Criminal Justice System in cases of violence against female heads of households in the North and East of Sri Lanka*, FOKUS WOMEN, 2016.

⁴⁴ S 12 of the Marriage and Divorce (Muslim) Law No 41 f 1975 as amended.

⁴⁵ S 74 *supra*.

⁴⁶ See CEDAW General Recommendation No. 33 on women's access to Justice, ¶ 25(d): The state has a duty to protect women from 'interpretations of religious texts and traditional norms that create barriers to their access to justice and result in discrimination against them.'

⁴⁷ Legal Aid is provided to those individuals receiving a monthly income of Rs. 8000.00 or less; The Legal Aid Law, No. 27 of 1978

⁴⁸ Article 18 of the Constitution

⁴⁹ *Sexual Exploitation of Female Heads of Households Affected by War in Sri Lanka: Twenty-five Case Studies* (FOKUS WOMEN, 2016)

⁵⁰ *Supra* 31.

⁵¹ The Bribery Act, No 11 of 1954 as amended. See also Section 158 of the Penal Code Act, No 6 of 1968.

⁵² *Sexual Exploitation of Female Heads of Household Affected by War in Sri Lanka: twenty-five case studies* (FOKUS),47

⁵³ CEDAW *General Recommendation No. 28 on the Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women*, 16 December 2010, CEDAW/C/GC/28, ¶¶9-13.

⁵⁴ United Nations Security Council (UNSC), *Report of Secretary General on Conflict-related Sexual Violence*, 23rd March 2015, S/2015/203; See also Office of the High Commissioner for Human Rights Inquiry on Sri Lanka (OISL) Report para 626

⁵⁵ Yasmin Sooka, *An Unfinished War: Torture and Sexual Violence in Sri Lanka 2009–2014*, (March 2014)

⁵⁶ *Survey on the Status of Muslim Female Heads of Households and Their Access to Economic, Social and Cultural Rights* (FOKUS WOMEN, 2015) 89-92.

⁵⁷ *A Study on the Status of Female Heads of Households and their Access to Economic, Social and Cultural Rights: Ampara District* (FOKUS WOMEN, 2015) 21.

⁵⁸ A statement made by a participant at a focus group discussion, *Survey on the Status of Muslim Female Heads of Households and Their Access to Economic, Social and Cultural Rights* (FOKUS WOMEN, 2015) 89

⁵⁹ For instance the Muslim Women's Development Trust has also held the view that "the anomalies in the system have culminated in the Quazi courts becoming hotbeds of patriarchy, and condoning what the general law considers to be abhorrent behavior."

⁶⁰ Registration of Muslim Marriages and Divorce Act No. 13 of 1951, § 12(1)

⁶¹ *A Study on the Status of Female Heads of Households and their Access to Economic, Social and Cultural Rights: Ampara District* (FOKUS WOMEN, 2015) 19.

⁶² Saleem Marsoof, *The Quazi Court System in Sri Lanka and its Impact on Muslim Women* (Muslim Women's Research and Action Forum/Women Living under Muslim Laws, 2011 reprint).

⁶³ Final Report of the Citizens' Commission on the Expulsion of Muslims from the Northern Province by the LTTE in October 1990: *The Quest for Redemption: The Story of the Northern Muslims*

⁶⁴ *Survey on the Status of Muslim Female Heads of Households and Their Access to Economic, Social and Cultural Rights* (FOKUS WOMEN, 2015) 18

⁶⁵ Only 9% of the 1000 Muslim FHH had had adult education and vocational training. *Survey on the Status of Muslim Female Heads of Households and Their Access to Economic, Social and Cultural Rights* (FOKUS WOMEN, 2015) 70

⁶⁶ Supra 81

⁶⁷ For instance *Viluthu* has also held the view that "Psycho-social support is among the primary needs of war-affected women"

⁶⁸ *Whither Justice? The Language Barrier in Accessing the Criminal Justice System in cases of Violence Against Female Heads of Households (FHH) in the North and East* (FOKUS WOMEN)

⁶⁹ The Registration of Deaths (Temporary Provisions) Act, No. 19 of 2010: A family member of a person missing for more than an year (due to 'terrorist or subversive activity or civil commotion) can make the application.

⁷⁰ *Ranaviru Sewa Authority, Annual Report 2011,*

(http://www.parliament.lk/uploads/documents/paperspresented/annual_report_rana_viru_sewa_authority_2011.pdf)

⁷¹ Widows and Orphans Pension Fund (Armed Forces) Act, No 18 of 1970

⁷² The Ministry of Defense Sri Lanka, (<http://www.defence.lk>)

⁷³ *Living in Shadow: Status of Military Widows in Sri Lanka* (FOKUS WOMEN 2016).

⁷⁴ Samararatne D & Soldatic K, *The social inclusion of rural women with disability in post-armed conflict Sri Lanka*, (August 2014)

⁷⁵ Protection of the Rights of Elders Act No. 9 of 2000; Protection of the Rights of Persons with Disabilities Act, No 28 of 1996

⁷⁶ Samararatne D & Soldatic K, *The social inclusion of rural women with disability in post-armed conflict Sri Lanka*, (August 2014)

⁷⁷ *Concluding observations of the Committee on the Elimination of Discrimination against Women : Sri Lanka* , 8 April 2011, CEDAW/C/LKA/CO/7, ¶ 23.

⁷⁸ See Rajasingham-Senanayake D., 'Post Victimization: Cultural Transformation and Women's Empowerment in War and Displacement' in Selvy Thiruchandran (ed) *Women, Narration and Nation* (SSA 1999)136.

⁷⁹ *Concluding observations of the Committee on the Elimination of Discrimination against Women: Sri Lanka*, 8th April 2011, CEDAW/C/LKA/CO/7, ¶¶30-31; Sri Lanka has never had more than 6 % women in any house. Currently only 5.8% of seats in the National Parliament, 4.1% of seats in the Provincial Councils (PC), and 2.3% of seats in the Local Government (LG) bodies are represented by women.

⁸⁰ *A Study on the Status of Female Heads of Households and their Access to Economic, Social and Cultural Rights: Ampara District* (FOKUS WOMEN, 2015) 22

⁸¹ *Concluding observations of the Committee on the Elimination of Discrimination against Women : Sri Lanka*, 8th April 2011, CEDAW/C/LKA/CO/7, 41(h)

⁸² CEDAW General recommendation No. 30 on women in conflict prevention, conflict and post-conflict situations, 1 November 2013, CEDAW/C/GC/30, ¶ 42

⁸³ The Registration of Deaths (Temporary Provisions) Act, No. 19 of 2010

⁸⁴ United Nations General Assembly (Human Rights Council) , *Promoting reconciliation, accountability and human rights in Sri Lanka*, 29th September 2015, A/HRC/30/L.29

⁸⁵ CEDAW General recommendation No. 30 on women in conflict prevention, conflict and post-conflict situations, 1 November 2013, CEDAW/C/GC/30, ¶ Anura Forum for Female Heads of Households comprised of 17,000 war affected FHH's proposal supported by Viluthu which was submitted to the government for a Widows' Charter released in December 2015.

⁸⁶ *A Study on the Status of Female Heads of Households and their Access to Economic, Social and Cultural Rights: Ampara District* (FOKUS WOMEN, 2015) 10.

⁸⁷ *A Study on the Status of Female Heads of Households and their Access to Economic, Social and Cultural Rights: Ampara District* (FOKUS WOMEN, 2015) 10.

⁸⁸ CEDAW General Recommendation No. 24: Article 12 of the Convention (Women and Health), 1999, A/54/38/Rev.1, Chapter I, ¶16.

⁸⁹ *A Report on the Status of Female Heads of Households and their Access to Economic, Social and Cultural Rights: Anuradhapura District* (FOKUS WOMEN, 2015) 13-14.

⁹⁰ See for instance, Daya Somasunderam, *Addressing collective trauma: conceptualisations and interventions*, Vol. 12(2014 Supplement 1) *Intervention* 43. The term collective trauma 'represents the negative consequences of mass disasters at the collective level, that is on the social processes, networks, relationships, institutions, functions, dynamics, practices, capital and resources; to the wounding and injury to the social fabric.' (47)

⁹¹ Daya Somasunderam, *supra* 47

⁹² According to the Ministry of Women's Affairs there are 10 Relief Sisters and 72 Women Development Officers in the Northern and Eastern Provinces.

⁹³ According to the Ministry of Women's Affairs there are 42 counsellors at the local authority level in the Northern and Eastern Provinces.

⁹⁴ Brief Analysis of Population and Housing Characteristics: Population and Housing Censuses in Sri Lanka, (<http://www.statistics.gov.lk/pophousat/pdf/p7%20population%20and%20housing%20text-11-12-06.pdf>)

⁹⁵ For instance the allowance for elders over the age of 70 is Rs 2000 and the monthly grant for persons with disability is Rs 3000 while the monthly grant for FHH is Rs 400.

⁹⁶ For instance the *Rajarata Praja Kendraya* has expressed that "[the] border villages are often overlooked by the state and non-state actors, donors and researchers. These villages faced similar issues to those prevalent in the war zone"

⁹⁷ *Post War Trends in Child Marriage Sri Lanka* (FOKUS WOMEN, 2015)

⁹⁸ Marriage and Divorce (Muslim) Act No 13 of 1951, § 23

⁹⁹ *Supra*, §18

¹⁰⁰ Marriage Registration Ordinance No 19 of 1907; Marriage and Divorce (Kandyan) Act No 44 of 1952.

**VISIT OF CEDAW COMMITTEE
MEMBER, MS. PRAMILA PATTEN**

JANUARY 2016

COMPILATION OF REPORTS

FOKUS WOMEN | Visit of Ms. Pramila Patten, CEDAW Committee Member 1

MEETING WITH DINESHA SAMARARATNE, CONSULTANT, ON PREPARING THE SHADOW REPORT

Tuesday, 12th January, 2016 | FOKUS Office | 2.00 p.m.

Abstract: The objective of the above meeting was to gain insights from Ms. Patten into writing a shadow report that is credible, relevant and well-presented. The report of this meeting captures the outlines of the process by which shadow reports will be considered, the expected structure, and material content of the report. Matters discussed in order to improve the quality of the shadow report are listed thereafter.

Procedure of session

Shadow reports are reviewed against the report of the State party on the status of women and implementation of the CEDAW. **Lapses** between claims made by the state and alleged ground level realities exposed in the shadow reports are ascertained. A **list of twenty questions** will be compiled thereafter and posed to the State party by a team of five experts. These questions aim to gain an understanding of remedial state action and undertakings, and reinstate state responsibility where there has been inaction. **Two sets of specific recommendations** are made to the State party in conclusion, on which the State is expected to revert with a **progress report within a period of a year of two**. This limited time period to revert is stipulated to encourage expedited reviewing of discrimination and timely action.

Structure and content of the report

Shadow reports are expected to present acutely **country-specific scenarios** where there are deficiencies in the implementation of CEDAW. Categorize relevant information in line with the articles¹ of CEDAW. **Discuss issues under each article** and dedicate one paragraph to each category of disadvantaged or marginalized women. The issues discussed for each article must be precise and concise. After the discussion of each article include a pertinent **question** on state responsibility which the committee can take up before the State party.

¹ Note that not all articles need to be mentioned. It would suffice to mention those where there are concerns in implementation and state responsibility

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Points of Discussion

Post-war concerns relating to women hold the potential for building up into long term vulnerabilities.

Comment on the gaps in state action, and suggest what the various state departments and ministries could do.

The 'head of the household' concept is one fraught with difficulty to address, owing to the absence of its formal mention in official documentation.

The CEDAW committee has not addressed the Female Head of Household as a distinct or particularly disadvantaged group, though there is nothing to dissuade it from doing so, given the elasticity and dynamic nature of the CEDAW.

Unavailability of academic documentation poses challenges for credible citations. In this light, what weightage is attached to different types of sources?

References are important in general. Much attention is paid by the Committee to data collection and definitions. Reports of Non-governmental organizations and academic work are primary citations. Case studies and narratives infuse the vital element of ground realities into the shadow reports.

The need prevails to address gender-based discrimination constitutionally, affirm the place of women through law and policy and avail remedies from the state for private action

The equality and non-discrimination clauses can be considered to succinctly address this issue. However, normative laws that are *prima facie* non-discriminatory fail to grab the attention of gender impact assessments. Due to the private-public divide being a source of contention, General Recommendation no. 30 involves measures to hold non-state actors responsible for acts of discrimination against women. Informal sector of employment, as well as domesticated instances of violence or discrimination are also thus covered, and responsibility is imputed to the state.

Widows and Female Heads of Household

Possibly throw in a paragraph on widows and FHH. Attempt to provide a comparative perspective on where issues faced by widows and FHH overlap and where they are mutually exclusive. Highlight the various categories of FHH who could be disadvantaged due to the narrow focus on widows, for instance, in doling out welfare concessions.

Tokenistic aid versus actual aid

Despite the existence of a universal healthcare system, the quality of services offered is questionable, not to mention the near-absence of psycho-social counseling and treatment. Accessibility to mental healthcare and maternity relief are a far cry from realization.

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Psycho-social healing is vital to remedy the collective traumatisation extant in the woman of a post-conflict era.

The role of and the place attributed to women in peace building, transitional justice and the accessibility to institutional remedies

Article 2 is broadly construed to encompass these issues. General Recommendation no. 33 on access to justice can be a useful point of reference.

MEETING WITH PARTNERS AND ASSOCIATES

WEDNESDAY, 13TH JANUARY 2015 | ICES | 9.30 A.M.

After briefing the gathering on the process by which the CEDAW Committee reviews shadow reports, Ms. Patten went on to add that shadow reports are an essential counter-response to the façade of responsible undertakings presented in State reports. The vital role played by non-governmental organizations in this regard was highlighted for two reasons. Firstly, the credibility of citations in shadow reports presented by NGOs is generally stronger. Moreover, the CEDAW committee values shadow reports and the opening they provide to engage with NGOs working at ground level. In addition, Ms. Patten made the following comments:

- Article 2 of the CEDAW provides a broad definition of discrimination, such that it demands all ratifying parties to condemn discrimination in any of its forms. Women who are discriminated in unconventional ways often fall through the cracks when remedies are offered against discrimination. Article 2 provides a reprieve in such instances. Moreover, several women undergo multiple layers of discrimination. Such inter-sectionality is also brought within the scope of Article 2.
- Shadow reports by NGOs are now made available on the extranet, in order to guide writers of shadow reports as well as, provide alternative perspectives to the general public.
- Article 4 (a) of the Convention stipulates the undertaking of “temporary special measures” to bridge the gap between tokenistic equality and substantial equality. Affirmative action taken in order to accelerate “de facto equality” is not discriminatory.
- Discrepancies amid personal laws in Sri Lanka are a source of contention and potential discrimination. Discrimination stemming from the substantive personal law, its interpretation, practices and court systems can be brought within the scope of Article 15 of the Convention.
- National Action Plans must be inspired at leadership level, among multifarious sectors. A Minister of Health, who is not knowledgeable about the CEDAW will not be able to implement gender sensitive programs. Ministries, departments and agencies must be collaborated with to realize meaningful changes.

Thereafter, representatives from FOKUS partners went on to highlight some sources of discrimination at ground level.

MUSLIM WOMEN’S DEVELOPMENT TRUST

- Mothers of children below 5 who seek to be employed abroad need their husband’s consent in order to apply. While a regressive requirement on the whole, this is particularly harsh on FHH.

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- According to the Land Development Ordinance, the eldest **son** gets the inheritance. Even if the Ordinance stated that the firstborn has a primary claim, that would be acceptable – but why son?
- The Domestic Violence Act does not necessarily bring within its reach verbal abuse. Law enforcement authorities also overlook language, unreasonably assuming that verbal abuse is of less gravity.
- With regard to the age of statutory rape, the discrepancies in practice, despite the standardization attempted to be brought in by the 1995 Amendment, are all too evident. The exception provided to wives of Muslim men in the Amendment, defeats the objects of policy behind the legislation. Moreover, girls between 16 and 18 who are raped, find themselves in a helpless position. From education to coerced, untimely marriages to health issues to mother and child, the girls in this age gap face several injustices. The standard punishment prescribed for statutory rape does not take effect for offenders who rape girls in this age group. This is an obvious defeat of, and in fact an illegal loophole made of the law and policy.
- Issues relating to transitional justice like sexual violence during the war and unlawful detentions were raised. Truth and justice to victims, and their families, have been consistently denied.
- Impact of Muslim Law – Both the police and Muslim leaders do not have an idea about the adverse impact of Muslim Law on women. The Quazi courts exercise unfettered discretion. The pronouncements made by these courts are not systematic or principled.

VILUTHU

- Fact finding missions relating to issues where the State is involved are complex. Women are not able to openly speak about any injustice they have faced during the war, or are facing now. Fact gathering meetings are surveillance, whereas the women are comfortable only with one-on-one discussions.
- Fact finding missions typically restrict themselves to a lopsided perspective. Either the atrocities committed only by the State or the LTTE are inquired into. This approach is not useful, because nearly all people were affected by both parties at differing points of time, instances and venues. It is not easy to distinguish between the perpetrators at other times. Therefore, fact finding missions end up incomprehensive or inaccurate. Eventually, the credibility of such reports is undermined.
- In order to support proposals or action plans, strong evidence is indispensable. However, due to the challenges in carrying out successful fact finding missions, complaints and proposals are unfruitful.
- Advocating for reform of personal laws and their discriminatory provisions is an issue which is often unduly racialized.
- Psycho-social support is among the primary needs of war-affected women.
- Labour is not adequately rewarded. With the opening up of economic activity in the North, several industries are newly coming up. However, reimbursement for high-risk or tedious

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labour is minimal. People too end up opting for these opportunities due to poverty. In a sense, their poverty is exploited. Labour regulations should be stringently enforced in the North and East as well.

- Despite the possible quota for female representatives in governance, political parties are little interested in nominating women. There is a gap between substantial representation and figures like quotas and percentages on paper.

RAJARATA PRAJA KENDRAYA

- The question was raised as to what steps are taken to bring non-complying state parties to compliance or accountability.
- The concept of Head of Household is problematic. When Female Heads of Households are narrowly defined, or equated to a category of FHH, many women fall through the cracks.
- Inequalities in the working of the law – men have a greater chance of claiming and acquiring lands. There is a discrepancy between substantial and formal law.
- Underage marriages were a common practice during the war, for safety needs. However, the culture has become so deep-rooted due to the extended period of the war, such that it is continued without any meaning or purpose even post-war.
- Border villages are often overlooked by the state and non-state actors, donors and researchers. These villages faced similar issues to those prevalent in the war zone.
- The post-war psychological and physical issues of children affect their education. Primary and secondary education is an issue of concern. During the war, these children were schooled for two hours or less. Thus, they now have problems of concentration, invariably developed due to the neurological training they have had from early childhood. They have never had to focus for an extended period of time, and now to sit for a public examination of three hours is a daunting task to many students.

EASTERN SOCIAL DEVELOPMENT FOUNDATION

- Quazi courts – the parallel court system with all male judges is a system that is beyond scrutiny and their wisdom in meting out justice is unquestioned. Most importantly, the judges are not gender sensitive. A practical problem is that when compensation is granted, there are wide disparities between the general law and the quazi system.

HOME FOR HUMAN RIGHTS

- Women and health – government hospitals are bent on providing a temporary relief and sending back the patients as soon as possible. There is no long term attention or treatment. The hospitals, and its staff are not equipped to deal with chronic illnesses requiring recurrent or consistent in-house treatment
- Law and procedure – men who are reluctant to pay maintenance prefer staying in remand custody rather than paying due maintenance. The choice between payment and remand custody defeats the object of the law.

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- Loans and loan repayment systems are counterproductive. While the loans may appear to enhance development this is a façade. The loan repayment schemes incur a steep loss to women, and in fact leave them in a far worse place than they were before the loan. Moreover, it has become practice for husbands to obtain loans, and have wives end up paying them back, or be obliged to do so.
- The Tesawalamai Law, and its stipulation of unity of domicile and unity of laws impact women adversely. The personal law is in need of reform.
- The role of the police – the police plays a significant role in the law enforcement mechanism, and defects in carrying out this duty impacts women. The most important of these shortcomings, is their inadequate training on law and procedure. Re-victimization in police stations is no novel phenomenon, and other government agencies like government hospitals and departments are fraught with similar difficulties like sexual violence inflicted on victims and undue delays.
- Labour laws should be enforced stringently. Women working at the garment factories are expected to tedious and physically strenuous activities, and be sparsely compensated.
- The Human Rights Commission – While the government advises people to file complaints with the HRC, the HRC does not provide satisfactory results. They are understaffed, difficult to work with at times, and in fact re-direct complaints to the Home for Human Rights, among other organizations.

WOMEN ACTION NETWORK FOR TRANSFORMATION

- The most important issues relate to transitional justice. Re-integration of ex-combatants into society has been nearly impossible. While most of them are educated and can be employed, the stigma attached to them is hard to shed.

NATIONAL PEACE COUNCIL

- There are significant issues with regard to receiving government compensations and concessions. The amount offered is sparse, and the effort undertaken to obtain it exceeds the value. Apart from procedural anomalies in obtaining them, some people have to travel and spend Rs. 200 to obtain a compensation of Rs. 1000. The monetary value of such rewards must be increased in order to defeat poverty, the root of multiple evils plaguing post-war societies.

Ms. Patten's responses to the some of the seminal issues raised above:

1. Because the requirement of the **husband's consent for women to work abroad** is directed in a circular, it could be raised under Article 11. Via Article 2, an appeal can be made against the directive.
2. **Verbal abuse** results psychological harm, and can therefore be listed under domestic violence.

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3. General Recommendation no. 30 sheds light on **access to justice and issues relating to transitional justice**. Some of the most pervasive forms of violence continue despite the end of the war. The GR sets out a remedial framework. A comprehensive mechanism to address issues relating to access to justice and substantial aspects of transitional justice must be heeded to.
4. Several of the issues raised by Rajarata Praja Kendraya could be brought within the head of Article 14.
5. In event of **non-compliance by the state party**, the international community will exert pressure on the state through various means. Sanctions can be imposed if the state is a party to the Optional Protocol.
6. The Sri Lankan government has stated that there is an **ongoing reform process of the Muslim Law**. It has been requested to accelerate this process. Morocco and Tunisia provide examples of best practices that curb the discrimination in religiously informed law.
7. **Women and political representation** – the issue of political parties' hesitance to nominate women despite a stipulated quota is a systemic and universal problem. As an alternative, political parties which do not adhere to the quota relating to women representatives could be sanctioned. Section 9 of General Recommendation no. 30 can be useful in directing constitutional reforms.
8. General Recommendation no. 30 advises law and policy makers about tackling problems relating to **early marriages**.
9. The issue of **female ex-combatants** is a strong point that the shadow reports could capture. The matter is brought within the scope of CEDAW distinctly.
10. **District-specific concerns** are best not included in shadow reports. As a country, the most signal issues that are widespread and systemic are better discussed, so that a set of recommendations can be given to the state party.
11. The issues pertaining to the **Human Rights Commission** are crucial. The HRC has a very specific mandate and budget and its independence is vital to carry out its mandate. Failure to carry out these obligations makes a good case in the shadow report.
12. A lot of problems highlighted above relate to **discrepancies between substantial and formal equality/justice**. It is important that legal mechanisms are not only in place, but that they are effective legal mechanisms capable of realization.

In conclusion, Country Director of FOKUS, Ms. Shyamala Gomez, stated that the partners and associates must start documenting issues and forward them to Ms. Patten, either through FOKUS or directly. Solid evidence, as discussed before, is the strength of shadow reports.

MEETING WITH THE MINISTRY OF WOMEN AND CHILD AFFAIRS

WEDNESDAY, 13TH JANUARY 2016 | 2.00 P.M.

INTRODUCTORY NOTES AND OBJECTIVES OF THE MEETING

- **Swarna Sumanasekara** opened the round of introductory notes by commenting that the National Action Plan on 1325 is to be carried out under the directive of the Ministry, and the National Committee on Women is to be commissioned with the mandate of implementation.
 - A national office has been established in Kilinochchi to look into the concerns of women, and especially to function as a hub for the communication of data from the North.
 - In considering the group of FHH in the country, military widows have not been excluded
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- **Secretary to the Ministry of Women and Child Affairs, Chandrani Senaratne**, added that the CEDAW was the ministry's bible.
 - Ms. Patten's visit will push us towards working on the implementation of CEDAW recommendations, and her guidance will be useful to prepare necessary documentation, specially the 9th State report.
 - The participation on women n Local Government institutions has been increased up to 25%, and the Cabinet approved today a memorandum to invest more in women.
 - The empowerment of women will correspondingly decrease violence against women.
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- **Pramila Patten** congratulated the Ministry on sending the 8th report on time, and highlighted that State reports opened up opportunities for the Committee to engage with the State. The 8th report will be examined at the 66th session of the CEDAW committee which will convene in July 2017. A pre-session working group will prepare a list of issues, ascertain gaps in the report, and compare and contrast the reports from NGOs.
 - The State's responses to the 20 questions, which it will be notified of in August 2016, will prove to be invaluable.
 - Ms. Patten reiterated that the purpose of the exercise was to engage in a constructive dialogue with the State on addressing the needs of women. For this endeavour to succeed, there exists a need to be candid with the Committee, and carry out an honest and transparent dialogue.
 - Recommendations made to the State are potentially drawn from the best practices of 189 member States and are expected to be the roadmap for action during the next four years.
 - It is important to get legislators involved in the process by sharing the report with Parliament, as well by including Members of Parliament in the delegation appearing before the CEDAW committee.
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- A proposal for conducting a **mock session** is put forward seriously. A capacity building session with a focus on the 16 substantive provisions of the CEDAW, which would involve and enlighten collaborative partners (like other ministries) is recommended. Upon the government's request UN Women will get an expert from the Committee to conduct the session. Since the matter is being heard in February 2017, the mock session should ideally take place in January 2017.
- The Parliamentary Women's Caucus is encouraged to participate in the mock session, capacity building, and be part of the State delegation. Getting parliamentarians involved will give them a sense of the urgency, and help them understand the dynamics. Parliamentarians must also be guided on what must be read and researched if a mock session is to be conducted.
- It is important to have a broad definition of discrimination in the constitution, so that it can be penalized under any of its forms. A study of General Recommendation no. 30 is highly recommended for its comprehensive coverage of relevant issues.

DISCUSSION

*Ms. Patten: Is the **judiciary being trained** on gender-sensitivity?*

Upon inquiring from the Ministry of Justice, the Ministry has requested to write directly to the training institute for judges.

Ms. Patten: Attempt to implement national policy on women prior to February 2017.

*Shyamala Gomez: **Concluding Observations** could be included in the National Action Plan. It is easier to pin down responsibility with specific recommendations that assign*

*Ms. Patten: **Specific 4 year action plan** could be included in the National Action Plan. In implementation, the guiding ideal should be achieving substantive equality and equality of results.*

*Swarna Sumanasekera: The potential involvement and contribution of devolved institutions, like the **Provincial Council**, has been contentious. Some Councils respond well, while others are harnessed by cultural and conventional gender stereotypes. Getting men involved remains problematic.*

Ms. Patten: While we unequivocally value culture, it is important to acknowledge its capacity to evolve. Cultural practices should not become a cloak under which discrimination is permitted. Sharia Law experts who progressively interpret the law are a fitting example to explain that culture is not static.

*Shyamala Gomez: The **'Head of the Household' terminology** is the source of much contention and prejudice. It needs to be replaced with terminology analogous to the attribution of responsibility, over a hierarchy. Departments have been persistently reluctant to cooperate in this regard.*

Swarna Sumanasekera: Again, culture complicates the change of mindsets and systems in this regard. Women themselves are culturally conditioned to accept that they are secondary to men in households.

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*Ms. Patten: What progress has been made with regard to **discriminatory practices in Muslim Law**?*

Despite several persuasions, our endeavours have not been fruitful in this regard. Repeated emphasis on this matter is being made at provincial level meetings.

*Swarna Sumanasekera: The **areas of education and health** are relatively better.*

Ms. Patten: However, because the Committee proceeds article by article, no country is exempted from answering questions from any area, certainly not education. Quality of and access to education in rural areas, education to war-affected children, teacher availability and quality, and scholarship to girls in non-traditional fields of study are oft overlooked areas pertaining education.

Ms. Patten: Article 2 (e) of the CEDAW stipulates State regulation of actions of non-state actors. Therefore States now have an obligation to dispense with regard to the discriminatory practices in the private sector. Issues relating to gender-sensitive salary reimbursements, equal work-equal pay and migrant workers are all imputable to the State now.

SUMMARY AND RECOMMENDATIONS

1. The proposal to conduct a mock session must be taken forward. For purposes of preparation and research, the mock session will prove invaluable to the State party. A team of persons attending will also have to be chosen along the lines of relevance, collaborative ministries and competency.
2. The involvement of law-makers is important in several ways. Parliamentarians, specially the women's caucus, should be enlightened on the issues that affect women, in order for change to be driven by the top level leadership.
3. The question and answer session with the State party can be enhanced only through transparency and mutual willingness to improve the situation of women. A willing and eager attitude will accomplish what must be done, rather than defensiveness. Another factor that will deeply enrich the session is the amount and depth of prior background research undertaken by the State party.
4. The State party will be given two very specific set of recommendations, which must be taken to heart and implemented. A progress report is required within a year or two on the implementation of the recommendations. The recommendations and concluding observations can be incorporated into National Action Plans for efficacious implementation. The specification of a timeline and responsible persons will ensure that the targets are attained in a timely manner, and that the failure to do so is easily recognized and imputable.
5. Cultural confines underpin several issues, albeit there is top-level consensus on the need to change. At ground level, civic education programs can be carried out to distinguish between

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culture and rights, and that the former must not impinge on the latter. Working towards the betterment of women and the elimination of discrimination is not to be viewed as jeopardizing “culture”, but rather as an ushering the said culture into modern realms of civilization. Moreover, the State, as representative of all sectors of society, is expected to take pro-active, affirmative measures towards the vulnerable. In acting to abolish discriminatory practices, the State must not be pinned down by the need to please various sectors of society.

6. State responsibility is now broadly understood to incorporate obligations towards ending discriminatory practices in the private sector, including workplaces and households. The rhetoric of solving one’s personal issues at home, and not “airing one’s dirty laundry” no longer obtains in the modern context, where, for every act of discrimination taking place within its boundaries, the State can be held internationally accountable.

MEETING WITH CIVIL SOCIETY ORGANISATIONS

THURSDAY 14TH JANUARY, 2016 | ICES | 9.30 A.M.

1. Introduction and objectives

- There has been no feedback or complaints from Sri Lanka on the Optional Protocol. This meeting seeks to explore the possibility of Civil society Organizations (CSO) feeding into this.
- The meeting is also for CSOs to state their expectations relating to: transitional justice, post conflict constitution making/reform, women affected by war, and post conflict social integration.
- The CEDAW Committee's relation to NGOs – the place and value of NGOs to the Committee has improved dramatically in recent times. The value placed on shadow reports is a reflection of this. Due to reprisals from state parties, the Committee has now adopted a resolution to establish a formal relationship with NGOs.
- The end goal of the reviewing of shadow reports is for the state party to take action against impunity.
- Legislative framework, including laws, policies and procedures can be brought within the scope of Article 2 of the CEDAW in general.

2. Shreen – Consultant/FOKUS

- The highly flawed nature of systematic responses to sexual violence was highlighted by Shreen. The government has deployed armed forces as peace-keeping forces. This reveals an absence of a basic understanding regarding transitional justice. The OISL report has clearly indicated incidences of fractional responses to violence against women and custodian rape.
- Soft issues relating to women remain unaddressed by the government
- Structural discrimination, albeit not directed at women, affect women adversely. Enforced disappearances and missing persons are examples of this. The structure is often patriarchal, and invariably, even decisions not related to gender, happen to be detrimental to women. For instance, vacancies for 2,000 police officers exist. Despite a need for female police officers to man the women's and children's desk, the government is reluctant to recruit women to the post of police officers.

3. Kumudini Samuel – Women and Media Collective

- Having previously authored a shadow report, Kumudini advocated that recommendations be extremely specific, in order to be taken up by the Committee. They should also not be too many in number, but focused and synthesized.
- The National Action Plan relating to CEDAW must be synchronized with other National Action Plans. Else, it might easily go amiss in the government's hierarchy of National Action Plans.
- The extent of child abuse, especially by the father, is a high in the homes of female migrant workers.

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- Affirmative action has been lacking in regard to many discriminations against women. The courts have gone to the extent of regressively ruling that affirmative action is a “shield, and not a sword.”
- With regards to the representation of women, proposals must also be made to appoint a quota of women, in addition to stipulating them to contest.

4. Chulani Kodikara – ICES

- Challenges in fact finding and gathering evidence have jeopardized the credibility of shadow reports in the past to a great extent. Observations we were providing were anecdotal to a large extent, and the little evident that exists relate to the singular area of custodial rape, and torture in detention. Even so, testimonials are from victims living abroad. Moreover, information available within an organization is not made publicly available, owing to the understandable issue of maintaining confidentiality. A point of information Chulani raised was regarding the necessary nature and extent of evidence.
- South Africa once authored a shadow report relating solely to sexual violence. In this light, is a shadow report dedicated to a particular, overwhelming issue, like to receive more prominence than a general report? The government has not made a public, discernible response to sexual violence.

5. Sumika - representing military widows

- Issues faced by military widows, albeit mentioned, do not receive *adequate* prominence. There is a widespread misperception that they are doing relatively ‘okay’. The substantial amount of the salary-based compensation keeps military widows from economic struggles. However, they face numerous social issues. (These issues are discussed in detail in the report of the meeting with military widows.)
- Military widows are sometimes very young and with children. This makes them dependent on other men in the family. Instances of sons raping mothers are not unheard of. Younger military widows are also forced into marriage by elder women, assuming it makes them less vulnerable to various evils in society. However, remarriage is scorned socially.
- Military widows support groups are often headed by ex-army personnel, who have patriarchal as well as nationalist notions deeply rooted in them.
- As a country we have little to make boast of in our ‘free’ health services. There is no safety or quality in these freely provided services. Accessibility is an issue as well.
- Land rights, awareness of different land rights, and substantively realizing and exercising formal rights are an issue.
- Sexual bribery, both within and without the government sector is a serious issue.
- Wives of disabled soldiers live a bitter life, where they are suspected by insecure husbands, and are thus confined to the household. Their issues are denied by military chiefs.

6. Udayanee

- Resettlement has proved a massive challenge. Temporary shelters, however, are particularly difficult for women.
- Psychological issues are not addressed formally. Survivors of the last phase of war still continue to be severely traumatized. For instance, even if they are donated chickens for their upkeep (a common donation), they are not in the mentality to feed or raise chickens.
- The peak that incidents of violence reached during the latter stages of war has not subsided. Perpetrators are most often powerful and influential, and are difficult to bring to justice.

7. Reponses and observations made by Ms. Pramila Patten

- ➔ **Shadow reports focused on a single issue** – There is no need to confine a shadow report to a particular issue. Ms. Shyamala Gomez added that the reports of Women and Media Collective are comprehensive and detailed and are an invaluable point of reference for everyone in the field of gender advocacy. Dinushika from the Law and Society Trust also concurred that a holistic approach is incomparably more useful.
- ➔ **How can CSOs follow up with the government on its promises** – None of the promises previously made by the government have materialized, for example those relating to Muslim Law and migrant workers. A National Action Plan is a useful device, because it renders monitoring and following up significantly easier. National Action Plans can be supported through the UN or its agency, in order to push towards realization. Taking cases to international fora, and using the media are alternatives through which pressure can be exerted on the government.
- ➔ **Admissibility criteria and making a good case** – For a case to be taken up at international fora the following prerequisites must be satisfied. A good case is made by the following.
 1. *There must be an exhaustion of local remedies.* Exceptions to this requisite can be availed when the local remedies are either (a) unreasonably prolonged, or (b) unlikely to culminate in effective results. The issue must not just be taken to the hierarchy of courts, but the same issue must have been consistently raised. Forum shopping on the merits is not likely to be favoured in international courts. When an issue is brought to courts, it is also important to raise the most pertinent issues. An apt example is provided of a Turkish woman who could not continue to wear her scarf. She challenged the action on the grounds of political ideology, rather than discrimination against women. Invariably, she lost her case.
 2. *Imputability of State Responsibility* – In terms of merits, the alleged conduct must be linked to state action/inaction or impunity. The grievance can also relate to non-state actors, because responsibility is imputed where the state has failed to take adequate

FOKUS WOMEN | *Visit of Ms. Pramila Patten, CEDAW Committee Member*

preventive, punitive, remedial or compensatory action. Article 2 (e) of the CEDAW is thus important because it brings within its scope private persons and enterprises.

3. *Disqualifying factors* – Cases ongoing in domestic courts, cases filed by anonymous persons, the failure to exhaust domestic mechanisms without being subject to the exceptions stated above, the hearing of the same matter in an international court/tribunal previously, allegations against non-ratifying state parties, manifestly ill-founded or unsubstantiated cases, or cases where victims cannot be brought within the scope of CEDAW
4. *Specificity of victim/identification by name, and testimonials by a woman or group of women make a strong case.*

➔ **Examples of viable cases and unsuccessful claims**

1. A Spanish royal woman claimed that she was deprived of the title of baroness, but her brother was entitled to the title of baron. Although Spain eventually removed the legislation that resulted in the woman being disentitled, the allegation was not considered to be a violation of Fundamental Rights.
2. Sterilization of a woman, who went for a check-up to a gynecologist, was considered a violation of Article 12 of the CEDAW.
3. A woman who was given a lift by her boss to an event, and eventually molested and raped on her way back, lost her case in domestic courts. The judge, a woman, blamed the victim for her conduct. However, the victim won her case before the CEDAW Committee.

Disappearances and missing persons – these issues can be tied up to women and brought within the scope of CEDAW

- ➔ **Confidentiality of reports** – there is a wealth of information that does not reach the Committee otherwise. Shadow reports are therefore valuable. However, due to concerns of confidentiality it is understandable that victims do not want information to be available on the extranet through shadow reports. As an antidote, reports can be personally communicated to Ms. Patten, which she will intimate to the Committee, thereafter.

MEETING WITH MILITARY WIDOWS

14th January 2016 | FOKUS Office | 2.00 p.m.

Introduction

Military widows are a segment of women affected by the war, whose issues do not always receive prominence, be it in the media, or in the eyes of the international community. They too face a unique set of problems resulting from the war. These problems however, are not a far cry from the systemic root causes that have victimized women everywhere.

Galgamuwa in Kurunegala is the Divisional Secretariat with the highest number of war women. These military widows encourage one another morally. Ranaviru Seva Authority is the government representative organization for military widows. Sujeewani, Sujiva, Anusha and Renuka belonging to the women's resource center headed by Sumika, met with CEDAW Committee Member, Pramila Patten, in order to discuss their concerns.

Award of the monthly compensation

1. The monthly compensation depends on the salary according to rank of the soldier at the time of death.
2. If the death of the soldier occurred after 2007, 25% of the salary-based-compensation is given to the parents.
3. If the soldier died a natural death while stationed at a military camp, and not in active combat on the battlefield, widows are denied any form of compensation.
4. After the age of 55, the widows get a compensation that mounts to the pension that the soldier would have received. The pension is about 50% of the salary.
5. Although several military widows are young and have children, there is no chance of remarriage. Upon remarriage a lump sum is awarded, and the monthly compensation is terminated. The lump sum is calculated by multiplying half a month's salary for ten years. This opens up a Pandora's Box of problems. The women are approached by men who are motivated to usurp the lump sum and abandon the women. Should the woman be abandoned without any means left to herself, she receives no further reprieve from the state. Moreover, a percentage of the lump sum should go towards the maintenance of children from the previous marriage with the soldier. Meanwhile, women who find suitable, genuine partners remain unmarried because they would lose the monthly salary.
6. Missing persons fall under the category of dead persons, upon the issue of a certificate, and are considered dead. While this may amount to monetary benefits, the absence of closure for the "widows" is a psychological issue that goes unaddressed.
7. In addition, the Army is reluctant to issue a certificate of disappearance if the soldier was held hostage by the LTTE. This has traumatized the wives of such hostages.

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Sexual bribery

1. In a system that has well comprehended the vulnerable position of military widows, the demanding of sexual bribes at every step is more the norm than the exception.
2. When looking for employment for themselves, or for their children, military widows are expected to perform sexual favours. As a result, most widows are looking to be employed by a female head. The chances of finding employment in a workplace headed by a woman are rare, given the overall backwardness of the areas these women come from.
3. The Ranaviru Sansatha is headed by disabled soldiers. Sexual bribes are demanded to obtain benefits from this forum. Importantly, the forum offers significant benefits like the scholarship offered to 1% of children.
4. The demands for sexual bribery cannot be openly stated for several reasons. Further sexual exploitation, social perceptions, and stigmatization are among the chief of them. Therefore, military widows mostly share their burdens only amongst themselves for emotional relief.
5. Furthermore, testifying, witnessing or reporting at a police station or court is problematic, since officials are pressurized by superiors to disregard the accounts of military widows.

Empowerment over handouts

1. The core need of military widows is psycho-social counseling and moral support. Due to the lack of empowerment, these women are unable to fend for themselves, and their families, although they are not necessarily bereft of material means.
2. The widows do not make informed decisions about spending their income. There is no plan on how to effectively invest the money they have in order to attain self sustainability and independence. Hence, there is a need for guidance on financial management
3. What the women are in real need of is skills development, which in result will equip them with the necessary independence and empowerment. It is noteworthy that the women have never received any prior exposure to self employment programs, or vocational training.

Structural anomalies

1. The Ministry of Defense is the body responsible for the allocation of funds, and decision making. However, the mention of spending on military widows in the budget is not detailed. The areas on which the allocated funds are spent, e.g. education of children, livelihood etc., are not specified.
2. Corruption is also rampant and this is significant because due recipients could be deprived of a lot of money. An example was cited where a half built house of a blind man was photographed for government documentation. The house was never completed, although documents are in order.

Conclusion and Recommendations

1. Aid that is offered recurrently and based on a nominal categorization becomes meaningless overtime. It creates a mentality of dependence in the recipient and could possibly result in disempowerment. On the other hand, the state incurs a continuous burden without any corresponding results in productivity. A healthy alternative is to equip the women with skills and more importantly, provide moral support, in order to sustain themselves independently. The fact that a substantial income every month is nevertheless improperly and ignorantly utilized at times, establishes this. Most issues flagged above can be averted through empowerment, informed decisions, and adequate guidance. While the importance of material aid cannot be understated, it is important to note that material aid cannot substitute moral support, and that the latter should be priority. In this light the value of psycho-social counseling, vocational training, basic literacy programs, and skills development training is reiterated.
2. Anomalies with the payment of the salary based compensation must be attended to:
 - The payment of a lump sum upon remarriage is dissuaded
 - Discrimination based on cause of death is artificially construed
3. Sexual bribery reports must be taken seriously at police stations and by the courts. The women and children's desk at police stations could be useful in this regard. Workplace harassment or sexual bribery for employment could be specifically tried by the labour tribunals.
4. Accountability and transparency must be demanded from the government, and its agencies, in order to battle corruption.

MEETING WITH MUSLIM WOMEN'S DEVELOPMENT TRUST

THURSDAY, 14TH JANUARY 2016 | FOKUS WOMEN OFFICE | 4.30 P.M.

Clients who have sought help from the Muslim Women's Development Trust shared their experiences with the Muslim Law. The issues highlighted below are specific to those faced by a Muslim woman due to Muslim Law and its procedure.

Polygamous relationships

1. Because Muslim Law permits polygamous relationships up to four subsisting marriages, several anomalies and injustices occur to women. Many wives are abandoned by their husbands for other women, or are deceived into marrying an already married man. While women and their families do not condone the practice, the law condones polygamy, and the women are left without a remedy. More importantly, the culture of polygamy has resulted in giving Muslim men a particular mindset and perspective about women. Most men believe in and justify womanizing, because a law founded in religion condones the practice of polygamy. The practice however, is not carried out consensually, or with proper financial compensation.

Maintenance issues

2. As a result of the issue highlighted above, many women are deprived of their due maintenance. This has an adverse economic impact on the women and children. In addition, wives who pronounce a Fazah divorce are not entitled to maintenance. Thus, women are forced to live with abusive or violent husbands, else risk a financial crisis.

Sexual violence

3. Domestic violence, rape, incest and intimate partner violence are rampant, albeit invisible. Perceptions in the Muslim community about a woman, who complains about her husband or marriage, prevent women from speaking up for themselves or their children.

Role of Quazi courts, Mosques, Muslim leaders and scholars

4. Quazi courts are a parallel court system that is at the helm of Islamic jurisprudence in Sri Lanka. The composition of the court is made up only of men. The anomalies with the system are multifarious. With regard to substantial law, there is no coherence in the principles followed by the Quazis. The awards are neither systematic nor consistent, and the discretion of the Quazis is unfettered and absolute within the system. Rules of natural justice and other stipulations regarding procedural integrity are neglected. While the jurisprudence of the Quazis cannot be equated to the plenary body of Islamic principles, there is no discernible source of law behind the judgment, besides the Quazi's wisdom. Needless to say, the anomalies in the system have culminated in the Quazi courts becoming hotbeds of patriarchy, and condoning what the general law considers to be abhorrent behavior. For instance, the Quazis do not order

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maintenance from a husband or ex-husband who is not present at the hearing. Invariably, men evade maintenance obligations, simply by not reporting to the courts.

5. The women leveled out the allegation that the most prominent Islamic scholars and leaders in the community live the most repugnant personal lives and engage in domestic violence, rape and incest. The plight of the woman is worsened, because even a Muslim community sympathetic towards her would not punish its leaders. Allegations are ignored because they could have wider ramifications - to admit of fallibility in a leader would be to undermine the credibility of Muslim male leadership as a whole. The notion is clearly flawed. To hold even the hierarchy accountable to an unassailable set of principles would in fact enhance the credibility of the legal system, on the contrary. A prominent figure in the community, engaged in charity with the Jammāt, has raped his six year old daughter, while the mother was employed abroad. The matter has not only been invisible, but the mother and daughter are without remedy against the man. In another instance, a man raped a daughter from a now divorced wife. The daughter, now sixteen, is pregnant and was compelled to terminate her education therefore.
6. The Mosques, on the other hand, act in excess of jurisdiction. The Mosques have no legal pedigree to look into civil matters, and yet the leadership in Mosques arrogates to itself the powers of inquiring into and settling matters regarding marriage, divorce and maintenance, much to the detriment of women. A man accused of raping a woman was ordered to pay Rs. 1000 to the Mosque. While rape is essentially not a crime one can pay out of, the compensation was nevertheless paid to the Mosque! This amount varies between Rs. 1000 and Rs. 10,000. On another occasion, the Mosque asked a woman who had decided to separate from her husband to stay with him. Eventually, the man abandoned her for another woman, and the first wife has not been able to obtain maintenance, two years since.
7. Exerting pressure on the government vis-à-vis the reform of Muslim law has been problematic. It has been sustained on grounds of religious autonomy, and under Article 16 of the Constitution which bars scrutiny of personal laws. Moreover, the Muslim leadership is not receptive to non-Muslims critiquing the shortcomings of Muslim Law or its leaders. Proposals for reform are often unduly racialized, and considered an affront on religious freedom. Importantly, the struggles specific to Muslim women in Sri Lanka have not been taken to an international forum ever.
8. Children are necessarily affected by the atrocities committed against women. A mother present at the meeting whose elder daughter was sexually abused, and the younger has hence been traumatized, said that she has had to resort to sleeping pills to get them to sleep every night. The behavior of men has adverse consequences on male and female children. Male children grow up into justifying or repeating their father's behavior, while the girl child is traumatized for life. Because children, from a stage early as infancy, get involved in such crises, the perpetuation of the vicious cycle has been hard to arrest.

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9. The crux of the matter lies in Muslim Law and procedure. The protection it affords to womanizing, violent and incestuous men has rendered it the source of all problems faced by a Muslim woman. While unscrupulous patriarchy may be inscribed in society, the protection afforded by the legal system to such patriarchy has compounded the issue and radically increased its frequency and gravity. Conversely, the legal system appears to be the fount of the male mindset in the Muslim community. Whatever society's ills may be, the law should not subscribe to, or compound them, and instead remedy harmful socio-cultural mores. The issue is transformed by the involvement of blatant human rights violations, which calls for immediate reform of the Muslim law.

Other issues – The issues faced by Muslim women are the same across different localities and circumstances, i.e. displaced Muslim women, Muslim women from the North and East and Muslim women from Puttalam. This clarifies that these issues are owed to the most part to the law that governs them.

10. Language – Most of these women are fluent only in Tamil, and have difficulties in communicating technical details effectively in Sinhala. This becomes a problem in government hospitals and departments, where the accuracy of information is vital. Language incompetency on the part of the state actors has left women without a remedy, where one was rightfully due.

11. Self employment – women are culturally restricted from fending for themselves. In addition to society's scorn, they are not used themselves to come up to the main road, sit in a shop or sell things.

12. The Human Right Commission, apparently overworked and understaffed has been handing over cases to the Director of the MWDT.

**Zero Tolerance for Sexual Exploitation and
Sexual Bribery of Women in Sri Lanka**

October 2018

Compilation of Reports

Zero Tolerance for Sexual Exploitation and Sexual Bribery of Women in Sri Lanka

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IN HOUSE MEETING WITH THE STAFF AT THE CENTRE FOR EQUALITY AND JUSTICE

Monday, 1st October 2018 | 9.00 am | CEJ Office

The meeting was held with the purpose of introducing CEDAW Committee Member Ambassador Ismat Jahan to the staff at CEJ, as well as to provide her with a general overview of the organization's work and ongoing projects.

The meeting commenced with Ms. Shyamala Gomez (Executive Director) providing a brief introduction to The Centre for Equality and Justice. She spoke of the transition from FOKUS Women to CEJ and on the projects undertaken by the new organization. Project officers then proceeded to introduce each project, its purpose and current status.

Amb. Jahan wanted to know how successful peace and reconciliation efforts were in the Sri Lankan context. She explained that in her experience working as a CEDAW member, she had noticed a sense of silence in war-affected communities, which did not seem like true, genuine reconciliation. Perpetrators are generally public figures in these communities and victim survivors struggle to live 'normally' in such a situation. This struggle indicates that there is a need for genuine peace and reconciliation in these communities. She further noted that in Bangladesh, following the Liberation war, many youth question reconciliation and transitional justice. They wonder why the past has to be brought up time and time again and why people can't just forget and move on. Amb. Jahan emphasized that transitional justice is not for the victors but for those affected by the conflict, and peace and reconciliation, although hard to achieve must be something that we strive for as a nation and as individuals.

Ms. Shyamala noted that government efforts towards transitional justice have been insincere and Amb. Jahan pointed out that victim survivors often have to deal with their perpetrators being in positions of power, such as successive governments.

Speaking on sexual violence in particular, Amb. Jahan stated that children born as a result of sexual violence are most often cast aside by society as well as their own families. They are referred to as illegitimate and ostracized by society at large. Raising awareness among the public through social media campaigns and other forms of media plays a very important role in creating empathy for these children.

Furthermore, she commended CEJ for the work they do with women in the post war context, emphasizing the importance of addressing sexual violence against women. Sexual violence is not discussed often but the #MeToo campaign on social media has sparked change in this area and most victims are encouraged to speak of their experiences of sexual harassment. However, some victims still remain silent.

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She further noted that traditional conservative attitudes on gender stereotypes and gender roles are seen in countries across the world. Media plays a prominent role in portraying a woman as someone who is meek and vulnerable. Education can be used to eradicate such misconceptions early on and since Sri Lanka has a high literacy rate, the nation could use the education system to address such issues.

In response, Ms. Shyamala commented that the idea of the man being superior and being the head of the household is an ingrained notion in Sri Lankan culture and therefore most women are reluctant to speak about what they go through.

In closing, Amb. Jahan thanked the staff at CEJ for welcoming her and added that she was looking forward to the roundtable discussion and stakeholder dialogue that was to follow.

MEETING WITH MS. ASMA EDRIS RAHMAN- PROGRAMME OFFICER, SOUTH ASIA PROGRAMME. OPEN SOCIETY FOUNDATIONS & MS. SHREEN SAROOR, WOMEN'ACTION NETWORK (WAN)

Monday, 1st October 2018 | 11 AM | CEJ Office

The meeting took place in CEJ office. Discussions with Ms. Rahman focused on sexual exploitation of women particularly, of war affected women, including Muslim women. Special references were made to issues of “sexual bribery” and the high level of impunity.

Ms. Saroor a prominent women rights activist shared from her firsthand experience in working with women affected by the conflict at the grass root level and her lobby work. She also stressed on public complicity in sexual exploitation of women both during and end of conflict. She gave concrete examples of “sexual bribery” as documented by her studies.

ROUNDTABLE MEETING WITH MEMBERS FROM INDEPENDENT COMMISSIONS AND LIKE-MINDED ORGANIZATIONS

Monday, 1st October 2018 | 3.00 pm | ICES Office

The purpose of this meeting was to have a preliminary discussion, with various lobby groups, on Sexual Exploitation and Sexual Bribery of women. This discussion took place prior to the stakeholder dialogue on policy changes and law reform in this area. The roundtable discussion was held to formulate strategies that could be adopted and to discuss ways in which government level officials and grassroots level women could be sensitized to the issue of Sexual Exploitation and Sexual Bribery.

The meeting began with Ms. Shyamala Gomez (Executive Director) introducing CEDAW committee member, Amb. Ismat Jahan to the gathering.

In her opening address, Amb. Jahan noted that the original CEDAW convention had not contained an explicit provision for violence against women. However, in 1979, the UN General Assembly adopted the convention and they formulated strategies to involve member states in addressing violence against women. The CEDAW committee emphasizes the need for prevention, prosecution and punishment to be included in national policies to address sexual violence against women.

Sexual Bribery was first mentioned in CEDAW committee proceedings in 2017 following the shadow report submitted to the committee from Civil Society Organizations in Sri Lanka. Sexual Bribery is an evolving concept and although it is generally understood by most, ensuring its inclusion in the current discourse is an ongoing challenge. She noted that sexual bribery is gender neutral but affects mostly women due to factors such as ignorance and illiteracy.

She noted that a threat of sexual violence is as important as an act and suggested that CEJ could include 'threats to commit sexual violence' in the proposed legislative reform. Furthermore, she spoke of sexual extortion or 'Sextortion' as an aspect of sexual bribery that could be added into the proposed terminology and commended CEJ for the measures taken to raise awareness on this issue, as it is important in effecting change.

Many countries address Sexual Bribery in their anti-corruption acts, but it is important that we have the constituents and consequences of sexual bribery codified in legislation. Some countries have taken stronger measures to address Sexual Bribery. India, for example, has reformed their Prevention of Corruption Act 1988 to include Sexual Bribery implicitly under the term 'undue advantage'.

In conclusion, she mentioned that many complaints go unreported due to shame and stigma. Victims suffer in silence and in some instances, this suffering could span over a

generation. However, change is a process and it doesn't happen overnight so now that this process has begun there is hope for the future.

Roundtable Discussion

Participants

Ms. Shyamala Gomez (Executive Director)- Centre for Equality and Justice

Mr. Asoka Obeyesekere (Executive Director)- Transparency International

Dr. Mario Gomez (Executive Director)- International Centre for Ethnic Studies

Ms. Bimali Amarasekara (Gender Specialist)- UNDP

Ms. Udeni Thewarapperuma -Freelance Consultant

Ms. Shreen Saroor (Member)- Women's Action Network

Mr. J.M Swaminathan (Member)- Law Commission

Ms. Maithreyi Rajasingham (Executive Director)- Vilithu: Centre for Human Resource Development

Mr. J.M. Swaminathan began the discussion with a few questions on India's amendment to the Prevention of Corruption Act 1988. He wanted to know if India's amendment was specific to sexual bribery or if it contained other types of bribery as well. He asked if any other South Asian countries had drafted similar laws or if Sri Lanka was pioneering the change. He also wanted to know if there were any international drafts/model laws, apart from the Indian reform, on which we could base this proposed provision.

Referring to the proposed terminology by CEJ, he wondered if we should restrict the perpetrator to someone being in a 'position of power or authority'. He gave an example of a peon or an office clerk who may not have the authority to do anything but might ask for a sexual bribe just to provide the victim with procedural information.

In addition, he suggested to add the word 'threatens' to the proposed terminology.

Responding to Mr. Swaminathan, Amb. Ismat Jahan spoke about the amendment to the Indian Prevention of Corruption Act 1988, the term 'undue advantage' in the act would include sexual bribery. The act states that the 'offeror' of the bribe will also be prosecuted alongside the solicitor. She raised her concern about the unjust prosecution of women who have been coerced to provide sexual bribes due to their vulnerability. The Indian amendment is criticized for this provision because women who have to be protected may be accused and prosecuted. We should be focusing on protecting the victim and not penalizing them further, she added.

Furthermore, the Indian government has to grant permission to investigate an allegation of sexual bribery against a public official and complaints have to be made within seven days of the incident. These prerequisites have also been criticized in India.

She further stated that according to her knowledge, the only South Asian country, thus far, that has expressly dealt with sexual bribery is India, but other countries deal with such

cases through other anti-corruption laws. She added that it is also not easy to successfully prosecute a case of sexual bribery.

Mr. Mario Gomez questioned the effectiveness of this criminal law: How effective can the criminal law be in this area? Should we adopt a rights-based approach framework as a supplementary measure, where the burden of proof would be much lower to help victims seek redress? Would a rights-based approach be better in the long run because there is no reliance on the state machinery for enforcement?

He went on to question the relationship between sexual harassment and sexual bribery: What is the relationship between sexual harassment and sexual bribery? Is sexual bribery a form of sexual harassment?

Further, he commended CEJ for their efforts in raising awareness on sexual bribery among the public, making specific reference to the most recent newspaper article published in the Sunday Times on the 30th of October, 2018.

Responding to Mr. Gomez, Amb. Jahan stated that sexual bribery was in fact a form of sexual harassment and it all falls under the umbrella of sexual violence against women. She further stated that sexual bribery is a grey area and therefore should be clearly defined. This requires proper conceptualization to prevent misuse. An express provision would ensure a clear understanding of what sexual bribery is.

Ms. Shreen Saroor pointed out that Sri Lanka had made a mistake by not criminalizing domestic violence. Criminalizing is important because it takes away the perpetrators power and this combats the culture of impunity. Therefore, she noted that criminalizing sexual bribery is essential. Even if we have one or two complaints, criminalizing will be most beneficial.

In response, Ms. Shyamala Gomez stated that 'undue advantage' in the Indian framework does not in fact encapsulate sexual bribery. By including 'Sexual Bribery' in the Bribery Act, it will be given the visibility it deserves. This would place sexual bribery on the same level as any other form of bribery. The bribery commission does not talk about sexual bribery in the current context because they are talking about other far-reaching amendments so by pushing for this change we are giving sexual bribery visibility. She also noted that amendments have to be carefully worded to prevent victim accusations.

Ms. Bimali Amarasekara added that the burden of proof is higher in a criminal case and women should be educated on how they can provide evidence to support their allegation.

Mr. Swaminathan suggested that sexual bribery be defined as a civil wrong, as well as a criminal offence. A victim could claim higher damages this way.

Ms. Udeni Thewarapperuma was of the view that sexual bribery is not understood by most government officers. Some say they didn't know it was an offence at the time of confrontation. Therefore, having an express provision referring to sexual bribery will

prevent officers from escaping prosecution and it will help clear any misconceptions regarding sexual bribery.

Mr. Asoka Obeyesekera from Transparency International provided a slightly different perspective. He said that in most instances, civil society wants to see a change through amendments to the law, when the problem actually stems from the implementation of the law and not from the provisions under the law. He was of the view that the current provision under the law for 'gratification' was a wide path that allowed room for interpretation, whereas if we were to expressly include sexual bribery in the law it would narrow down the avenues for a victim seeking redress. Would an express provision of sexual bribery help the cause, or was the existing implicit provision sufficient?

Mr. Asoka continued, pointing out that India's amendment is addressing sexual bribery implicitly through 'undue advantage'. That is to say that undue advantage could be extended to include sexual bribery. So in a sense, India has just arrived to a place that Sri Lanka is already at, since our bribery act address sexual bribery implicitly through 'gratification'.

Responding to Amb. Ismat's opinion that having an express provision would help those who are unclear about what sexual bribery actually is, Mr. Asoka stated that such unawareness was not an issue with the law, but a matter of implementation, whereby the public and officials are not made aware of what sexual bribery is. He further stated that people might not be aware that sexual bribery is not part of gratification; in that case it's an unawareness of the current law. This could be fixed through implementation measures. Is law reform the answer?

Further, Amb. Jahan stated that while expressly providing for sexual bribery in the Act might cause it to be a narrow pathway by which victims are further victimized, it is also important to note that such an express provision would also serve as a deterrent to perpetrators.

Ms. Maithreyi Rajasingham noted that solicitation is never direct. A professor will make an indirect remark and the student understands that she has to offer a sexual bribe. In such an instance if a student succumbs to giving a sexual bribe, can we refrain from protecting such a victim because she 'offered' the bribe?

The common assumption in our society today is that if you are young and beautiful you have it easy because you can give sexual bribes and get promotions. Therefore, even if you are rightfully given a promotion the rumor is that you had to offer a sexual bribe to get it. In such an instance, how do you determine in words, which women we are going to protect and which women we aren't going to?

She went on to address the nuances of amending the law to include sexual bribery; how can you define an 'offer' a 'coercion'? All victims of sexual bribery should be protected, regardless of whether they offered it or not but how many will stand by this to push it forward?

Ms. Shyamala added that to government officials in the Bribery Commission, the Bribery Act is their 'bible' so if we have an express provision for sexual bribery that captures the nuances, people will be more confident to make complaints and officers will be compelled to act on such complaints.

Ms. Rajasingham raised questions on the weightage and placement of sexual bribery: 'Should we place it on the same level as any other form of bribery or at a higher level?' Mr. Swaminathan added that in determining weightage, we also have to pay attention to the kind of punishment for this offence.

Adding to Mr. Asoka's comment on developing implementation methods, Mr. Mario suggested that formulating and including a code of conduct for public officials in the training curriculum could be an alternate solution to addressing sexual bribery. Sri Lanka Institute of Local Governance (SLILG) could facilitate this process and the regional centers could carry out this training for local government officials. He was of the view that raising awareness would have a greater impact than law reform. He suggested focusing on implementing measures rather than law reform.

Responding to Mr. Gomez, Amb. Jahan accepted that such a code of conduct would serve the purpose of addressing sexual bribery and should move simultaneously with legislative amendments rather than being an alternate solution to the problem of sexual bribery. She further noted that some women have misused laws on violence against women to take revenge on their husbands. Therefore, in determining the terminology for sexual bribes, special care should be taken to limit any leeway for such false allegations.

Both Mr. Swaminathan and Mr. Gomez made suggestions to the proposed terminology in the following manner: Mr. Swaminathan suggested that sexual favors 'includes' may be a better term than sexual favors 'shall be' as the latter leaves no room for interpretation.

Mr. Gomez suggested changing 'solicits and receives' to 'solicits or receives' as soliciting in itself should suffice.

Sharing her experience from cases of sexual bribery she has worked on, Ms. Saroor stated that the military, police and quasi court officials are most often the perpetrators. Women are afraid to lodge complaints because of the power that is enjoyed by these officials. Most victims are women who are female heads of households, single or looking for their loved ones who went missing during the war. Women find it hard to talk about their experiences because of the social pressure that they will have to face. The powerful will always escape punishment. As of now, the only punishment given to perpetrators is a mere transfer; there is no strong punishment. So, having a codified express law on the issue of sexual bribery can help in prevention, as well as successful prosecution.

Commenting on Ms. Saroor's view of having a codified law expressly providing for sexual bribery, Mr. Swaminathan emphasized that the law alone will not solve this problem; administration and implementation of the law should also be strengthened.

Agreeing that an express provision for sexual bribery is the way forward, Ms. Thewapperuma stated that most victims say that even if they make a complaint to their superiors, a higher-up who is also corrupt, handles the complaint. In such an instance, there is no hope for the victim. Therefore, if there is an express law, such perpetrators will not be able to escape.

Mr. Asoka pointed out that under the current law of gratification, both the offeror and solicitor could be prosecuted. This could be used to argue against the current legislation since we are lobbying for the victim not to be penalized, due to the coercive nature of sexual bribery. He also noted that a fine as a form of punishment is being used as a 'get out of jail free' pass.

In response, it was suggested to have compensation and rigorous punishment, in addition to fines, as forms of punishment.

Ms. Shreen emphasized that victims can't make much progress with their complaints, if the perpetrators come back to the same position of power after a brief period. She was of the view that it should be ensured that such perpetrators are stripped of all power never to return again to a position of power.

In conclusion Amb. Ismat Jahan pointed out that advocacy was not a substitute for implementation measures, such as developing a code of conduct for officers in the public and private sector, but that both initiatives should run parallel to each other.

STAKEHOLDER DIALOGUE

Tuesday, 2nd October 2018 | 9.00 am | BMICH

The purpose of this meeting was to take a closer look at sexual bribery and bring it into the discourse to give it the visibility that it deserves. Through this discussion, CEJ aimed to push policy makers and government officials, at the local and national level, to address sexual bribery by including the word 'sexual gratification' in the Bribery Act. Furthermore, as the current act punishes both the giver and taker of bribes, the aim was to lobby for the exclusion of the victim from punishment due to the coercive nature of sexual bribery. The method of punishment was also a factor up for discussion, along with forming a code of conduct for government officials that includes sexual bribery in their training curriculum. It was also important to discuss strategies for raising awareness among men and women on this issue and recognize it as a violation of human rights that mostly affects women due to abuse of power by those in authority.

The meeting commenced with Ms. Shyamala Gomez (Executive Director) introducing The Center for Equality and Justice and the work it undertakes with women in the post conflict context. She proceeded to welcome CEDAW committee Member Amb. Ismat Jahan and introduce the project 'Zero Tolerance for Sexual Exploitation and Sexual Bribery of Women in Sri Lanka'.

Addressing the gathering, Amb. Jahan spoke about the signing of the CEDAW convention in 1979 and its focus on addressing violence against women. CEDAW has held dialogues with member states, including Sri Lanka, to discuss the best possible method to address gender-based violence, giving prominence to violence against women. She noted that in her 50-year tenure, gender-based violence, whether committed by the state or non-state actors, remains pervasive in all countries around the world in varying degrees. High levels of impunity contribute to increased gender-based violence in certain countries.

Social media and mass media have increased awareness on gender-based violence, spreading the message that this should not be tolerated to any degree. Although CEDAW is not a sanction imposing body, it does impact policy development in countries that come under scrutiny by preparing and discussing reports. Concluding remarks, made by the committee, also influence national policies. Some states have responded fast while some have not responded at all. Member states are required to report on the progress and steps taken in terms of agreed recommendations in their country. She stated that Sri Lanka has been regular in reporting progress.

Sexual harassment, sexual exploitation and sexual bribery are all violence against women and emphasis should be placed on providing access to justice and gender sensitive law enforcement. It was further stated that victims of sexual exploitation are not a homogenous group. Some women are at a greater risk of exploitation due to poverty,

Zero Tolerance for Sexual Exploitation and Sexual Bribery of Women in Sri Lanka

their status as unmarried women, illiteracy, etc. Furthermore, it should be noted that violence does not stop with the end of conflict but continues, to a large extent, in the post war context.

Social norms and stigma affect women and girls and prevents them from lodging complaints. Fear of reprisals and fear of revictimization prevent victims from speaking about their experience. Sexual bribery is closely linked with the abuse of power. Sexual favors could be exorted through coercion and coercion is not always physical, it could be psychological as well. She emphasized that CEDAW is working to adopt a sensitive approach to situations where women face the threat of sexual bribery when accessing services that they are rightfully entitled to.

Speaking on legislative measure surrounding sexual bribery, Amb. Jahan stated that sexual bribery is a criminal offence but prosecuting it is a challenge due to the difficulty in gathering evidence, as most often there aren't any witnesses. The culture of impunity is high due to the imbalance of power and those in authority use this to their advantage. Therefore, for successful prevention and prosecution, legislation must be stronger. Legislation needs to be reformed to be relevant and an express provision for sexual bribery would also act as a deterrent.

Sri Lanka has begun lobbying for legislative change, but we must also note that raising awareness on the issue of sexual bribery is an equally important aspect to ensure high levels of engagement to bring about change. In conclusion, she stated that change is not an easy process and it won't happen overnight but now that the process has begun, there is hope.

Findings from the research on Sexual Exploitation in Sri Lanka

Project officer, Ms. Ando Anthappan, presented the findings of the research on Sexual Exploitation and Sexual Bribery of Women in Sri Lanka (PowerPoint presentation is attached to this report). An overview of the project, research findings and recommendations were presented.

This was followed by a video documentary on the puppet show, conducted in Anuradhapura and Kurunegala, to raise awareness on sexual bribery among grass root level communities. (Link to video <https://youtu.be/SwILD9josl0>)

Panel Discussion

The panel consisted of:

- Mr. Asoka Obeyesekere (Executive Director)- Transparency International Sri Lanka
- Ms. Swarna Sumanasekara (Chairperson)- Ministry of Women and Child Affairs

- Ms. Subashini Siriwardhena (Asst. Director General)- Commission to Investigate Allegations of Bribery and Corruption (CIABOC)
- Ms. Shreen Saroor (Member)- Women's Action Network
- Ms. Shyamala Gomez – (Executive Director)- Centre for Equality and Justice
- Ambassador Ismat Jahan- CEDAW committee member

Briefly addressing the gathering, Amb. Ismat Jahan commended CEJ on their research efforts and added that the project had been well executed. Although this is just one project, this step is symbolic in effecting change in many other countries as well. She further stated that she has witnessed the issue of sexual bribery in Rwanda, as well as in Bangladesh, and therefore understood the gravity of this issue. The culture of impunity, stigma, shame, fear, silence and power play put women and girls in a position of vulnerability and subject them to varying forms of abuse. She emphasized that the role of the media was to create general awareness to change societal attitudes.

Ms. Swarna Sumanasekara, from the Ministry of Women and Child Affairs, in her opening address, stated that the ministry is currently engaged in gender sensitive programs. Sexual Harassment committees have been formed to investigate complaints of sexual violence. However, she noted with concern that these committees haven't received any complaints up to date. She noted that this lack of complaints might be because men and women are unaware of sexual bribery and they also live in fear of the shame and stigma that accompany complaints of such nature. The ministry also hopes to provide input on the Sexual and Gender-Based Violence Action Plan, as well as the Human Rights Action Plan, which will contain a component to address sexual violence. Importance has been given to include sexual violence and sexual harassment in the establishment code, as a disciplinary matter as well. She further noted that even though the government sector had a grievance mechanism for complaints of sexual harassment, this was not the case in the private sector. The Ministry of Women Affairs had a discussion with the Ministry of Labour and Trade Union Relations to incorporate sexual harassment in their policy framework and they had promised to conduct a workshop on the same.

With the aim of raising awareness, Ms. Swarna noted that the ministry hopes to conduct various media programs, such as a radio program on the Sri Lanka Broadcasting Corporation channel, regarding gender mainstreaming and sexual harassment. Furthermore, a draft media policy has been submitted to the Ministry of Finance and Media. She added that sexual bribery had not been considered in programs conducted by the ministry but following the local government elections, many women had made complaints of sexual bribery and the ministry is currently looking at measures to address this issue.

After summarizing Ms. Swarna's address, Ms. Shyamala Gomez noted that when discussing amendments, it is important to understand whether sexual bribery falls within the wider category of sexual harassment or if they are mutually exclusive issues. She also recommended exploring ways in which the private sector could be included in this discussion

Ms. Subashini Siriwardhena, a prosecutor in the current legal system, accepted that prosecuting a case of sexual bribery was difficult and stated that having an express provision might allow for more successful prosecutions. However, she noted that narrow definitions might make proving its constituents more difficult. Furthermore, she added that the lack of awareness among the public is one of the biggest issues and although sexual harassment has been addressed in the National Action Plan on Corruption, specific reference has not been made to sexual bribery.

Activist Shreen Saroor mentioned four key cases of sexual bribery: one against a professor at the Jaffna University, the second against a principal of a school for physically challenged children, another against a member of the Tamil National Alliance political party, and finally a case against a member of the Sri Lanka Red Cross. These cases were the beginning of a lengthy investigation by her and her team. She added that when female heads of households try to access necessary services in the post war context, they are often subject to sexual bribery. Women blame themselves (say it is their fate) for being in such a situation. The culture of impunity is very high, and perpetrators are in positions of power and authority and women are afraid to come forward and complain. Women victims want to see the power of these perpetrators stripped away because power prevents cases from being heard and prevents victims from obtaining justice. She further stated that awareness has been created, to a great extent, in the North and East but what we need now is a strong support system.

Speaking specifically on the Bribery Act, Mr. Asoka Obeyesekere made an observation that the Act is clearly anchored to the state whereas sexual bribery is not purely a state issue and this should be taken into consideration when making any amendments. The fact that sexual bribery goes beyond state authority and permeates in to the private sector should be considered as well. He said that, in his opinion, this is an implementation issue and he wonders if an explicit provision in the law would solve the problem. However, he also stated that expressly providing for sexual bribery might have a greater impact on preventing it in the future. He also emphasized that civil society organizations should highlight that sexual bribery is in fact covered under 'gratification' in the current bribery act to bring about greater change. He emphasized that legislative reform and development of implementation measures must be undertaken simultaneously and should not be considered a substitute for each other. Furthermore, he raised a question as to whether the National Authority for Victim and Witness Protection could play a significant role in this regard.

Ms. Shyamala summed up the introductory messages of all panelists and added that explicit inclusion of sexual bribery will serve as a catalyst for change in the current social and legal context. It will also encourage relevant authorities to take action. Then she opened the floor up to the participants to voice their questions and remarks.

Ms. Sakunthala Kadirgamar, Executive director of the Law & Society Trust mentioned that it was important to keep the proposed definition of sexual bribery gender sensitive, to include both men and women, because she believed that many younger men could also

be victims of sexual bribery. She emphasized that it is important to address sexual bribery explicitly because it is prevalent in both the private and public sectors and it occurs when accessing essential government services.

Ms. Maithreyi Rajasingham, Executive Director of Vilithu had a question for the representative from CIABOC. She inquired if the proposed amendment to the Bribery Act could refrain from punishing the 'giver' of the sexual bribe, as victims will not come forward to complain if they were to be blamed alongside the perpetrator. Furthermore, she inquired about other mechanisms that could be included in the law to protect victims of sexual bribery. She stated that the law dealing with such offences must give prominence to the offence and must emphasize measures of protection for the victim. Therefore, in our proposed amendments we need to expressly provide for protection of these victims.

Ms. I. Sabalingam, Additional Secretary of the Ministry of Post, Postal Services & Muslim Religious Affairs noted that sexual violence is not only tied to the state but is used systematically by other groups as well. She added that in the post war context it is important to create awareness regarding sexual violence and pressure the state to act, as certain perpetrators may also be functioning with the blessings of the state. She further noted that it is important to create awareness among women and spread the message that women should not give sexual bribes, as both men and women are responsible for sexual bribery. Her observation was that many women had 'given' sexual bribes to secure their nomination in the local government elections. She stated that there was no cure for sexual bribery, so attention must be placed on prevention rather than on legal amendments. The bitter reality is that there are laws on all kinds of offences in the country, but we don't have effective implementation. Addressing Mr. Asoka's suggestion on involving the Witness and Victim Protection Authority, she stated that although protection should be guaranteed for victims of sexual bribery, the definition of a 'victim' should also be looked at closely. Should we protect someone who voluntarily gave a bribe to secure a position, as was seen in the local government elections? We have to provide for protection of victims but if the bribe wasn't coerced, in other words if it is voluntarily given, should protection be given?

Answering Ms. Sakunthala's question, Ms. Nehama Jayawardene, Human Rights Officer (OHCHR) stated that prominence has been given to all victims however since it has been observed that most perpetrators are men, the legislation should reflect this observation and not devalue it. Addressing sexual bribery within the LGBTQ community, she noted that certain incidents may not be reported because same sex relations are criminalized in Sri Lanka. She also pointed out that in local ministries you have to provide services for a promotion. This gap, where one is denied of what he/she is entitled to because he/she refused to provide what was asked for, needs to be addressed. Finally, she emphasized the need to address the fact that more powerful perpetrators, such as members of parliament, are known to take sexual bribes, blatantly abusing their power.

Dr. Nimalka Fernando, Attorney-at-law was of a different view; she said that we should focus on societal notions of patriarchy, sexuality and sex. She noted that the community

lives in denial: believing that the women of this country are well looked after, and the men and politicians of this country are well behaved. This contributes to the issue of sexual violence, so we need to start by addressing the community's denial of the existence of sexual gratification and the ill treatment of women. We have still not been able to address gender-neutral legislation, establish a gender commission or reform penal codes relating to minorities. Further, we should place importance on raising awareness. If women got their nomination for local government elections through sexual bribery, then we should have taken steps to hold a tribunal with these women to encourage them to speak. Such movements are important to empower women and this will help them create awareness and protect others when they are promoted to positions of power in the local government. It is time we empower women to deal with sexual bribery. She also suggested that the terms 'sexual bribery', 'sexual harassment' and 'sexual violence' should be explicitly stated in all state institution trainings. She agreed that law reforms are important and the law should be broad enough to encompass all types of victims. However, she noted that certain definitions for terms such as sexual gratification, etc should be narrower.

Dr. Mapiitigama, National Programme Manager of the Ministry of Health, Nutrition and Indigenous Medicine, Family Health Bureau, took the opportunity to briefly share with the gathering the work carried out by the Ministry of Health regarding sexual harassment. A guidelines program was initiated in March 2018 to address sexual harassment in administration. The guidelines were adopted by teaching hospitals in their training curriculum and committees were created in each hospital for victims to lodge complaints. Posters and leaflets were printed with informative details on prevention mechanisms. The guideline focused on prevention and forms of informal reporting.

Ms. Shyamala added that CEJ has been in conversation with the Ministry on Women & Child Affairs to discuss the possibility of including a section on sexual bribery in their existing policy on sexual harassment. CEJ also met with Sri Lanka Institute of Development Administration (SLIDA) and suggested that they include a component of sexual bribery to their anti-corruption module. SLIDA agreed and they have implemented a six-hour training for public officials at the inception of their public service.

Ms. Maithreyi agreed with Dr. Nimalka, saying that the prevalence of patriarchy leaves women in a vulnerable position. She spoke about the forms of punishment that should be lobbied for, as part of this proposed reform. Punishments should be considered in relation to the offence. In response to Ms. Sabalingam's previous comment, Ms. Maithreyi noted that our system has created certain barriers which force women to resort to such measures in order to have access to equal opportunities, such as competing in local elections. If women are pushed to provide sexual bribes, is it right for them to be punished for it? If our society has deemed sexual bribery as the only option, can we blame women for succumbing to it?

In response to Ms. Maithreyi's comment, Ms. Subashini stated that in the current bribery act, the person who files a complaint first will not be punished. So if a female victim were to complain to the authorities about a situation of sexual bribery, she would not be held

liable for 'giving' the bribe. However, Ms. Madu Dissanayake, Assistant Representative of the UNFPA was quick to point out, the question arises: what happens to the victim if the perpetrator files the complaint first?

Amb. Jahan, responding to the discussion, stated that these kinds of questions reflect the lack of confidence in the system. She emphasized that victims are subjected to revictimization through this abuse of power. Ms. Shyamala suggested that the Bribery Commission look in to including a clause that would specifically protect the 'offeror' of sexual bribes. She further stated that raising awareness could help address the larger issues that had been discussed. She reminded the gathering that our focus should be on the perpetrator and not on the victim; there must be 'zero tolerance' of sexual bribe taking by officials. It is important to shift the onus on to the perpetrator.

In conclusion, Ms. Shreen Saroor wrapped up the day's proceedings by pointing out that we are in a transitional justice period. She urged the gathering to think creatively to structure a method of prosecution and punishment that will address the culture of impunity that currently exists. She pointed out that if the system does not allow for prosecution, these victims can never be helped; they will be left helpless and vulnerable.

The meeting concluded with the vote of thanks given by Project Officer, Ms. Ando Anthappan.

Keynote Address by Ambassador Ismat Jahan, Member CEDAW

1-2 OCTOBER 2018, COLOMBO,
SRI LANKA

“ZERO TOLERANCE FOR SEXUAL EXPLOITATION OF WOMEN”

ADDRESSING SEXUAL EXPLOITATION: COMPARATIVE PERSPECTIVES

Sexual Exploitation in its various forms is Violence Against Women (VAW) and a major violation of human rights. One of the major ways the international human rights system has endeavoured to prevent violence against women is by international law, particularly the CEDAW, which is often described as the International Bill of Rights for women.

Notably, CEDAW Convention does not contain a specific provision on VAW. By way of interpretation the CEDAW Committee has read gender-based violence as a form of discrimination into the Convention. Notably, with adoption of General Recommendation (GR) 19 in 1992, gender-based violence was defined as a form of discrimination; more specifically, “violence that is directed against a woman because she is a woman or that affects women disproportionately. It includes physical, mental or sexual harm or suffering, threats of such acts, coercion and any other deprivations of liberty”. The Committee has therefore been consistently addressing VAW mainly under Art.5 by tackling gendered stereotypes, practices and laws that perpetrate gender inequality. This is a priority issue in the Concluding Observations/recommendations that CEDAW committee makes following discussions on the Report presented by a state party.

Over the last 8 years, as member of the UN-CEDAW Committee, I have observed that gender-based violence against women, whether committed by States or non-state actors, including private persons and armed groups, remains pervasive in all countries of the world,

albeit in varying degrees, often with high levels of impunity. “Me Too hashtag”, shows that women have experience sexual assaults in some way or the other, most of the time in silence.

CEDAW is law without sanctions. However, it does impact on policy development in the countries under scrutiny. The process of preparing reports, presenting and discussing reports fosters new cultural understandings of gender and violence. At the very outset, I would like to underline that CEDAW Committee greatly values the collaboration with NGOs in developing cross-cutting advocacy strategies. We are also benefitted by the submission of the shadow reports. It is however, true that while VAW is becoming an important concern for policy development. Yet government action remains uneven, while some countries have adopted comprehensive polices to combat VAW, whereas others are slow to address the issue. Notably, it is not CEDAW's intention to name and shame noncompliant governments but through its Concluding Observations and recommendations it has encouraged State Parties to make changes for the better.

CEDAW's GR 35 on gender-based VAW which was adopted in July 2017, updating GR 19, recognised that VAW occurred in all spheres including the family, the community, the public spaces, the workplace, leisure, politics, sport, health services, educational settings and their redefinition through technology-mediated environments, the Internet and digital spaces. It also recognises that ‘gender-based violence may affect some women to different degrees or in different ways’ and accordingly that different legal and policy responses must be devised through adoption of new generation of national action plans on the elimination of gender-based violence including all forms of sexual violence.

CEDAW's GRs are not legally binding in the same way as the text of CEDAW, but they are designed to show states parties their obligations when they are not mentioned or not sufficiently explained in the convention itself. The GRs have established

due diligence principle = state responsibility for gender-based violence perpetrated by public authorities but also by private actors and have urged to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation.

I would add, that at least eight articles bear indirectly on VAW including sexual violence and exploitation in all scenarios within state and non-state institutions, including those related to gender stereotypes, trafficking in women, prostitution, sexual harassment in workplace, women's health including in rural areas, and women's position in the family and community. Furthermore, sexual harassment, sexual exploitation, sexual bribery and sexual abuse by public officials and private enterprises are also considered as violence against women. In this context, emphasis is placed on access to justice and gender sensitive judicial and law enforcement system. Issues concerning the climate of impunity are frequently raised. The Committee also recognises that girls and women exposed to sexual exploitation or victims of such exploitation are not a homogenous group. Some women may be at an even greater risk of violence and abuse because of their isolation, dependency or oppression. They include women living in poverty, single women, widows, women and girls from rural communities, indigenous women; refugee, migrant, asylum-seeking and IDPs; women in detention, women in conflict and post conflict situation; women from different ethnic, religious and racial backgrounds, trafficked women, women in prostitution and women with disabilities. GR 30 on women in conflict prevention, conflict and post-conflict situations notes that for most women in post-conflict environments, the violence does not stop with the official ceasefire but often sexual violence escalates in post-conflict setting and that women are not a homogeneous group and their experiences of conflict and specific needs in post-conflict settings are diverse.

Notably, discriminatory cultural traditions and social norms and stigmas affect girls and women disproportionately, often deterring women and girl victims from reporting sexual and gender-based violence due to social stigma, apprehending disbelief and dismissal by the police, prosecutors and courts and by the public at large, as well as for fear of reprisal or re-

victimisation. In this context, the Committee asks state parties to promote the gender sensitive training of professionals in the law enforcement and justice sector to make sure that there are effective access to justice and remedies for women victims and to prevent re-victimisation of women and ensure due punishment for perpetrators without impunity.

Speaking on Sexual bribery: I am reminded of a concept coined by International Association of Women Judges which aptly names it as "sextortion", wherein the abuse of power takes the form of a demand for sexual favours. To me, it captures the very essence of the abuse of authority to extort sex. Demands for sex as bribes are a serious form of sexual exploitation and VAW. It is absolutely despicable where a person is compelled or coerced into using one's own body to gratify someone in exchange of services/favours. CEDAW has so far, mainly looked into "Sexual Bribery" in the context of sexual exploitation or harassment in the workplace in the context of Article 11. Notably, GR 19 (paragraph 18) states that '*sexual harassment includes such unwelcome sexually determined behaviour as physical contact and advances, sexually coloured remarks, showing pornography, and making sexual demands, whether by words or actions...it is discriminatory when the woman has reasonable grounds to believe that her objection would disadvantage her in connection with her employment, including recruitment or promotion, or when it creates a hostile working environment.*' Employers bribing job seekers or employees - especially women - with jobs and promotions in exchange for sex is sexual corruption and is in fact sexual bribery. The Committee has addressed another kind of sexual bribery, now from the side of woman, where offer of sex is used in order to pressure or lobby a person in position of power to conform to a certain agenda, e.g. seeking promotion. Another example could be a prostitute offering sex to a law enforcement officer in order to ensure that solicitation charges against the prostitute are dismissed. This is in contrast to the usual scenario where sexual favours are often demanded by the police law from prostitutes. CEDAW addresses this under Article 6: Women in prostitution.

The CEDAW Committee is becoming more sensitive to examples when women have to deal with "sexual bribery" in accessing services,

even to those they are rightfully entitled to. So far, as I can recall, the Committee has used the term “sexual bribery” explicitly in the Concluding Observations on Sri Lanka, March 2017, in the context of paragraph 24 on Conflict-Related Sexual and Gender-Based Violence Against Women; noting with concern serious allegations of sexual bribery targeted at women reportedly perpetrated by the military and the police.

Legislation concerning sexual bribery, general views:

Sexual bribery although should be a criminal offence and in some countries it is legally so, it however, is a big challenge to prosecute the perpetrator for various reasons. Clearly, sexual bribery differs from traditional monetary bribery cases, having both a “sexual exploitation” and a “corruption or bribery component”. While “sexual bribery” is a gender-neutral concept, it disproportionately affects women, especially those who are exposed to vulnerabilities and are dependent on those entrusted with power to obtain or access services to which they are otherwise rightfully entitled to but may also mean benefits, which they are otherwise, not entitled to e.g. undue promotion. Unfortunately, cases relating to sexual bribery are seldom investigated seriously because majority of the persons involved are persons in a position of authority and holding them accountable is a big challenge and as such a culture of impunity runs high. Victims of sexual bribery are often pressurised into silence due to patriarchal attitudes and social stigma and community ostraciation, fear of repercussions and reprisal e.g. withdrawal of much needed services or employment related sanctions or due to an overall lack of confidence in the legal system (which is not always gender sensitive). Often there is no witness and their experience is difficult to prove. This may all lead the victim against reporting or pressing charges. Notably, victims may often be reluctant to lodge complaints for fear of prosecution especially under traditional anti-corruption frameworks where both the offeror and the recipient of the bribe commit a punishable offence. Even if offence of sexual bribery is punishable under the law, victims may lack awareness of such existing legal provisions and may not have the knowledge on where or how to report.

Addressing the offence of sexual bribery: Some would argue that the offence can be prosecuted under either a country’s anti-corruption framework or its sexual harassment and gender-based violence laws. Gender-based violence laws usually require evidence of physical force or overt refusal by the victim. These may not be suitable for prosecuting sexual bribery as a person that offers to exchange sexual favours for obtaining even a basic service may run the risk of being perceived as ‘consenting’ to such activity, and could well be seen as a party or an accomplice in the crime of corruption. This could lead to re-victimisation of the victim, as it would not be appropriate to prosecute the bribe giver as well as the bribe receiver. Secondly, sexual bribery relies on coercive pressure rather than physical violence, explicit or implied to obtain sexual favours. While it is possible that in such a transaction the element of consent is implied, it is very important to note that such consent is extracted under duress or through coercion, which may not be physical but emotional. It is what is commonly called a Hobson’s choice: “take it or leave it”. Victims who accede to the perpetrator’s request/demand for a sexual favour may be viewed as having “consented” to the sexual conduct. The main safeguard should be not to re-victimise the victim under any circumstances!

Concluding remarks:

While there is no internationally adopted convention that expressly refers to sexual favours, some conventions employ language that is broad enough to cover the solicitation or acceptance of non-monetary benefits or inducements – language that would include the sexual favours as sexual bribery. The UN Convention Against Corruption (2003) and the UN Convention Against Transnational Crime (2004) contain parallel provisions, making it a crime for public officials to solicit or accept an “undue advantage” in the exercise of their official duties. Seeking a sexual favour in exchange for official action would appear to constitute such an “undue advantage.” Accordingly, several countries are known to have sexual harassment provisions in national human rights legislations, criminal codes, labour codes, health and safety legislation, anti-discrimination and equal opportunity laws, as well as education and licensing statutes and executive orders, to name a few. Some anti-corruption statutes

expressly address the abuse of authority to obtain sex:

- Section 27 of the Tanzanian Prevention and Combating of Corruption Act of 2007, makes it an offense for “any person in position of power or authority” to “demand [or impose] sexual favours” as a condition of the exercise of that authority.
- The Criminal Codes of Bosnia and Herzegovina Article 205(1) (2003) mentions that (1) Whoever induces into sexual intercourse or any other sex act with a person who is in a subordinate or dependent position in relation to him due to the person’s financial, family, social, health or other condition or straightened circumstances commits offence.

Certain countries have also amended the ethical rules and professional codes of conduct governing public officers in a manner that addresses, and prohibits sexual bribery. In the Philippines, Section 3(e) of the Anti-Graft and Corrupt Practices Act of 1960 (Rep. Act No 3019) covers actions by public officers in the discharge of their functions that cause “undue injury” or give a private party “unwarranted benefits, advantage or preference.”

Few countries have amended their anti-corruption statutes. A recent example, which you may already know, is of India’s Prevention of Corruption (Amendment) Act, 2018 where the term “Undue Advantage” has been defined to mean any gratification other than legal remuneration.

For ensuring effective prosecution, “sexual bribery” MUST be stipulated in legislation, as explicitly a criminal offence with necessary penalties as existing legal statutes may not be sufficient enough. There is a need for sustained efforts by countries for reviewing the broad spectrum of their existing national legislation in order to determine if provisions on sexual bribery would require being included expressly. There is no one-size fits all reform. It will vary from country to country. Specialist advice/ opinion of jurists should be sought about specific circumstances in reviewing the best practices of other countries, which have undergone reforms in their legislation to either codify or capture the essence of “sexual bribery”.

In Sri Lanka, I understand that while the Bribery Act (no.11 of 1954), does not explicitly identify ‘sexual bribery’ as an offence, there seems to be a precedence where the judiciary had recognized sexual favours as a form of bribery by expanding the concept of “gratification” (Sri Lanka vs Abdul Rashak Kathubdeen’ in 1994). Notwithstanding that, I am aware that a strong lobby group is emerging who seeks amendment of the Bribery Act to articulate the offence of sexual bribery by listing ‘sexual gratification’ as a specific form of ‘gratification’, in order to prosecute the crime of sexual bribery effectively through appropriate sanctions. In parallel they are also seeking to bring visibility to the issue itself; to raise public awareness on what constitutes sexual bribery and also within public offices and private sector bodies, enlisting it in the code of conduct and training manuals in ensuring zero tolerance policy on sexual bribery. In this context the role of the civil society, Commissions, Press and media at large in bringing visibility to the issue is highlighted.

I thank you.

5.3 | Report on the virtual event with international stakeholders on Sexual Bribery in the Health and Justice Sectors in Sri Lanka.

**NOVEMBER 18TH, 2022 | 5 PM – 7 PM (IST)
VIA ZOOM**

Resource Persons:

Shyamala Gomez,
Executive Director, Centre for Equality and Justice (CEJ)

Dinushika Dissanayake,
Deputy South Asia Director (Research), Amnesty International

Dr. Dinesha Samararatne,
Senior Lecturer, Public and International Law,
Faculty of Law, University of Colombo

Ms. Shyamala Gomez, Executive Director of Centre for Equality and Justice (CEJ) began the event by welcoming all the participants and giving a brief introduction on work carried out by the CEJ in terms of working on issues related to peace and security of war-affected women in Sri Lanka, issues related to transitional justice, preventing hate speech and violent extremism, sexual and gender-based violence (SGBV), conflict-related sexual violence as well as working with youth groups and involving them in work related to ensuring language rights, the role of youth in governance, etc. Further, she mentioned the recent inclusion of work on issues concerning sexual and gender minorities.

Afterwards, Ms. Gomez introduced CEJ's work related to sexual bribery. Sexual bribery was introduced as a term coined by the CEJ which was brought to the discourse by the organization in 2015. Its definition is, 'a public officer abusing his authority and asking for a demand which is sexual in nature in return for the service s/ he provides to the person who is asking for the public service'. Furthermore, sexual bribery was seen to have three key elements;

1. An instance where a public officer (the Bribery Act in Sri Lanka covers the public service) abuses their authority and asks for a sexual bribe in return for their services,
2. The quid-pro-quo aspect – an underlying agreement of giving something back in exchange for receiving something
3. There is psychological coercion where perpetrators will be working with the mind of whom they solicit the bribe and try to coerce them into complying with the sexual demand.

Ms. Gomez further explained the possibility of sexual bribes being overlooked and only monetary bribes being considered a form of corruption. Therefore, the need of identifying sexual bribery not only as an issue related to sexual violence/harassment but also as a form of corruption as it violates the law of the country. She also mentioned CEJ's advocacy in this regard. The background to CEJ's work on sexual bribery, starting from 2015 where extensive documenting of cases of women from war-affected areas who had experienced solicitations of sexual bribes from public officers (especially local government officials and the police) was then shared. Learning through such research, CEJ has been engaging in advocacy and raising awareness among victim-survivors as well as others on what sexual bribery is and about individual rights when it comes to refusing to comply with a solicitation of sexual bribery. Over the years CEJ had strategically done this in many districts by utilizing many methods such as puppetry and drama. CEJ has also obtained expert support in continuing with its advocacy efforts by obtaining insight from lobby groups consisting of like-minded organizations and academics in planning strategy. These advocacy efforts have led to many useful and significant achievements including;

- Working with the Commission to Investigate Allegations of Bribery and Corruption (CIABOC) and influencing them to consider sexual bribery a widespread and significant

issue that needs to be addressed.

- CEJ's working definition of sexual forms of gratification being included in CIABOC's National Action Plan on bribery and corruption in Sri Lanka. CEJ views this as a major achievement as this implied sexual bribery and sexual forms of gratification being recognized as a form of bribery under the bribery framework.
- Providing CEJ's input on including the issue of sexual bribery to a draft and consolidated anti-corruption law which brings together the Bribery Act, the CIABOC Act and the Declaration of Liabilities Act together. CEJ has further been able to provide recommendations and discuss observations with the Ministry of Justice on this behalf.

After providing the above background, Ms. Gomez introduced the objective for the day's discussion as collaboratively exploring ways of looking at the issue of sexual bribery in a more holistic manner and taking it to international platforms to see if action can be taken at the global level. Here, Ms. Gomez highlighted how the UN convention against corruption does not focus on sexual bribery and hence was seen as a platform where it could be introduced. Other platforms were identified as treaty bodies on economic social and cultural rights, civil and political rights committee, and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) as the issue of sexual bribery clearly affects many rights of individuals. The discussion was further aimed at looking into ways on how to take this conversation forward and utilizing CEJ study findings in determining the way forward.

Afterwards, Ms. Dinushika Dissanayake, Deputy South Asia Director (Research), Amnesty International addressed the participants and commended the consistent work done by the CEJ in terms of sexual bribery and the important milestones that were achieved along the way. Ms. Dissanayake discussed two issues related to sexual bribery;

1. The number of human rights it impacts in terms of the Right to Equality of women who try to access public services in terms of justice, education, health, etc. Moreover,

marginalized groups may be at a higher risk of being approached with solicitations of sexual bribery. Therefore, the issue of sexual bribery needs to be identified as an issue of corruption in the local context and not merely an issue related to sexual harassment. She further highlighted that this identification was in its infancy even internationally.

2. Types of advocacy needed – international legal recognition (within international standards) often is confined to recognizing financial corruption and other forms of corruption such as sexual bribery go unnoticed. Therefore, advocacy can include;

- seeking international legal recognition of sexual bribery,
- creating more awareness and consciousness-raising at a domestic and international level,
- increasing action at the domestic level. Here Ms. Dissanayake appreciated the draft bill as it will increase the possibility of enforcement mechanisms in future. She further suggested that the lack of laws is not an issue in the Sri Lankan context but the implementation of it by the police and other authorities was. This coupled with the lack of an enabling environment for women to come forward in making complaints, to see a complaint through the prosecution process, and to stay safe through the entire process makes the situation even more challenging. Advocacy efforts should address the above as well as
 - raising social consciousness and awareness among the public,
 - improving public awareness and support for victim-survivors,
 - create an environment where perpetrators are called out by society,
 - providing protection for victim-survivors
 - addressing the issue of social stigma which prevents victims from coming forward with their complaints and seeking support

Ms. Dissanayake concluded her remarks by commending the progressive work done by the CEJ and consistent documenting of case studies which shows that sexual bribery is a widespread concern and not simply an issue confined to any particular group of people or geographical area. Afterwards, Ms. Tracy Holsinger of Mind Adventures Theatre presented a dramatized version of some of the quotes taken from the in-depth interviews with the victim-survivors. This particular set of quotes was from a lady who had to face solicitations of sexual bribery from a healthcare worker (male nurse) while her husband was hospitalized.

RUPA: I liked you from the moment I saw you, he said, and asked whether I could come and meet him alone. I moved my hand away and asked him to go back to his seat.'

'While walking towards his chair he said that I was the only person who turned down his... invitation.'

'After that, he started calling; from that night itself. Began calling all the time. Began sending voice messages to WhatsApp. After that, I gave this number to my husband. My husband called him and asked him not to talk to me. Still, he would not listen. Would call all the time.'

'Then my husband threatened to leak all the phone recordings, and the doctor challenged him. He said, show me what you think you can do to me. So my husband sent him one of the recordings, and then that doctor backed out.'

'I didn't tell this to anybody else because I felt embarrassed. And, since I haven't shared it with anyone, I haven't felt any stigma. These incidents happen frequently because perpetrators know that there's no system, no mechanism in place to apprehend them. They can always seek support from someone with money or power and evade the law.'

'We have to change the way we think about the problem. A sexual act happens with

the consent of two people. It shouldn't happen by force. I didn't complain to the Police because I was worried about my job. I was worried that I would be re-victimized if I went to the Police and therefore I didn't lodge a complaint.'

No matter how good a woman is, it cannot be seen. She is always the person at fault. We should take action without thinking these are such small things. We do it as if we are hiding something.

There may be women who are troubled more because of this. I don't know the details but, definitely, he has requested other women to do the same. If he was courageous enough to walk over to me and hold my hand then I can only imagine the plight of his other female patients.'

During the next segment, findings of the study conducted by CEJ on sexual bribery by the lead researcher of the study Dr. Dinusha Samararatne (Senior Lecturer, Public and International Law, Faculty of Law, University of Colombo) were presented to the participants. This was A Study on Sexual Bribery in the Justice and Health sectors focused on women and the LGBTQI community (2021-2022) and it discussed the problem of sexual bribery through real-life experiences of women and members of the LGBTQI community in Sri Lanka. Dr. Samararatne expressed the importance of drawing attention to and facilitating discussion as to how sexual bribery can be raised as an issue that cuts across corruption, Gender Based Violence (GBV), and also as a human rights violation.

As an approach to sharing study findings, Dr. Samararatne shared background information on sexual bribery in the Sri Lankan context. She explained key indicators of bribery and corruption and the prevalence of these using statistics from the Global Corruption Barometer 2019. She also quoted a 2014 study titled 'Women's Experience of corruption in the Public Sector' by Transparency International to illustrate how Sri Lankan women had experienced sexual bribery in the public sector. As further illustrated similar trends were seen in global and local statistics where more than 50% of women had experienced sexual

bribery and corruption. Further data showed that the highest noted experiences were from the legal and health sector and that more women from rural areas and female-headed households were more susceptible. The following too were discussed;

- Status of women and the LGBTQI community –
 - Women are a historically marginalized group despite being the numerical majority in the country. Their experience in GBV has continued and combating GBV has been difficult due to two main reasons;
 1. weaknesses in law
 2. the issue of impunity and cultural factors that act as barriers for women who seek justice for their rights being violated.
 - The situation can be worse for members of the LGBTQI community as colonial legislation criminalize homosexuality and establishes social and cultural norms which marginalize persons with non-heteronormative gender identities. This is still being actively used in the country. This results in LGBTQI persons suffering discrimination in the public sphere and before the law thus making their experiences even harsh.
 - Current knowledge and studies on sexual bribery in Sri Lanka – previous work / research conducted by the CEJ laid the foundation for the current study. Other limited numbers of studies include the Global Corruption Barometer. The current study will be one of the first studies that seek to broaden the knowledge and understanding of sexual bribery and discuss the different aspects of sexual bribery and the way in which it cuts across the many areas of life and law.

Through the present study, the team introduces sexual bribery as a 3-dimensional issue;

1. An issue of corruption – reflects the entrenched nature of corruption, the associated problem of impunity, and also the institutional cultures which enable the practice of corruption.
2. A human rights violation.

3. A criminal offense – because it is a form of GBV as well as a form of corruption.

As explained by Dr. Samararatne, viewing the issue of sexual bribery through these dimensions will help in understanding the full impact sexual bribery has on individuals and communities and how it erodes fundamental commitments that are valued in a constitutional democracy; respect for human rights and the rule of the state which is to deliver services and create an environment in which individuals can approach the state and enjoy its services without fear of being subjected to harassment. Afterwards, the below was discussed;

- The study design –
 - This is a qualitative study as exploring a sensitive issue such as sexual bribery will have to be studied through individual experiences
 - The study sample – 19 individual in-depth interviews, five focus group discussions, 12 key informant interviews
 - Rationale for justice and health sectors being selected –
 - Exploratory information from previous CEJ studies indicated that these were two sectors where women and members of sexual and gender minorities frequently experienced sexual bribery.
 - Significance of health and justice sectors in the everyday lives of Sri Lankans. Healthcare is provided by the state free of charge and many individuals have frequent contact with it.
 - Limitations –
 - Not being able to get interviews from Tamil-speaking women or members of the LGBTQI community. Limitations could not be addressed effectively due to the method of snowballing used for participant recruitment based on discreet introductions made based on connections with like-minded organizations/individuals.
 - The approach to analysis – drawing from

interviews to identify the issues highlighted by the victim-survivors and developing accounts of the nature of sexual bribery and its incidence based on these.

- Study findings – here the lead researcher shared her personal experiences in reading the interview transcripts and suggested that it was an emotionally difficult task and gave a deep understanding on how being a victim-survivor of sexual bribery affects one's life. the following findings were discussed;
 - Personal impact on the victim survivor – sexual bribery was seen to have an immediate impact which is multidimensional, i.e., psychological, economical (e.g. when trying to appeal against a job transfer, finding hostel facilities, obtaining police approval/ reports for overseas employment), security related.
 - The family and community of the victim-survivor too were seen to be impacted by sexual bribery.
 - While it has been recorded that reminiscing about distressing events during studies can result in psychological distress, almost all study participants in the present study saw the interviews as a positive experience. The lead researcher interpreted this to be a result of participants being reluctant to share their experiences with loved ones due to the seriousness of the issue.
 - The unique impact on the LGBTQI community – the severity and seriousness of the experiences were higher in this group compared to the women participants as they are an extremely marginalized group of people in Sri Lanka where their mere existence is criminalized at times. This makes escaping from sexual bribery and seeking justice extremely difficult for them.
 - Informal support – there are no formal support mechanisms in the country for victim-survivors of sexual bribery of GBV. Only a few victim survivors had the luxury of having support and this was through informal sources such as family and friends. This informal support helped them to come to terms with the experience.
 - Social and cultural factors – these were seen to place participants at risk for sexual bribery. Specific risk factors include; being female headed household, husband not being present (i.e., due to overseas employment, being separated), having to depend on a higher authority to get their needs met, i.e. the power imbalance between a member from a marginalized community and a public officer with authority.
- Perceptions of victim-survivors about perpetrators – the accounts of the victim-survivors were seen to capture the deep-seated trauma resultant from sexual bribery and they viewed/reported;
 - sexual bribery as the worst possible thing a person could do and many described of having a physical reaction to the incidents
 - being sexualized, been seeing as objects, being taken lightly and being denied of their humanness in the process
 - that their consent was never sought, their lack of consent was disregarded. Here, it was discussed that all participants had an understanding of their right to refuse. It was further discussed that the existence of a power imbalance creates a situation in which a victim's consent becomes immaterial and that this is an important factor to be considered during law reforms. This was further deemed important to be considered in the local context where providing a bribe is also considered an offense. It is problematic to apply this to a context where the giver of the bribe is victimized in the process.
- Access to justice –
 - Victim survivors felt that they were being victimized by the very officers who were expected to provide them legal remedies and justice.
 - They felt that public officers of the justice system were protected by the law.
 - The above patterns suggest that the

law itself may become a problem in the context of sexual bribery and that sexual bribery should be considered a form of corruption.

- Availability of effective remedies
- Abuse of communication technology – these methods had been used by perpetrators as a common method for making demands and maintaining contact with victim-survivors. These methods had made it easier for the perpetrators to have constant contact during any given time of day and had raised important questions about data privacy, etc.
- Impact of the pandemic – the pandemic had at times exacerbated the victimization of vulnerable individuals and the restrictions (e.g. travel restrictions) during the pandemic had on other times protected some from being victimized.
- Other key findings;
 - Impact on sex workers from gender minorities – sex workers were routinely subjected to sexual bribery as sex work is criminalized in the country, their consent had always been immaterial, and solicitation of sexual bribes from them was frequent and was thought of as the status-quo. Laws which criminalize sex work were seen as a prominent risk factor.
 - In terms of key informant interviews, these individuals too agreed with the information provided by the participants in terms of;
 - Sexual bribery often occurs in the context of a power imbalance
 - Victim-survivors do not often come out with their complaints as they have no guarantee of justice and due to impunity
 - There is a lack of awareness and sensitivity to victim-survivors in the society which results in them not seeking justice.
 - It can be very difficult for victim-survivors to provide proof of

sexual bribery due to the subtle ways in which they are solicited and taken.

- Recommendations – these were discussed in three broad sections categorized as; 1) preventing sexual bribery, 2) investigating and prosecuting sexual bribery, and 3) providing remedies. The lead researcher briefly highlighted some of the key recommendations under these categories;
 1. Preventing sexual bribery
 - State elected bodies – criminalizing sexual bribery specifically through legislative reforms and other forms of legal reforms such as the regularization of commercial sex work and discrimination of sexual acts against the order of nature.
 - State administrative bodies – awareness raising and training of public servants on the issue of sexual bribery and adapting clear policies on internal procedures that would take place when an incident of sexual bribery is reported.
 - Civil society organizations – undertaking qualitative and quantitative research to highlight the nature of sexual bribery, and its prevalence and advocate for policy and legal reforms based on evidence.
 - Private sector and professional bodies – building codes of conduct and policies against sexual bribery and complaint mechanisms in working with cases of sexual bribery.
 - International level –
 - International non-governmental organizations – supporting work done at the local and domestic level in terms of supporting studies and networks for victim-survivors.
 - International organizations – creating international consensus on recognizing sexual bribery as a specific issue with a corruption angle, which is a human rights violation and a crime in terms of corruption and GBV.
 2. Investigating and prosecuting sexual bribery
 - State organizations – independence of state institutions was highlighted as the most

important factor here as victims-survivors often do not have confidence in state mechanisms. Ensuring state protection for witnesses and victim-survivors was further highlighted as extremely important.

- Civil society organizations – can act as an intermediary that provides access to legal advice and aid and in empowering, supporting, and showing solidarity with victim-survivors and their allies.

3. Remedies

- State – it is important that the state / justice sector understand that perpetrators may be from within their own system in terms of being public officers and police officers. Therefore action to remedy the wrong as well as to ensure non-recurrence in future must be taken. E.g. police officers can be given access to counseling services as an avenue available to them in understanding their role in perpetuating sexual bribery (when a complaint is reported).

The discussion on the findings of the study ended here and Ms. Holsinger presented another dramatized set of quotes by a disabled woman who was a study participant and had experienced solicitations of sexual bribery. Afterwards, the floor was open for questions.

: Suffering...Huhis it something to ask about, Miss... Isn't it enough that I had to sleep with that man?

I must have done something wrong. It is because we have done something, that this happens to us. .But the first time when he did it forcefully I could not escape. How could I, an incapable woman, struggle and escape from the hands of that man.

Crippled or disabled, I lived with self respect. That's how I lived. Doing a job also.

Don't we get anything for solving what was a burden to you' he asked...I understood very well that he was asking for my body. To sleep with me. Saying that, he pulled me and took me into the middle room (crying).

Inside the room, that man said he likes to have a continuous relationship with me. These people have no shame at all. It was for me to become his mistress and go to rooms with him, what else? Good words come to my mind. My blood begins boiling even now when I remember those things.

The thing isthey think we women are there to satisfy men's sexual desires. This is the only issue here.

After he made use of me, I said please don't call me and worry me for a second time. Then he threatened me. He scolded me in filth. Disgusting. He said "not only your transfer, I will make you lose your job and put you in prison also". Saying I went there for no reason, tempted him and some nonsense he said, aneh. He said he would give me 24 hours. Only my decision was wanted.

Whom to tell ? What to do? I did not have money like others to go to the Police for these things...If I lose my job, everyone at home will go hungry.

What was in my mind was that I would do anything for the job. But for that, I had to give my whole life...it is the lowest kind of bribery. It asks for your soul. For two days [he] called in that same way. On the second day, I gave in. It was not willingness, it was due to helplessness as there was no other option. When I said I would come wherever [he] asked, the man was thrilled.

'That is why he is a beast. He will be cursed someday.

We women have a right to decide on what we like and dislike. To select. Definitely, to have the right to say no. As far as I know, this is how it is with sexual things too... This is not being willing or unwilling, this is a human right...that is what society should know. If not, we're done for.

After the incident, I could not sleep. I started to lose my memory. I began

forgetting often.(weeps)so much anger, sadness. I was helpless and alone. He did this to me,miss. Because I was extremely helpless. I had not done anything wrong, isn't it?

Discussion/ Questions:

The first question presented by Mohamed Ziyad from TISL was in two parts; 1) did the study participants understand that sexual bribery was a corruption issue as well as a violation of human rights? 2) the term sextortion is often used to imply extorting sexual favours in return of service and would this be a better term instead of the term sexual bribery and will use this term imply that the giver of a sexual bribe has also committed an offense?

Dr, Samararatne answered this question by adding that all participants had either thought that sexual bribery was prohibited by the law or that it should be prohibited and considered a crime. They had an understanding that the sexual demands made of them were wrong. Participants were from various education and social backgrounds and they had further understood sexual bribery as a corruption issue as it had occurred when seeking a public/state service and that there was an encroachment to their autonomy which was fundamentally wrong. In terms of the second part of the question, Dr. Samararatne explained sextortion to be a term that needs learning in order for it to be understood. In contrast, the term sexual bribery was viewed to be clearer. Ms. Gomez also added by explaining that the term sexual bribery would help in relating this offense to the already existing Bribery Act. In terms of the giver of a sexual bribe being criminalized, both resource persons further explained how consent was immaterial in the context of sexual bribes and the need for law reforms which does not criminalize the victim survivor.

Afterwards, Ms. Gomes invited the participants to suggest ways/strategies that can be used to discuss the issue of sexual bribery at an international level. Ms. Dinushika Dissanayake suggested the below in terms of advocacy;

1. Including the issue to the CEDAW committee list of issues and sending in a submission or a shadow report to the committee.
2. Approaching other treaty bodies by illustrating the intersectionality of the issue which has very clear repercussions on civil and political rights as well. Some of such platforms include;
 - The CCPR review scheduled for 2023
 - Universal periodic review

Here she further suggested that CEJ should harness the success obtained locally in getting support from the state in including these in national reports as a topic to depict the work done by the state in addressing sexual bribery as a corruption issue (e.g. work done in collaboration with the CIABOC). Ms. Gomez further added that CEJ had submitted a shadow report to the CEDAW committee in 2017 which suggested sexual bribery faced by women and female-headed households in war-affected areas and that recommendations were made by the CEJ. She further added that CEJ can look into adding sexual bribery to their next report to CEDAW on SGBV and access to justice and recommend sexual bribery as an issue that needs to be addressed at a CEDAW and UPR level.

The second question of the day inquired about the support of the state when taking issues similar to these to the international level. She inquired if the government is willing to revisit the draft of the Bribery Act as the International Monetary Fund (IMF) has suggested strengthening processes from within Sri Lanka or whether new amendments would be needed in case a new draft is requested by parliamentarians. She further expressed her concern about the previous CEDAW review and inquired about plans for advocacy with the new government.

Ms. Gomez responded to this question by explaining the ad-hoc nature of the government process which does not give much time and opportunity for CSOs to provide feedback/input in a conducive manner. She stated that many reforms and amendments had to be done to the Bribery Act when trying to include sexual bribery in it and despite the challenging nature she stated that CSOs will continue with their best efforts to make the necessary change by making alliances

with other national and international groups, parliamentarians and various other stakeholders. Moreover, taking the issue to international treaty bodies and using multiple strategies in doing so were also discussed. Furthermore, the new draft of Women Empowerment and Gender Equality policy was also discussed and as stated by Ms. Gomez the women's ministry is working on this policy and have started drafting a law that mirrors this policy. Dr. Samaratne too contributed to this discussion by stating that as seen historically law reforms in Sri Lanka take a considerable time and often the implementation of those which finally enter the law books also fail abysmally, especially laws related to women and violence. She suggested that working with non-state actors can be beneficial in keeping the discourse alive when working in such a context. She also shared her observation that the younger generation at present was more engaged in issues related to equality, discrimination, and violence and that this could be one way of influencing the state as law reforms may take considerable time.

The next question from the gathering was about the views of the government, opposition and parliamentarians about this issue.

Ms. Gomez responded stating that approaching parliamentarians would be the next stage of advocacy as the consolidated law was being handled by various committees at the Ministry of Justice (MoJ) at the moment. As further stated by Ms. Gomez, the MoJ is now considering amendments to the penal code to include sexual bribery as an offense. She further stated that CEJ had approached Dr. Thusitha Jayamanne in 2018/2019, who was a women parliamentarian at the time in advocating for this issue and the change of governments had affected the continuation of working with this particular parliamentarian. The CEJ had also approached other parliamentarians such as Hon. Rosy Senanayake, etc as further explained by Ms. Anthappan of the CEJ. She further stated that approaching individuals of political parties and parliamentarians have been challenging despite the many successes with state institutions such as the CIABOC.

Participants from the gathering further suggested that the implementation of laws has always been an issue in terms of issues related to women and violence. They also inquired

about situations where women contestants (for elections) were subjected to solicitations of sexual bribery from leaders/individuals from their own political parties and whether approaching politicians would in a context where such situations take place.

Ms. Gomez responded stating that approaching parliamentarians at different levels is often an uphill task and that both top-down and bottom-up approaches may be required. She further suggested that it is important to continue creating awareness of laws and necessary amendments and strategic approaches should be taken in identifying and approaching suitable individuals/leaders and in making everyone a part of this conversation. Dr. Smaratne added by stating that the above question had tapped into the core issue, i.e. if the state is corrupt, how realistic is it for us to expect the state to address this issue? As a response to this, she suggested that a helpful approach would be to continue advocacy and efforts in trying to address this issue despite the stance of the existing government. She highlighted that collaborating with non-state bodies will be of immense help in doing so.

After this conversation, Dr. Valarie Begley of the US State Department addressed the gathering and commended CEJ on their work and the thoughtfulness with how this work was conducted and in exploring future avenues for implementation through discussing very complex areas related to the way forward. She shared an observation suggesting that the increase in GBV and sexual bribery may be one way that indicates backward trends in the country and may disrupt the narrative which says that things are progressing.

The virtual session was concluded here and the closing remarks were made by Ms. Charunya of CEJ who thanked the collaborating and funding organizations including the U.S. State Department and The Asia Foundation and individuals from the lobby group and experts including Dr. Samaratne who had significantly contributed to the success of the work and research carried out by the CEJ.

6 | LAW AND POLICY RELATED DOCUMENTS (DRAFTS)

6.1 | Code Of Conduct On Sexual Bribery And Sexual Harassment Within The Public Sector

SECTION 1: BACKGROUND

A. INTRODUCTION

Sexual bribery is a form of corruption where sex, rather than money, is the currency of the bribe. For the offence of sexual bribery to be established there must be:

- a. a request (whether implicit or explicit) to engage in unwanted sexual activity; and
- b. a person in a position of authority who solicits or accepts a sexual favour in exchange for exercising the power entrusted to him or her. This exchange is commonly referred to as 'quid pro quo', or 'something for something'

B. SRI LANKAN LEGAL FRAMEWORK

The Bribery Act No. 11 of 1954

The Bribery Act No.11 of 1954 (Bribery Act) sets out a series of bribery-related offences. These offences criminalise both (a) the act of offering any gratification to a public officer as an inducement for the performance (or non-performance) of a particular task, and (b) a public officer soliciting or accepting any gratification as an inducement for the performance (or non-performance) of a particular task.

'Gratification' under the Bribery Act constitutes the following:

- a. Money or any gift, loan, fee, reward commission, valuable security or other property or interest in property, whether movable or immovable
- b. Any office, employment or contract
- c. Any payment, release, discharge, or liquidation of any loan, obligation or liability in whole or in part
- d. Any other service, favour or advantage of any description; and
- e. Any offer, undertaking or promise of any gratification within the meaning of (a), (b), (c), and (d).

In 1994, the High Court in Sri Lanka v. Abdul Rashak Kuthubdeen held that demanding sexual favours could be considered a form of gratification under the Bribery Act. However, since the offence of sexual bribery has not been articulated under Sri Lankan law, its application is likely to be selective in practice. Moreover, the failure to list sexual favours as a specific form of 'gratification' under the Bribery Act can result in victims of sexual bribery being unwilling to report such conduct for fear of further harassment or employment-related sanctions.

The Bribery Act covers the offering of or accepting of a bribe by Judicial officers, Public officers, Members of Parliament, Police Officers and Peace Officers under its mandate.

C. COMPARATIVE EXAMPLES

International Norms

A number of international conventions prohibit sexual bribery.

For example, Article 8.1 of the United Nations Convention Against Transnational Organised Crime (2004) states that 'each party shall adopt such legislative and other measures as may be necessary to establish criminal offences when committed internationally'. Criminal offences include *'the solicitation or acceptance by a public official, directly or indirectly, of an undue advantage for the official himself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties'*.

Moreover, Article 41 of the African Union Convention on Preventing and Combatting Corruption (2003) prohibits *'the solicitation or acceptance, directly or indirectly, by a public official or any other person, of any goods of monetary value, or other benefit, such as a gift, favour, promise or advantage for himself or herself or for another person or entity, in exchange for any act or omission in the performance of his or her public functions'*.

The United Nations Convention Against Corruption (UNCAC) is the only legally binding universal anti-corruption instrument. The UN Convention Against Corruption does not expressly include sexual forms of bribery.

International instruments applicable to women such as the Declaration on the Elimination of Violence Against Women define the term 'violence against women' to encompass the kind of psychological harm and coercive pressure that characterizes sexual bribery, although there is no express provision on sexual bribery.

Comparative Experiences

A number of countries have adapted their legal and policy frameworks to address sexual bribery. This adaptation usually utilises one or more of the following models.

7. Implicitly addressing sexual bribery under the country's anti-corruption statute
 8. Addressing sexual bribery through the ethical rules, and professional codes of conduct applicable to public officers
6. Expressly addressing sexual bribery under the country's anti-corruption statute

Model	Intent	Example
Expressly addressing sexual bribery	To make sexual bribery an explicit offence under the country's anti-corruption and/or criminal statutes	<p>1. Section 27 of the Tanzanian Prevention and Combatting of Corruption Act of 2007, makes it an offence for 'any person in a position of power or authority to demand or impose sexual favours' as a condition of the exercise of that authority.</p> <p>2. Taiwan's Criminal Code expressly criminalises the abuse of authority to extract sexual intercourse.</p>
Implicitly addressing sexual bribery	To make anti-corruption statutes broad enough to cover non-financial inducements	<p>1. Section 3(e) of the Anti-Graft and Corrupt Practices Act of 1960 in the Philippines, prohibits conduct by public officers that may cause 'undue injury' or give a private party 'unwarranted benefits, advantage or preference'.</p> <p>2. In a 1986 case, the U.S. Court of Appeals for the Fifth Circuit upheld the racketeering conviction of a union official found guilty of threatening two female workers with economic loss unless they acceded to his sexual demands: To establish extortion under the laws of Louisiana, it is not necessary to show that the threat was successful in obtaining property, but only that the threat was made to the victim to obtain something of value from her.</p> <p>In <i>State v. Moore</i>, 419 So. 2d 963, 967 (La. 1982), the Louisiana Supreme Court held that sexual favors are a thing of value within the meaning of the [Louisiana extortion] statute.</p> <p>3. The Interpretation Clause of Kenya's Bribery Act defines "advantage" to mean and include "any other service, favour or advantage of any description whatsoever..." and "any offer, undertaking or promise of any gratification". Kenya's Anti-Corruption and Economic Crimes Act interprets the term "benefit" to include "any gift, loan, fee, reward, appointment, service, favour, forbearance, promise or other consideration or advantage"</p> <p>4. The Prevention of Corruption Act of Singapore, the term 'gratification' is given a broad definition. It includes 'any other service, favour or advantage'. A sexual favour is considered gratification. Persons who offer or accept a bribe on behalf of another person can also be prosecuted and convicted of corruption. The terminology used in the statutes above is broad enough to be interpreted to include sexual favours.</p>
Addressing Sexual Bribery through Ethical Rules and Professional Codes of Conduct	To prohibit sexual bribery through administrative bodies (rather than through the judiciary)	<p>1. In Uganda the Code of Conduct and Ethics for the public service prohibits a public officer from subjecting others or being subjected to 'conduct of a sexual nature affecting his or her dignity which is unwelcome, unreasonable and offensive to the recipient'.</p> <p>2. In Mexico where its anti-corruption statute fails to recognise non-financial inducements, the country's code of conduct has permitted sexual bribery to be addressed by administrative bodies.</p>

D. THE PROCESS

This policy document will focus on developing a Code of Conduct to regulate sexual bribery and harassment in the public service. The drafting exercise was informed by national dialogues conducted with 100 government officials in 11 districts including Jaffna, Kilinochchi, Mullaitivu, Vavuniya, Mannar (Northern province), Batticaloa, Trincomalee, Ampara (Eastern Province), Galle, Matara and Hambantota (Southern province). Participants were tasked with providing their inputs on drafting a Code that would aim to prevent and prohibit the prevalence of sexual bribery in the public sector. The idea being to seek the support and buy-in of government officials for the Code. The Code of Conduct in Section 3 is an outcome of these discussions. The Code will attempt to detail an ethical standard to which those with power are held. The Code will aim to increase government accountability in relation to sexual bribery.

SECTION 2: PARTICIPANT VIEWS

Reasons for Sexual Bribery

Participants were of the view that sexual bribery was prevalent in the public sector. Particularly, in places such as schools, police stations and health services.

The vulnerability and discrimination that women face in society were seen as key enablers of sexual bribery in the public sector. For instance, participants were of the view that women were not afforded preference in the allocation of public services and promotions. This factor was perceived as compelling women to offer sexual gratification in exchange for basic public services and merit-based promotions. Moreover, information relating to the criteria on which state benefits are allocated was perceived as being obscure. According to participants, this obscurity created opportunities for sexual bribery within the public sector - as benefits were afforded on the basis of 'favours' rather than on merit.

Participants in the North and East were of the opinion that widowed women were particularly vulnerable to sexual bribery. This was attributed to the fact that the socio-economic status of such women made them excessively dependent on the state for relief, loans and housing. Participants were of the view that there were instances where state actors abused this dependency to obtain sexual gratification.

Opportunities for Redress

Participants were of the view that victims of sexual bribery were afforded limited opportunities for redress. It was stated that victims were generally not given the necessary information to make a complaint (e.g. process for complaining, officer in charge of processing complaints). Moreover, public offices were generally viewed as not being equipped to deal with cases of sexual bribery (e.g. board to assess complaints not constituted). Participants were of the view that these factors reduced the willingness and ability of victims to file complaints. Participants also stated that in certain instances victims that complained of instances of sexual bribery faced additional harassment and interrogation by high-ranking male officers in the public body in question. This further disincentivized complaints relating to sexual bribery.

Regressive Participant Sentiment

Despite the above views, certain participants expressed their opposition to regulating sexual bribery. This opposition was framed on the basis that: (a) women were manipulating state officers through sexual conduct and (b) women were too weak to resist the 'harmless' advances of state officers. In the case of the former, women were seen to obtain preferential treatment by offering sexual services to the state officer. These women were perceived as being offenders, rather than victims of sexual bribery. For instance, women that failed to 'dress decently' were viewed as being part of the problem of sexual bribery.

In the case of the latter, women were seen as being victimised by certain predispositions attributed to their gender, rather than by offensive conduct on the part of the state officer. Both these views place significant obstacles in the regulation and prosecution of sexual bribery.

Behavioural Change: A Code of Conduct

Participants were of the view a Code of Conduct governing sexual bribery would aid in transforming the behavioural norms that cause it to persist. Participants were of the view that the following behavioural outcomes were necessary to effectively regulate sexual bribery. They are:

1. Understanding the 'offensive' nature of sexual bribery
2. Disincentives to engage in sexual bribery through employment related sanctions, independent evaluation committees and awareness of the complaint procedure
3. Deterrents to engage in sexual bribery secured through increased transparency in decision-making processes and outcomes

SECTION 3: DRAFTING A CODE OF CONDUCT TO PREVENT SEXUAL BRIBERY AND HARASSMENT IN THE PUBLIC SERVICE

This section will set out key provisions that participants felt were necessary in a Code of Conduct to Prevent Sexual Bribery and Harassment in the Public Service.

The purpose of such a Code is to provide general guidance to disincentivize sexual bribery within the public service by: (a) setting an ethical standard governing Public Officer conduct and (b) penalising Public Officers that engage in sexual bribery and harassment.

A. GENERAL PRINCIPLES

Comparative examples and participant views suggest that a Code of Conduct should be based on the following general principles. They are:

1. **Accountability:** A public officer holds office in public trust and is personally responsible for his or her actions or inactions and is accountable to the people he or she serves.
2. **Decency:** A public officer shall present himself or herself in a respectable manner that conforms to accepted standards in society
3. **Discipline:** A public officer shall behave in a manner as to conform with the rules and regulations set out under the Code of Conduct and other basic norms of behaviour and decorum expected of a public official.
4. **Effectiveness:** A public officer shall strive to achieve intended results in terms of quality and quantity in accordance with stipulated performance standards set for service delivery. He or she will effectively deliver services without delay.
5. **Impartiality:** A public officer shall give fair and unbiased treatment to all clients irrespective of gender, race, religion, disability or ethnic background. A public officer shall make choices solely based on merit
6. **Integrity:** A public officer shall be honest and open in conducting his or her affairs and adhere to the highest levels of integrity.
7. **Professionalism:** A public officer shall adhere to professional codes of conduct and exhibit a high degree of competence in carrying out his or her duties

- 8. **Transparency:** A public officer shall be as open as possible about the decisions and actions taken. He or she must always be prepared when called upon to give reasons for the decisions he or she has taken

B. CODE OF CONDUCT TO PREVENT SEXUAL BRIBERY

This section will address and provide for participant concerns regarding sexual bribery and harassment in the public sector.

Defining Sexual Bribery and Sexual Harassment

Definition of Sexual Harassment: Conduct of a sexual nature that affects the dignity of women and men, which is unwelcome, irritating, unreasonable and offensive to the recipient. Such conduct may be explicit, verbal or non-verbal, or implicit and creates an intimidating, hostile or humiliating working environment for the recipient.

Definition of Sexual Bribery: A person in a position of authority who in the exercise of his or her authority demands or imposes sexual favours as a condition for giving employment, promotion, a right, privilege, or any preferential treatment. Consent of a victim of sexual bribery is immaterial to establishing offensive conduct and shall not be used as a defence.

Regulating Sexual Bribery and Harassment in the Public Sector

- a. A Public Officer shall not subject others or be subjected to conduct of a sexual nature that is unwelcome, unreasonable and offensive to the recipient
- b. A Public Servant shall avoid all types of conduct, which may constitute sexual harassment or sexual bribery. This conduct may include:
 - i. Pressure for sexual activity or sexual favours exerted on a fellow employee
 - ii. Rape, sexual battery and molestation or any other form of sexual assault
 - iii. Intentional physical conduct which is sexual in nature such as unwelcome touching, pinching, patting and

grabbing

- iv. Requesting sexual favours in exchange for preferential treatment
- c. A Public Officer or member of the public who is subjected to sexual harassment or sexual bribery shall report such case to the institution/ department of Government that is responsible for investigating civil and criminal offences with a view to obtaining redress.
- d. A Public Officer or member of the public who has lodged any complaint regarding sexual harassment using the established complaints procedure can opt to keep his or her identity anonymised until the conclusion of the investigation
- e. A Public Officer or member of the public who has lodged any complaint regarding sexual harassment using the established complaints procedure shall not be unduly victimised
- f. Remedies for sexual harassment and sexual bribery shall be those prescribed under the civil or criminal laws of the country and shall apply equally to all persons.
- g. He or she can lodge a complaint with The Commission to Investigate Allegations of Bribery or Corruption on Tel 0112 596360 / 1954.
- h., the institution mandated to deal with bribery of all forms.

C. VIOLATION OF CODE

Participants at the workshops were of the view that the Code of Conduct should outline clear sanctions for its breach.

Investigation of Complaint

Sexual Bribery and Harassment committed by officers in the Public Sector shall not be acceptable or tolerated. On the breach of the Code, the Public Body shall forthwith investigate the complaint through an independent and impartial mechanism. The investigation and hearing shall be conducted by those that do not have a conflict of interest in the matter being investigated. The complainant has the right to be

informed of the proceedings and the outcome of the same. Investigations and hearings should be concluded in a timely manner.

Sanction

- a. Depending on the gravity of the breach, the following one or more penalties shall apply
- b. Warning or reprimand
- c. Suspension of increment
- d. Withholding or deferment of increment
- e. Interdiction from duty with half pay
- f. Reduction in rank
- g. Removal from the Public Service in the public interest
- h. Dismissal

D. AFFIRMATION OF AND INFORMATION ON THE CODE

Participants were of the view that a lack of information and understanding within the public sector prevented incidents of sexual harassment and sexual bribery from being investigated. Moreover, they stated that the lack of knowledge on the complaints mechanism for sexual bribery disincentivized reporting.

1. The information in the Code shall be made available to all Public Officers and displayed prominently in all Public Offices.
2. The information displayed should clearly set out (a) the prohibition on sexual bribery and harassment and (b) the complaints mechanism and (c) options for redress in the event an allegation of sexual bribery and harassment is substantiated.
3. The information in the Code and its implementation should be shared with all Public Officers via electronic mail and other modes of internal communication used by such officers.
4. All Public Officers shall consciously subscribe to the Code of Conduct. To this effect, all Public Officers shall take the

following oath upon recruitment to the public sector.

5. "I [name] solemnly swear to uphold the provisions set out in the Code of Conduct to Prevent Sexual Harassment and Bribery. To this end, I swear to refrain from such conduct and immediately report all types of conduct that may constitute sexual harassment and sexual bribery to the relevant officer in charge"

6.2 | Proposed Amendments To The Human Rights Commission's Sexual Harassment Policy (Draft)

Introduction

Sexual bribery is a form of corruption where sex, rather than money, is the currency of the bribe. The phenomenon disproportionately affects women that are vulnerable and dependent on those entrusted with power.

Sexual bribery has both a sexual component and a bribery component. For the offence of sexual bribery to be established, there must be: (a) a request (whether implicit or explicit) to engage in unwanted sexual activity, and (b) a person in a position of authority who solicits or accepts a sexual favour in exchange for exercising the power entrusted to him or her.

Since sexual bribery occurs at the crossroads between corruption and sexual exploitation, it is recommended that it be prohibited under both a country's anti-corruption framework and its sexual harassment and gender-based laws and policies. This policy paper will deal with a component of the latter. At present, the Human Rights Commission (HRC) has a Sexual Harassment Policy that covers all public authorities. The Policy aims to define sexual harassment, provide for the investigation of complaints and set out penalties for offensive conduct. This policy paper aims to include sexual bribery within the scope of the HRC's Sexual Harassment Policy. Proposed amendments are highlighted in **bold**.

Comparative Experiences

A number of countries have utilised professional codes of conduct and other ethical rules to regulate sexual bribery. The enforcement of these codes and rules is often effected through administrative bodies rather than through courts. Although these administrative bodies may not be able to impose criminal sanctions, they usually have the authority to impose a suspension from duty or removal from office, depending on the severity of the offence.

For example, the Code of Conduct and Ethics that covers Uganda's public service officers prohibits an officer from subjecting others or being subject to 'conduct of a sexual nature affecting his or her dignity, which is unwelcome, unreasonable and offensive to the recipient'. The Code emphasises that the provisions are necessary to ensure "public officers who are loyal, committed, results-oriented, customer-centred and observe a high standard of conduct in both official and private life"

Moreover, in Mexico where laws do not explicitly prohibit sextortion, administrative bodies enforcing codes of conduct and ethics protocols have been instrumental in preventing sexual harassment by public officers. For example, Mexico's Federal Law of Administrative Accountabilities for Public Servants (FLAPPS) requires public officials to behave professionally, treating all persons with whom they interact with respect, diligence, impartiality and righteousness. Breaches of the above provision in instances of sexual bribery may result in private warnings, suspension of duty or removal from office and debarment from up to 1 to twenty years depending on the circumstances of the case and harm caused to the victim.

In Australia, the New South Wales Police Code of Conduct states that intimate personal relationships between an instructor and student are inappropriate on the basis that this relationship can be readily open to abuse. The New South Wales Police Force has applied this Code as part of investigations into police misconduct, including cases where police instructors threatened to prevent students from passing unless they performed sexual favours.

Countries that seek to use administrative penalties to prevent sexual bribery are likely to encounter certain challenges. It is essential that these challenges are addressed (and anticipated) in order to strengthen the effectiveness of state responses to sexual bribery. For instance, unless staff members are adequately trained and aware of the existence of the Code of Conduct, it is

unlikely to reform offensive behaviour. Moreover, sexual bribery is often not taken seriously and sanctioned appropriately. This practice can lead to

- a. an inconsistent application of the Code of Conduct and (b) outcomes of investigations not corresponding to the gravity of the offence (e.g. the officer being sent for managerial counselling instead of being suspended). The lack of consistent disciplinary action taken in instances of sexual bribery can lead to the Code of Conduct failing to have a deterrent value.

The above comparative experiences will inform recommendations made to the Sexual Harassment Policy of the Sri Lankan Human Rights Commission.

Amendments to the Human Right's Commission's Sexual Harassment Policy

1. Defining Sexual Harassment

The following amendments seek to introduce sexual bribery within the Policy's definition of sexual harassment.

2. What is Sexual Harassment

Sexual harassment is considered a criminal offence in Sri Lanka. Sexual harassment includes unwelcome sexually determined behaviour such as physical contact and advances, sexually coloured remarks, showing pornography and sexual demand, whether by words or actions.

Sexual harassment also comprises sexual bribery. Sexual bribery is a form of corruption where sexual activity, rather than money is the currency of the bribe. It involves (a) a request (whether implicit or explicit) to engage in unwanted sexual activity and (b) a person in a position of authority who solicits or accepts a sexual favour in exchange for exercising the power entrusted to him or her.

In the context of sexual bribery, the victim's consent is immaterial when establishing the offence and cannot be used as a defence

Sexual harassment can cause significant mental and physical trauma for victims. This makes workplaces non-compliant from a health and safety standpoint. Moreover, it creates a hostile working environment and affects an individual's employment opportunities and workspace.

3. Conduct that may constitute sexual harassment or sexual bribery. This conduct may include:

- i. Pressure for sexual activity or sexual favours exerted on a fellow employee or a third party that accesses a public service
- ii. Rape, sexual battery and molestation or any other form of sexual assault
- iii. Intentional physical conduct which is sexual in nature such as unwelcome touching, pinching, patting and grabbing
- iv. Requesting sexual favours in exchange for preferential treatment
- v. Denying or delaying to provide services or goods until sexual favours have been given

4. Independent Investigations

The following amendments seek to ensure impartiality and independence in the investigation of sexual harassment. Thus, strengthening the public authorities' ability to effectively respond to allegations of sexual harassment (including sexual bribery).

Committee on Investigating Sexual Harassment

- It should consist of a fair balance of representation of men and women. At least two members must be women
- This Committee should include a representative from the management sector, a senior officer of the establishment and **an external third party appointed in agreement with the management, and the complainant**

- **Women members should comprise at least two-thirds of the Committee**
- **The Committee should comprise five members.**
- The members of the Committee should undergo gender sensitivity training and be knowledgeable about the parameters of sexual harassment
- **The Committee should make provisions to ensure that the identity of the complainant is protected until the conclusion of the investigation**
- **The investigation should be impartial and confidentiality should be maintained throughout the investigation**
- **The alleged harasser should be given the right to be heard by the Committee.**
- **The members of the Committee should conduct regular workshops and awareness in their respective public authorities on sexual harassment and penalties for offensive conduct. The Committee should disseminate the Sexual Harassment Policy amongst public officers and display the Policy prominently at the physical premises of the public authority in English, Sinhala and Tamil languages.**
- **The members of the Committee should encourage employees of public authorities to report offensive conduct**
- **The Committee should take additional steps to ensure that victims of sexual harassment (including sexual bribery) are able to report conduct without fear of reprisal. If the victim is a state sector employee, the Committee should ensure that no attempts are made to terminate the services of the employee or intimidate the employee into leaving the place of work.**

5. Strengthening Penalties

The following amendments seek to strengthen the penalties associated with perpetrating sexual harassment. Enforcement of such penalties is likely to serve as a deterrent for individuals committing such acts.

6. Penalties Register

The following penalties can be imposed against anyone who is found responsible for sexual harassment:

- A written report on steps taken after the complaint should be attached to the personal file of the employee who committed the offence
- This report should contain the nature of the offence, reprimand, steps taken to conduct investigations and the consequent disciplinary action taken
- **Public or private warnings, suspension of duty or removal from office and debarment from 1 up to twenty years. The penalty should depend on the circumstances and gravity of the case and the damage caused to the victim**
- **Revenge – In case of revenge alleged to have been taken on the complainant because of a complaint of sexual harassment, the person may be interdicted if the act of revenge is substantiated**

6.3 | Public Administration Circular Issued To Prohibit Sexual Harassment And Sexual Bribery In The Public Sector

Ministry of Public Administration Circular: [insert circular number]

Ministry of Public Administration
and Home Affairs,
Independence Square,
Colombo 07.

[insert date]

To all Secretaries of Ministries
Chief Secretaries of Provincial Councils
Heads of Departments

Public Administration Circular Issued to Prohibit Sexual Harassment and Sexual Bribery in the Public Sector

1. Background

Sexual harassment and sexual bribery constitute offensive conduct under the law. Sexual harassment includes unwelcome sexually determined behaviour such as physical contact and advances, sexually coloured remarks, showing pornography and sexual demand, whether by words or actions.

Sexual harassment also comprises of sexual bribery. Sexual bribery is a form of corruption where sexual activity, rather than money is the currency of the bribe. It involves (a) a request (whether implicit or explicit) to engage in unwanted sexual activity and (b) a person in a position of authority who solicits or accepts a sexual favour in exchange for exercising the power entrusted to him or her. In the context of sexual bribery, the victim's consent is immaterial when establishing the offence.

Sexual harassment can be humiliating and may constitute a health and safety problem. Moreover, it creates a hostile, unsafe working environment and affects an individual's employment opportunities.

At a societal level, studies have indicated that women as a group suffer from the costs of corruption to a greater extent than men. This is attributed to the fact that women represent a higher segment of a society's poor population and are increasingly more vulnerable to abuses of power. This is compounded by their dependency on the government for essential services such as health, education, land, water and sanitation.

In view of the above, the Ministry of Public Administration has decided to take steps to prevent sexual harassment and sexual bribery within the public service.

2. Legal and Administrative Provisions

Under section 345 of the Penal Code, sexual harassment is a criminal offence in Sri Lanka. Moreover, under the Bribery Act No. 11 of 1954, sexual bribery is an offence under the law – on the ground that it involves 'gratification as an inducement or reward for an officer interfering with the due administration of justice'. In 1994, the High Court in Sri Lanka v. Abdul Rashak Kuthubdeen held that demanding sexual favours could be considered a form of gratification under the Bribery Act.

Moreover, the Human Rights Commission of Sri Lanka prohibits the commission of sexual harassment within the public service. The Commission's Sexual Harassment Policy requires that the public body take steps to conduct an independent investigation into allegations of sexual harassment and impose penalties that are proportionate to the gravity of the offence.

3. Prohibited Conduct

The public authority is required to take steps to prevent sexual harassment and sexual bribery. Accordingly, public officers should be expressly prohibited from:

- a. Subjecting others or be subjected to conduct of a sexual nature that is unwelcome, unreasonable and offensive to the recipient
- b. Conduct that may constitute sexual harassment or sexual bribery. This conduct may include:
 - i. Pressure for sexual activity or sexual favours exerted on a fellow employee or a third party that accesses a public service
 - ii. Rape, sexual battery and molestation or any other form of sexual assault
 - iii. Intentional physical conduct which is sexual in nature such as unwelcome touching, pinching, patting and grabbing
 - iv. Requesting sexual favour in exchange for preferential treatment
 - v. Denying or delaying to provide services or goods until sexual favours have been given

the induction programmes for all recruits to the public sector

- f. Regular training programs for public officers on preventing and addressing sexual harassment and sexual bribery
- g. Raise awareness on the prohibition on sexual harassment and sexual bribery in the workplace through posters, flyers and other awareness-raising materials

.....

Sgd/insert secretary
 Secretary,
 Ministry of Public Administration and Home
 Affairs.

4. Enforcement

All public institutions are required to take steps to prevent instances of sexual harassment and sexual bribery and to adopt a zero-tolerance approach to sexual harassment and sexual bribery. The following action may be taken to prevent and prohibit instances of sexual harassment and sexual bribery within the public sector:

- a. A visible complaints mechanism detailing the process for reporting instances of sexual harassment and sexual bribery
- b. Independent and impartial investigations into allegations of sexual harassment and sexual bribery
- c. Enforce penalties for offenders found guilty of sexual harassment and sexual bribery
- d. A zero-tolerance approach to sexual harassment and sexual bribery.
- e. Ensure mandatory inclusion of a component on preventing and addressing sexual harassment and sexual bribery as part of

C AWARENESS-RAISING

Globally, sexual bribery is underreported due to a lack of understanding, awareness and research on the issue. In Sri Lanka, CEJ's past and ongoing research has shown that many individuals, especially women, including female heads of households, and LGBTQI persons encounter sexual bribery when they access public services. They often don't speak about it; sometimes self-isolating and often not reporting the incident to the police.

To address this serious and widespread issue, CEJ took a two-pronged approach by (1) Amplifying voices and giving visibility to those who have been approached for a sexual bribe, and (2) highlighting the cost of sexual bribery. As the largest workforce in Sri Lanka, the state sector should take the lead in ending sexual bribery by encouraging corruption-free services and enforcing zero tolerance for sexual bribery in the public sector.

To achieve the stated goals, CEJ used multiple approaches to raise awareness across the island and encourage public support for transparency and accountability. CEJ launched a 360 media campaign including TV commercials, radio commercials, website advertising, print and radio interviews, and a social media campaign. To ensure accessibility, CEJ launched three local language-based Facebook pages to disseminate information on sexual bribery. CEJ also printed publications and leaflets and produced a video of an in-person puppet show that creatively addressed the topic. CEJ also created a module on sexual bribery for public officials and developed several policy papers.

1.1 | Newspapers Articles and Advertisements

WHEN public officials demand cash or favours to perform their duty we understand that these are bribes and that the officials in question are corrupt. What if the demand was of a sexual nature instead? Is it corruption? Sexual exploitation? Can it be categorised as a bribe?

Much like monetary bribes and other forms of corruption, sexual bribery extends to everyday transactions. However, it is rarely discussed due to unfamiliar terminology and vague interpretation. This makes it difficult to identify and understand, consequently resulting in a very low rate of reported offences. From 2010-2019 only 13 cases have been reported to the Commission to Investigate Allegations of Bribery or Corruption (CIABOC), with only six being prosecuted¹.

The Centre for Equality and Justice (CEJ) has been active in researching and documenting this issue among war affected female heads of households. Their working definition of the offence is an "improper benefit" that is sexual in nature, demanded from a person

Sexual bribery: The silenced side of corruption



The cultural and societal perceptions surrounding sexual bribery and the treatment of victim survivors makes it more challenging for them to come forward with their stories and for justice to be met - Pic by Shehan Gunasekara

by persons in positions of power in exchange for a service.

Sexual bribery has always remained in the background of other forms of corruption due to the lack of clarity and awareness around it. The cultural and societal perceptions surrounding sexual bribery and the treatment of victim survivors makes it more challenging for them to come forward with their stories and for justice to be met. "He did not force her. He only suggested, so he's not at fault" is what Madhuri's neighbours said when she shared her experience of being sexually propositioned by her local government officer.

CEJ has found that women who are heads of their households or without a male figure in their lives are the most susceptible to sexual bribery. Community and social criticism, tradi-



onal patriarchal values and their vulnerable position add to the notion that women are to blame for such advances or that they must accept them. The idea that sexual bribery is a secondary form of abuse that goes against law, fundamental rights and is a tool of corruption is still a vague concept that many cannot grasp. For Madhuri, the situation was problematic and confusing. She knew that his request was wrong and unlawful but did not know how to assert her rights without provoking the officer on whom she was dependent on to receive her family's much needed documents.

Most Sri Lankans are unaware of their rights and the legal implications of this offence. Sexual bribery can be brought up under the Bribery Act (No. 2 of 1965) although there is no express provision. The definition for gratification in the law as it stands does not

trust and faith in the mechanism and to ensure accountability of the public service sector.

In 2019, the National Action Plan to Combat Bribery and Corruption in Sri Lanka was initiated by the CIABOC with the aim of combating corruption on a large scale. This proactive measure has continued with President Rajapaksa's election manifesto of upholding a corruption free public service sector and holding accountable those who misuse their office. Organisations that provide training to government and private sector bodies such as Sri Lanka Foundation Institute (SLFI), and Sri Lanka Institute of Development Administration (SLIDA) should include modules on how to combat sexual bribery in their anti-corruption training modules.

Understanding and creating awareness around sexual bribery is essential to Sri Lanka's effort towards combating this issue and reinstating a public sector that upholds accountability, identifies and prevents all forms of corruption. Until sexual bribery becomes part of the 'corruption' conversation, there will always be a missing piece to the corruption puzzle restricting the recognition and ability to address its full extent and impact.

¹Names have been changed to protect privacy.

Footnote
¹<https://www.pressreader.com/sri-lanka/daily-mirror-sri-lanka/2019/12/17/201764220605765>

Addressing Sexual Bribery in Sri Lanka

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With support from The Asia Foundation, the Center for Equality and Justice (CEJ) is implementing a project on sexual bribery in Sri Lanka. Sexual bribery is when someone in a position of power, like a public official (e.g., Grama Niladhari/Village Officer, Police Officer, Samurdhi /Welfare Officer, Judge, etc.), demands or implies that sexual acts are required to provide entitled services or benefits. Globally, sexual bribery is underreported due to fear, a lack of understanding and research. In Sri Lanka, CEJ's completed and ongoing research shows that many individuals, especially women, female heads of households, and LGBTQI persons encounter sexual bribery when accessing public services. Denial of such services is a violation of their socio-economic, civil, and political rights.

A key component of the project is a qualitative research study on the occurrence and prevalence of sexual bribery with a special focus on the health and justice sectors. Using key informant interviews with victim-survivors and focus group discussions, CEJ hopes to learn more about the contributing factors to sexual bribery in the local context. CEJ conducted several capacity-building workshops on gender and sexual bribery for officials at the Commission to Investigate Allegations of Bribery or Corruption (CIABOC) and developed a pilot complaint platform to report incidents of sexual bribery.

Most recently, CEJ launched a 360 media campaign to increase awareness of sexual bribery as an unacceptable and egregious form of corruption. CEJ strongly believes that the state sector, as the largest workforce in Sri Lanka, should take the lead in ending sexual bribery by encouraging corruption-free services and enforcing zero-tolerance for sexual bribery in the public sector. Accordingly, as part of our holistic approach, CEJ launched the online campaign on UN Public Service Day. We invite you to follow the campaign on our social media pages ([Webpage \(https://cejsrilanka.org/sexual-bribery/\)](https://cejsrilanka.org/sexual-bribery/), [Facebook English \(@TheOpenSecret.Eng\)](#), [Facebook Sinhala \(@vivurtharahasa\)](#), [Facebook Tamil \(@பிரபல இரகசியம்\)](#), [Twitter \(@CEJ_SriLanka\)](#), [Instagram \(@cej_srilanka\)](#)) to learn more about sexual bribery and how to take action for safer and more just communities. TV, radio, and print materials will be disseminated in the coming weeks. Thank you for joining our campaign. Your rights have #NoConditions.

For more information, please contact:

Shyamala Gomez -
shyamalagomez.ed@cejsl.org



30 Aug, 2022

THE CENTER FOR EQUALITY AND JUSTICE

Addressing Sexual Bribery in Sri Lanka

Colombo, Tuesday 23rd August 2022: With support from The Asia Foundation, the Center for Equality and Justice (CEJ) is implementing a project on sexual bribery in Sri Lanka. Sexual bribery is when someone in a position of power, like a public official (e.g., Grama Niladhari/Village Officer, Police Officer, Samurdhi /Welfare Officer, Judge, etc.), demands or implies that sexual acts are required to provide entitled services or benefits. Globally, sexual bribery is underreported due to fear, a lack of understanding and research. In Sri Lanka, CEJ's completed and ongoing research shows that many individuals, especially women, female heads of households, and LGBTQI persons encounter sexual bribery when accessing public services. Denial of such services is a violation of their socio-economic, civil, and political rights.

A key component of the project is a qualitative research study on the occurrence and prevalence of sexual bribery with a special focus on the health and justice sectors. Using key informant interviews with victim-survivors and focus group discussions, CEJ hopes to learn more about the contributing factors to sexual bribery in the local context. CEJ conducted several capacity-building workshops on gender and sexual bribery for officials at the Commission to Investigate Allegations of Bribery or Corruption (CIABOC) and developed a pilot complaint platform to report incidents of sexual bribery.

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When public officials demand cash or favour in return for their duty we understand that these are bribes and that the officials in question are corrupt. What if the demand was of a sexual nature yourself? Is it corruption? Sexual exploitation? Can it be categorised as a bribe?

Much like monetary bribes and other forms of corruption, sexual bribery extends to everyday transactions. However, it is rarely discussed due to taboos surrounding and vague interpretation. This makes it difficult to identify and understand, consequently resulting in a very low rate of reported offences. From 2010-2019 only 13 cases have been reported to the Commission to Investigate Allegations of Bribery or Corruption (CIABC), with only 6 being prosecuted. The Centre for Equality and Justice (CEJ) has been active in researching and documenting this issue among low affected female heads of households. Their working definition of the offence is an "improper benefit" that is sexual in nature, demanded from a person by persons in positions of power in exchange for a service.

Sexual bribery has always remained in the background of other forms of corruption due to the lack of clarity and awareness around it. The cultural and societal perceptions surrounding sexual bribery and the treatment of these women make it more challenging for them to come forward with their stories and for justice to be met. We did not know how to only suggest, as we're not at least a victim's testimonial's toughness and when she stated her

SEXUAL BRIBERY

The Silenced Side of Corruption



to her local government official. CEJ has found that women who are heads of their households or without a male figure in their lives are the most susceptible to sexual bribery. Community and social customs, traditional patriarchal values and their vulnerable position add to the notion that women are to blame for such advances or that they must accept them. The idea that sexual bribery is a

Sexual bribery has always remained in the background of other forms of corruption due to the lack of clarity and awareness around it. The cultural and societal perceptions surrounding sexual bribery and the treatment of victims survivors makes it more challenging for them to come forward with their stories and for justice to be met.

secondary form of abuse that goes against law, fundamental rights and to a level of corruption is still a vague concept that many cannot grasp. The Maldives, the situation was problematic and confusing. She knew that his request was wrong and unethical but did not know how to assert her rights without provoking the official in which she was dependent on to resolve her family's much needed documents.

Most Sri Lankans are unaware of their rights and the legal implications of this offence. Sexual bribery can be brought up under the Bribery Act (No. 2 of 1982)

although there is no express provision. The definition for gratification in the law as it stands does not extend to those of a sexual nature, despite covering other forms of bribery from money, loans, gifts, etc. Several suggested amendments have been presented for consideration in recent years and CEJ's advocacy has led to a working definition for gratification and sexual forms of gratification. This working definition has been accepted by the CIABC and has been added to the National Action Plan for Combating Bribery and Corruption in 2018. The

CIABC has also established a reporting mechanism for individuals to lodge a complaint either by calling them on their hotline-1954 or emailing them on their website-<https://www.ciabc.gov.lk/contact/submit>

However, in order to create better protection for sexual bribery the reporting system should be facilitated by officers who are trained to handle sensitive cases such as those in order to build trust and faith in the mechanism and to ensure accountability of the public service sector.

In 2018, the National Action Plan to Combat Bribery and Corruption in Sri Lanka was initiated by the CIABC with the aim of combating corruption on a large scale. The proactive measures have continued with President Rajapaksa's election. Some of the key measures of appointing a corruption free public service sector and holding accountable those who misuse their office. Organizations that provide training to government and private sector bodies such as Sri Lanka Foundation Institute (SLFI), and Sri Lanka Institute of Development Administration (SLIDA) should include modules on how to combat sexual bribery in their anti-corruption training modules.

Understanding and creating awareness around sexual bribery is essential to Sri Lanka's effort towards restoring the trust and maintaining a public sector that upholds accountability, integrity and prevents all forms of corruption. Until sexual bribery becomes part of the "corruption" conversation, there will always be a glaring gap to the corruption public restricting the recognition and ability to address its full extent and impact.

TAKING A ZERO TOLERANCE APPROACH TO

Sexual Bribery

When a State Official demands money or a favour in exchange for a service the word 'bribery' comes to mind. What if this demand wasn't monetary? What would you call a favour that was sexual instead?

Sexual bribery is hardly a novel offence. It is however shrouded in ambiguity and lacks a legal definition making it difficult to identify. Centre for Equality and Justice (CEJ) began documenting and researching on this issue four years ago. CEJ defines sexual bribery as an "improper benefit" that is sexual in nature, demanded from a person by persons in positions of power in exchange for a service.

The absence of express laws governing sexual bribery makes it all the more difficult to prosecute offenders.

Sexual bribery is prevalent both in Sri Lanka and in other countries. In a 2019 study on gender and corruption published by Transparency International Switzerland, 97% of the respondents noted that the non-monetary bribes they had experienced more of a sexual nature, than making sexual favours an active element of bribery culture. Similarly, the 10th Edition of the Global Corruption Barometer- Latin America and the Caribbean (2018) stated that one in five citizens experience or knows someone who experienced sexual extortion when accessing a government service.

In Sri Lanka, sexual bribery can be discussed under the Bribery Act (No. 2 of 1982) with several amendments under consideration. The statute's interpretation of gratification covers money, loans, gifts, etc. but not sexual gratification. CEJ's advocacy has led to a working definition for sexual forms of gratification that has been accepted by the Bribery Commission and this definition has been added to the National Action Plan for Combating Bribery and Corruption in 2018.

Additionally, the Commission to Investigate Allegations of Bribery or Corruption (CIABC) has established a reporting mechanism to handle cases of bribery and corruption. Individuals can lodge a complaint either by calling them on their hotline - 1954 or through their website- <https://www.ciabc.gov.lk/contact/complaints>

Even the political climate has moved to eradicate bribery and corruption. President Rajapaksa in his election manifesto committed to working towards an efficient and corruption-free public service, taking action against those who misuse their office.

Yet, from 2010 to 2019 only thirteen cases were reported to the Bribery Commission of which nine were successfully detected while six were prosecuted. Most people are however, unaware of the reporting mechanism. It is imperative to foster awareness, empowerment and protection of those who come forward.



For most survivors of sexual bribery fear lies not only in standing up to the corrupt official but its consequences

CEJ also suggests that the laws need amending. Amending sexual bribery isn't enough. Survivors need to feel safe knowing that the law will protect them if they come forward with their experiences and won't penalise them for going into such bribes.

For most survivors of sexual bribery fear lies not only in standing up to the corrupt official but its consequences. Faria*, a widow from Vavuniya, resigned over her decision to report her village Grama Niladhari officer who refused to authorize documents needed for her daughter's school admission unless she submitted to his sexual demands. "I knew it was wrong but I couldn't stand up against him," she shared, when he also threatened to influence the village school principal's decision. Fear of the pressure and power of the aggressor extends to fear of social and community backlash if they take a stand, especially where there is a lack of a male presence in their lives. "Being a woman, you should know how to keep a man at bay" is what Faria had to endure when she spoke about her experience.

The road towards instilling zero tolerance for sexual bribery is one that depends on several factors. Legal remedies and protection is essential, but should be developed parallel to a system of support and awareness. It should additionally empower individuals with practical remedies and a reporting mechanism they can trust. * Names changed to protect privacy.



SAYING 'NO' TO SEXUAL BRIBERY

During a 21-year-old period of these events she has been trying to obtain a much needed loan. But as she reached her, she meeting with the bank manager was all that changed her thoughts. She had a male colleague who had been working for the bank, advised her to go to the bank to see the manager as she had a male friend who worked for the bank.

She's story is one that many women heads of households who experience sexual bribery in the work-related domain of Sri Lanka have experienced. Despite the criminalising, sexual bribery in a private sector such loans and in other settings, require further and concrete changes to the Gender Equality and Justice Act (No. 2 of 1982) with several suggested amendments recently made contributions.

Being a woman, she should have been to know that if she did not have an approved loan in a company sector, she would have faced bribes. Social norms can be oppressive and create high moral expectations to women and single women, this putting them in a position to be approached and sexual bribes to obtain a service. That women will also face the possibility of the abuse extending to their children.

Attempting to report on abuse a grave repercussion to be a detriment of the reporting mechanism. The lack of reporting mechanism and the consequences of reporting mechanism often such as depression, stress, it is imperative to protect your

self such attempts. It is imperative to understand that one's report is confidential in writing the law and the official's responsibility. This an official's weekly advice to individuals or even one can report. Being a woman, getting and reporting can be a challenge, but it is worth the effort to report. One should be aware of the challenges especially if the act takes place in an isolated, unattended place or behind closed doors.

Amendments of one's understanding and the perpetrator's behaviour is important as one's preparation can be affected. Money, loans, justice, whether submitted, one can indicate that someone, possibly for enjoyment or pleasure and whether or not it would be safe to engage with. One should be aware of the challenges especially if the act takes place in an isolated, unattended place or behind closed doors.

Social norms can be oppressive and create high moral expectations for widows and single women

Often, submission is due to dependence on the official involved. They would be Manager's capability to provide her job. "He has been very helpful, I require a loan for my business" a woman thought of the new deposit but she was not sure if she was allowing to accept rather than another the official being more aware can lead a woman to report if necessary if the official reporting mechanism, support and attempts to give her the findings of such. Her, stress and handling would not get resolution after such as depression, stress, it is imperative to protect your

"Doing one's job and providing services does not mean the right to ask for sexual favours in return"

will work and image and mental health that you are not to be blamed for any outcomes. Being a woman, getting and reporting can be a challenge, but it is worth the effort to report. One should be aware of the challenges especially if the act takes place in an isolated, unattended place or behind closed doors.

At the end of the abuse is present, but there is power in the support of the right women law. Being a woman, getting and reporting can be a challenge, but it is worth the effort to report. One should be aware of the challenges especially if the act takes place in an isolated, unattended place or behind closed doors.

Even the political climate has moved to eradicate bribery and corruption. President Rajapaksa in his election manifesto committed to working towards an efficient and corruption-free public service, taking action against those who misuse their office.

Names have been changed to protect privacy. Based on real events.

The Silenced Side of Corruption

Sexual bribery extends to everyday transactions but rarely discussed



When public officials demand cash or favours to perform their duty we understand that these are bribes and that the officials in question are corrupt. What if the demand was of a sexual nature instead? Is it corruption? Sexual exploitation? Can it be categorised as a bribe?

Much like monetary bribes and other forms of corruption, sexual bribery extends to everyday transactions. However, it is rarely discussed due to traditional conservatism and vague interpretations. This makes it difficult to identify and acknowledge, consequently resulting in a very low rate of reported offences. From 2010-2018 only 13 cases have been reported to the Commission to Investigate Allegations of Bribery or Corruption (CIABOC), with only six being prosecuted. The Centre for Equality and Justice (CEJ) has been active in researching and documenting this lesser-known but affected female heads of households. Their working definition of the offence is an 'unhappy female' that is sexual in nature, demanded from a person by persons in positions of power to exchange for a service.

Sexual bribery has always occurred in the background of other forms of corruption due to the lack of clarity and awareness around it. The

cultural and societal perceptions surrounding sexual bribery and the treatment of 'victim survivors' makes it more challenging for them to come forward with their stories and for justice to be met. "We did not know her, he only suggested, so he's not at fault," is what Madhuri's neighbours said when she shared her experience of being sexually propositioned by her local Government officer.

CEJ has found that women who are heads of their households or without a male figure in their lives are the most susceptible to sexual bribery. Conservatism and social criticism, traditional patriarchal values and their vulnerable position add to the notion that women are to blame for such advances or that they must accept them. The idea that sexual bribery is a necessary form of abuse that goes against law, fundamental rights and is a tool of corruption is still a vague concept that many cannot grasp. For Madhuri, the situation was problematic and confusing, the issue that she reported was wrong and unlawful but did not know how to



assert her rights without provoking the officer on whom she was dependent on to receive her family's much-needed donations.

Most Sri Lankans are unaware of their rights and the legal implications of this offence. Sexual bribery can be brought up under the Bribery Act No. 2 of 1969 although there is no express provision. The definition for gratification in the law is it stands

does not extend to those of a sexual nature, despite covering other forms of bribery such as money, loans, gifts, and so forth. Several suggested amendments have been presented for consideration in recent years and CEJ's advocacy has led to a working definition for gratification and sexual forms of gratification. This working definition has been accepted by the CIABOC and has been added to the National Action Plan for Combating Bribery and Corruption in 2019.

The CIABOC has also established a reporting mechanism for national-wide to help a complainant either by calling them on their hotline - 1194 or reaching them on their website, ciaboc.gov.lk.

However, in order to create accountability for sexual bribery the reporting system should be facilitated by officers who are trained to handle sensitive cases such as those in order to build trust and faith in the mechanism and to ensure accountability of the public service

sector. In 2019, the National Action Plan to Combat Bribery and Corruption in Sri Lanka was initiated by the CIABOC with the aim of eradicating corruption on a large scale. This proactive measure has continued with President Gotabaya Rajapaksa's election mandate of upholding a corruption-free public service sector and holding accountable those who misuse their office. Organisations that provide training to Government and private sector bodies such as the Sri Lanka Foundation Institute (SLFI) and the Sri Lanka Institute of Development Administration (SLIDA) should include modules on how to resist sexual bribery in their anti-corruption training modules.

Understanding and creating awareness around sexual bribery is essential to Sri Lanka's effort towards eradicating this issue and establishing a public sector that upholds accountability, integrity and prevents all forms of corruption. Until sexual bribery becomes part of the 'corruption' conversation, there will always be a waiting game to the corruption police realising the recognition and ability to address its full extent and impact.

"There has been a change to protect privacy"

ICEL



To access more articles on CEJ's work on sexual bribery, please visit this link: <https://cejsrilanka.org/articles/>

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#නීතිමයවිධිමත්කරගන්න

“ HOW CAN I SAY NO TO A NICE GIRL LIKE YOU? I CAN HELP YOU WITH YOUR SON'S SCHOOL ADMISSION ”

“ I DON'T NEED YOUR HELP. I WILL FOLLOW THE OFFICIAL PROCESS. ”

DON'T. TELL...

#STOPSEXUALBRIBERY

“ මම හරිමි ඉන්නෙමි මේ විදුලි බල මාරු 5ක් මම මාරු කරන්නෙමි...”

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#මිනිසුන්ගේමනසටවිවේචනය

WHEN LODGING COMPLAINTS OR PROCURING RECORDS FROM THE POLICE STATION

WHEN APPROACHING A LOCAL GOVERNMENT OFFICIAL TO GET DOCUMENTS CERTIFIED



 [Open Secret](#)

2 | PUPPET SHOWS AND FORUM THEATRE PERFORMANCES

Research indicates that reinforcement of key ideas is crucial to knowledge retention and, ultimately, behaviour change. Therefore, while there is clear value in direct messaging, CEJ believes that the use of creative art forms can be an effective awareness-raising tool.

Following discussions with organizations and partner networks, CEJ came to the conclusion that puppetry and forum theatre, where community members, possibly including victims and perpetrators, are directly involved, can be an effective way of getting the message across and impacting people.. CEJ primarily used theatre and puppetry to share findings of select research studies with approximately 800 women, men, and children from Tamil and Sinhalese communities across five districts in the Northern, North Western, and Eastern provinces. CEJ completed a total of nine productions and each was tailor-made, taking into consideration the specific needs and community context of each audience.

Following the success of community-centered theatre and puppet performances, CEJ used the same approach to engage with and capacitate Civil Society Organisation representatives through a series of sensitization workshops in Kurunegala, Anuradhapura, Kilinochchi, and Colombo. The puppetry was used to share research findings on post-war issues such as sexual bribery and sexual exploitation. The workshops enabled active participation ranging from role-playing to the creation of new puppets. Ultimately, participants were provided with practical information on how to be an empathetic listener to how to report a case of sexual bribery or exploitation.

To view video recordings of the puppet show and other community-based activities related to our work on sexual bribery, please go to the following link:



<https://cejsrilanka.org/additional-videos-on-sexual-bribery/>

3 | LEAFLET ON SEXUAL BRIBERY

A leaflet titled 'The Open Secret' on sexual bribery was designed in English and translated into Tamil and Sinhala. The leaflet was designed to raise awareness among women, government officers at the district level, and Civil Society Organization representatives. The

Tamil and Sinhala documents were printed and disseminated among beneficiaries in and out of Colombo during workshops, events, and with COVID-19 relief packages.



WHAT IS SEXUAL BRIBERY?



- ❑ Sexual Bribery is a request which is sexual in nature demanded by a person in a position of power in exchange for a service or favour.
- ❑ Sexual Bribery is a form of corruption and sexual exploitation.
- ❑ Sexual Bribery is the abuse of entrusted power for private gain.
- ❑ Sexual Bribery is a form of bribery punishable under the bribery law.
- ❑ Public officers cannot request or accept any sexual gratification as a prerequisite for the performance or non- performance of an official task.

WHO ARE THE PERPETRATORS?

Sexual bribes can be asked for by state officials in charge of law enforcement and security, public services and legal services.¹

WHO CAN BE SUBJECTED TO SEXUAL BRIBERY?

- ❑ Anyone can be subjected to sexual bribery.
- ❑ However, women can be victimized differently by corruption because they are more vulnerable
- ❑ These acts are often not reported or measured because:
 - these acts are not always thought of as corruption
 - of the shame associated with sexual crimes

¹ These actors are identified as perpetrators under the the Bribery Act No. 11 of 1994 (as amended)

IT IS NOT YOUR FAULT

- ❑ It is important to remember is that it is not the fault of the victim.
- ❑ The affected individual may feel ashamed and guilty for what happened.
- ❑ Speak to a trusted person (eg: family, a friend, a relative) who will be able to provide practical and emotional support.
- ❑ You can call a number listed below.

FORMS OF SEXUAL BRIBERY

A request for sexual bribes can be direct or indirect/ express or implied. Below are some examples of sexual bribes which have been requested in exchange for service an individual is entitled to.


Eg :-

- Requesting for sexual intercourse
- Being touched inappropriately
- Being forced or asked to look at sexual images (pictures or films)
- Forced to take explicit pictures of oneself,
- To be filmed performing sexual acts
- To watch a public official perform sexual acts
- Phone calls that are sexual in nature
- Denial of services or continued harassment when the demand for a sexual bribe is denied.



You can get legal, counselling and psychosocial support from the organizations listed below.

D TRAINING MATERIAL



CEJ developed a module (draft) on gender and sexual bribery specifically for public officials to ensure the appropriate processing of sexual bribery complaints. The Module was introduced to the syllabus at the Sri Lanka Institute of Development Administration (SLIDA). It consists of four lessons focused on the harm associated with sexual bribery and the tools that can be used to prevent it. Each lesson has a combination of resource material and interactive exercises designed to enhance practical application. The four lessons are:

- Lesson 1: Understanding sexual bribery
- Lesson 2: Combating sexual bribery
- Lesson 3: Institutional responses to sexual bribery
- Lesson 4: Preventing sexual bribery

MODULE ON SEXUAL BRIBERY (DRAFT)

Sexual Bribery Training Module

Objectives:

The Module on Sexual Bribery is structured in a 4-part series. At the end of the series, you will have an understanding of the impact of sexual bribery and the tools that can be utilized to prevent it. Each lesson has a combination of resource material, stimulus material and interactive exercises. These are designed to ensure the practical utility of the module.

Lesson 1:
Understanding Sexual Bribery (3.5 hours)

Lesson 2:
Combatting Sexual Bribery (hours TBD)

Lesson 3:
Institutional Responses to Sexual Bribery
(1.5 hours)

Lesson 4:
Preventing Sexual Bribery (2 hours)



Interactive exercises that
require group work



Stimulus Material
e.g. (video, audio)



Resource material



Tips for Trainers

LESSON 1: UNDERSTANDING SEXUAL BRIBERY

Recommended Time: 3 Hours 30 Minutes



Participants break down into groups of 3- 5 and are given cards with three examples of sexual harassment, and verbal, physical or sexual abuse. In their groups they are asked to list:

- Three reasons why these behaviours are generally seen as unacceptable (e.g. effect on recipient, against the law, creates tensions in the workplace);
- Three possible reasons the behaviour takes place (e.g. production pressure, socially acceptable behaviour workplace culture);
- Three suggestions of how to reduce the cause of the unacceptable behaviour (e.g. clear workplace statement on unacceptable behaviour, independent complaints procedures changing the organization of layout of workspace, training, or providing safe transport).



i. Introduction to Sexual Harassment

Sexual harassment is defined as sex-based behaviour that is unwelcome and offensive to its recipient. For sexual harassment to exist these two conditions must be present.

Although sexual harassment is an offence under section 345 of the Penal Code, the problem is widespread in Sri Lanka.

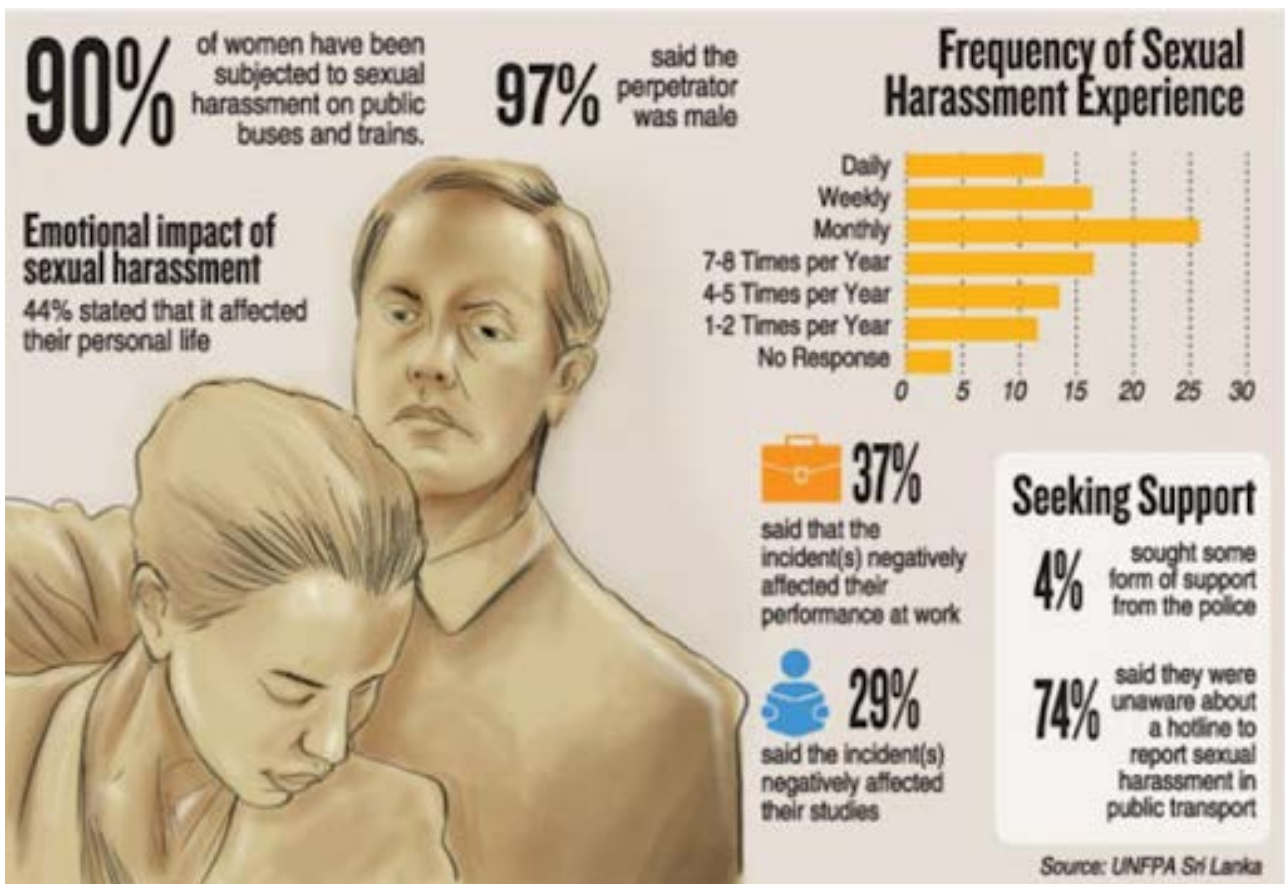


Delete the numbers and ask participants to guess the figures. Once participants have completed this exercise the visual stimulus can be shown

Video Content:

https://www.youtube.com/watch?time_continue=50&v=BautGoiUIKA&feature=emb_logo

<https://www.youtube.com/watch?v=OCAuv4b2d3Q>





ii. Quid Pro Quo: This for That

Quid Pro Quo is a type of sexual harassment. This is when a benefit (e.g collecting due payments, continued employment, promotion) is made conditional on the victim giving in to demands to engage in some form of sexual behaviour.

There is usually evidence of a direct threat or sexual bargaining by a person in a position of power. The victim being afforded the benefit is conditional on her willingness to perform sexual favours.

The cost of sexual harassment is severe. For victims, it results in psychological suffering including humiliation, reduced motivation, and loss of self-esteem. Victims often also display instances of stress-related physical and mental illness including drugs and alcohol abuse and committing suicide.

iii. Introduction to Corruption



Corruption Exercise

- Prepare at least five thought-provoking statements or keyword/s about corruption issues relevant to Sri Lanka
- Ask the participants to form two concentric circles, facing each other, and to move around in opposite directions.
- After a few seconds, ask them to stop and pair up with the person standing opposite them in the other circle. You can use music to signal when it is time to move around and when to stop.
- Read out a statement on corruption issues and ask the participants to talk about it in pairs for about one minute for each statement or keyword/s.

- Ask them to move around again and repeat the exercise until they have talked about all the statements.
- Ask participants to form a large group again and get 3-5 participants to make a comment on the exercise.
- Relate their post-activity reflections to the learning objectives and key lessons of the session.



Definition of Corruption

Corruption is the abuse of entrusted power for private gain. The Bribery Act No. 20 of 1994 makes corruption an offence in Sri Lanka. Common acts constituting corruption are:

- Bribery
- Extortion
- Fraud
- Deception
- Collusion and
- Money-laundering

iv. Forms of Corruption

Bribery

Bribery is committed when a person (A) offers or gives some benefit to another person (B) as an inducement for that person (B) or another person (C) to act dishonestly in relation to his principal's or employer's business or to perform his or her functions or to cheat on behalf of the person offering the benefit. In such a case, all those persons (A, B, and C), as well as other persons who were complicit in the offence, may be guilty of bribery.

Nature of a bribe: A bribe may be a cash payment, or it may be a non-cash advantage.

Common examples of Bribery include:

- Paying or demanding money for grades at schools
- Offering or demanding sex for grades at school
- Offering or demanding money for a job or promotion at work
- Demanding money to process a passport, birth certificate, or official documents
- Paying or demanding money to stamp or process an immigration document

Extortion

Extortion is a form of blackmail where someone makes threats against another person of adverse consequences unless demands, usually for payment, are met by the other person. Such blackmail may constitute, for example, refusal to provide customs clearance for equipment or materials, or refusal to make payments or issue certificates that are due. Sometimes such threats may involve threats of physical harm.

If the party who is the victim of the extortion provides the payment or other benefit, it will normally become answerable for the offence of bribery. However, the party making the extorted payment may have a defence to bribery if the threat was of imminent death or personal injury



v. The Cost of Corruption

https://www.youtube.com/watch?time_continue=14&v=FYorzlkCWYo&feature=emb_logo



vi. Sexual Bribery: Where Harassment and Bribery Meet

For millennia, people who occupy positions of authority and public trust have sometimes abused their power and sought to take advantage of those who are dependent on their favour. Whether they are government officials, judges, educators, law enforcement personnel, border guards, or employers, their power to grant or withhold something of importance – a visa, favourable court decision, good grade, dismissal of a traffic ticket, passage across a border, or overtime at work – makes others vulnerable to their corrupt attempts to extort money or other things of value in exchange for the desired action. When that abuse of power takes the form of a demand for sexual favours, it is termed sexual bribery.

Sextortion is the abuse of power to obtain a sexual benefit or advantage.

Sex + Corruption = Sextortion

Sexual bribery is a form of corruption where sex, rather than money, is the currency of the bribe. The phenomenon disproportionately affects women that are vulnerable and dependent on those entrusted with power.

Sexual bribery has both a sexual component and a bribery component. For the offence of sexual bribery to be established, there must be: (a) a request (whether implicit or explicit) to engage in unwanted sexual activity, and (b) a person in a position of authority who solicits or accepts a sexual favour in exchange for exercising the power entrusted to him or her.



Sexual Bribery Exercise

- Divide participants into groups of 3 – 5
- Each group is tasked with coming up with 5 instances of sexual bribery

Each instance has to have

- (a) name of person entrusted with power
- (b) quid pro quo and
- (c) sexual bribery victim

Each group is asked to relate their post-activity reflections to the learning objectives and key lessons of the session.

- See sample of outcome below:



Look for Evidence of Psychological Coercion Rather Than Physical Force:

Sexual bribery relies on the power of the authority rather than the physical violence or force to obtain sexual favours. The abuse of authority implies an imbalance of power between the perpetrator and the victim. This allows the perpetrator to exert coercive pressure on the victim to agree to sexual demands. An officer processing a war widow's pension, for example, holds her entire future in his hands when he decides whether she is eligible for her pension. When the perpetrators power is so great, and the victim is so powerless no restraint or physical force is needed to extort sexual favours.

vii. Harm associated with Sexual Bribery

In a study conducted in 2018 to assess the community impact of sexual bribery participants were of the view that sexual bribery was prevalent in the public sector. Particularly, in places such as schools, police stations and health services.

The vulnerability and discrimination that women

face in society were seen as key enablers of sexual bribery in the public sector. For instance, participants were of the view that women were not afforded preference in the allocation of public services and promotions. This factor was perceived as compelling women to offer sexual gratification in exchange for basic public services and merit-based promotions. Moreover, information relating to the criteria on which state benefits are allocated was perceived as being obscure. According to participants, this obscurity created opportunities for sexual bribery within the public sector – as benefits were afforded on the basis of 'favours' rather than on merit.

Participants in the North and East were of the opinion that widowed women were particularly vulnerable to sexual bribery. This was attributed to the fact that the socio-economic status of such women made them excessively dependent on the state for relief, loans and housing. Participants were of the view that there were instances where state actors abused this dependency to obtain sexual gratification.



Talking about Sexual Bribery in Sri Lanka

<https://www.youtube.com/watch?v=dRLwG00IUNM&feature=youtu.be>

LESSON 2: COMBATTING SEXUAL BRIBERY

Recommended Time: 1 Hour 30 Minutes



i. Sri Lankan Legal Framework

The Bribery Act No. 11 of 1954

The Bribery Act No.11 of 1954 (Bribery Act) sets out a series of bribery-related offences. These offences criminalise both (a) the act of offering any gratification to a public officer as an inducement for the performance (or non-performance) of a particular task, and (b) a public officer soliciting or accepting any gratification as an inducement for the performance (or non-performance) of a particular task

- a. Gratification' under the Bribery Act constitutes the following
- b. Money or any gift, loan, fee, reward commission, valuable security or other property or interest in the property, whether movable or immovable
- c. Any office, employment or contract
- d. Any payment, release, discharge, or liquidation of any loan, obligation or liability in whole or in part
- e. Any other service, favour or advantage of any description; and
- f. Any offer, undertaking or promise of any gratification within the meaning of (a), (b), (c), and (d).

Under the current legal framework, 'sexual bribery' has not been explicitly recognised as a form of gratification. This could hinder victims from coming forward to report instances of sexual bribery. It has been argued that in order to ensure proper enforcement and reporting of sexual bribery, the Bribery Act should be amended to (a) explicitly recognise sexual bribery and (b) hold victims of sexual bribery not guilty of an offence.

ii. Sri Lanka v. Abdul Rashak Kuthubdeen

In 1994, the High Court in Sri Lanka v. Abdul Rashak Kuthubdeen held that demanding sexual favours could be considered a form of gratification under the Bribery Act. However, since the offence of sexual bribery has not been articulated under Sri Lankan law, its application is likely to be selective in practice. Moreover, the failure to list sexual favours as a specific form of 'gratification' under the Bribery Act, can result in victims of sexual bribery being unwilling to report such conduct for fear of further harassment or employment-related sanction.

iii. Comparative Examples

International Norms

A number of international conventions prohibit sexual bribery.

For example, Article 8.1 of the United Nations Convention Against Transnational Organised Crime (2004) states that 'each party shall adopt such legislative and other measures as may be necessary to establish criminal offences when committed internationally'. Criminal offences include 'the solicitation or acceptance by a public official, directly or indirectly, of an undue advantage for the official himself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties'.

Moreover, Article 41 of the African Union Convention on Preventing and Combating Corruption (2003) prohibits 'the solicitation or acceptance, directly or indirectly, by a public official or any other person, of any goods of monetary value, or other benefits, such as a gift, favour, promise or advantage for himself or herself or for another person or entity, in exchange for any act or omission in the performance of his or her public functions'.

Comparative Experiences

A number of countries have adapted their legal and policy frameworks to address sexual bribery. This adaptation usually utilises one or more of the following models.

1. Expressly addressing sexual bribery under the country's anti-corruption statute
2. Implicitly addressing sexual bribery under the country's anti-corruption statute
3. Addressing sexual bribery through the ethical rules, and professional codes of conduct applicable to public officers

MODEL	INTENT	EXAMPLE
Expressly addressing sexual bribery	To make sexual bribery an explicit offence under the country's anti-corruption and/or criminal statutes	<ol style="list-style-type: none"> 1. Section 27 of the Tanzanian Prevention and Combating of Corruption Act of 2007, makes it an offence for 'any person in a position of power or authority to demand or impose sexual favours' as a condition of the exercise of that authority. 2. Taiwan's Criminal Code expressly criminalises the abuse of authority to extract sexual intercourse.
Implicitly addressing sexual bribery	To make anti-corruption statutes broad enough to cover non-financial inducements	<ol style="list-style-type: none"> 1. Section 3(e) of the Anti-Graft and Corrupt Practices Act of 1960 in the Philippines, prohibits conduct by public officers that may cause 'undue injury' or give a private party 'unwarranted benefits, advantage or preference'. 2. Kenya's Anti Corruption and Economic Crimes Act of 2003, a benefit is described as 'any gift, loan, fee, reward...service, favour, forbearance, promise or other consideration or advantage'. The terminology used in the statutes above is broad enough to be interpreted to include sexual favours.
Addressing Sexual Bribery through Ethical Rules and Professional Codes of Conduct	To prohibit sexual bribery through administrative bodies (rather than through the judiciary)	<ol style="list-style-type: none"> 1. In Uganda, the Code of Conduct and Ethics for the public service prohibits a public officer from subjecting others or being subjected to 'conduct of a sexual nature affecting his or her dignity which is unwelcome, unreasonable and offensive to the recipient'. 2. In Mexico where its anti-corruption statute fails to recognise non-financial inducements, the country's code of conduct has permitted sexual bribery to be addressed by administrative bodies.

Prosecuting Sexual Bribery

Mr. Perera is an official at a government office. In November 2020 the secretary of the office received a complaint from an individual stating that he had threatened to refuse to authorise the documents she needed for her daughter's school application if she didn't perform sexual acts on him.

Divide the room into 4 groups

- Group 1 is the school board, Group 2 is the lawyer for the victim, Group 3 is the lawyer for the defendant, and Group 4 is the judge
- Each group is given 30 minutes to prepare their approach to the case, and 15 minutes to present it to the rest of the participants
- Each Group is given an additional 5 minutes to respond to the submission by other groups
- Relate their post-activity reflections to the learning objectives and key lessons of the session.

Further Reading:

<http://www.dailymirror.lk/article/Sexual-bribery-in-Sri-Lanka-Victims-continue-to-Cry-in-silence-151257.html>

<http://www.sundayobserver.lk/2018/04/01/issues/sexual-bribery-and-its-silent-victims>

LESSON 3: INSTITUTIONAL RESPONSES TO SEXUAL BRIBERY

Recommended Time: 1 Hour 30 Mins



i. General Principles

There are 8 Principles that should frame an institutional response to sexual bribery:

1. **Accountability:** A public officer holds office in public trust and is personally responsible for her actions or inactions.
2. **Decency:** A public officer shall present himself/ herself in a respectable manner that conforms to accepted standards in society.
3. **Discipline:** A public officer shall behave in a manner that conforms with the rules, and regulations set out under the Code of Conduct.
4. **Effectiveness:** A public officer shall strive to achieve intended results in terms of quality and quantity in accordance with stipulated performance standards set for service delivery.
5. **Impartiality:** A public officer shall give fair and unbiased treatment to all persons irrespective of gender, race, religion, disability, ethnic background, or any other grounds. A public officer shall make choices solely based on merit.
6. **Integrity:** A public officer shall be honest and open in conducting his or her affairs.
7. **Professionalism:** A public officer shall adhere to professional codes of conduct and exhibit a high degree of competence in carrying out his or her duties.
8. **Transparency:** A public officer shall be as open as possible about the decisions and actions that are taken. She/he must always be prepared when called upon to give reasons for the decisions he/she has taken.

ii. Comparative Experiences

A number of countries have utilised professional codes of conduct and other ethical rules to regulate sexual bribery. The enforcement of these codes and rules is often affected through administrative bodies rather than through courts. Although these administrative bodies may not be able to impose criminal sanctions, they usually have the authority to impose a suspension from duty or removal from office.

Country	Administrative Code
Uganda	Code of Conduct and Ethics: Prohibits an officer from subjecting others or being subject to 'conduct of a sexual nature affecting his or her dignity, which is unwelcome, unreasonable and offensive to the recipient'.
Mexico	Mexico's Federal Law of Administrative Accountabilities for Public Servants: Requires public officials to behave professionally, treating all persons with whom they interact with respect, diligence, impartiality, and righteousness. Breaches of the above provision in instances of sexual bribery may result in private warnings, suspension of duty or removal from office, and debarment from up to one to twenty years depending on the circumstances of the case and harm caused to the victim.
Australia	New South Wales Police Code of Conduct: Intimate personal relationships between an instructor and student are inappropriate on the basis that this relationship can be readily open to abuse.

Discussion of Comparative Examples

Break participants into groups of 3 – 5 and ask them to work on the following questions

- Which country's administrative code do you think is the best suited to deal with instances of sexual bribery?
- Why do you feel this way?
- How would you improve these codes based on the general principles above
- What do you think are some of the challenges associated with enforcement
- Each group presents outcomes to participants

iii. Sri Lankan Administrative Framework on Sexual Bribery

Sri Lanka lacks a comprehensive administrative framework to address sexual bribery. Unlike the comparative examples above, Sri Lanka does not have a code of conduct or other administrative practices to explicitly prohibit public officers from committing sexual bribery.

The Human Rights Commission's Sexual Harassment Policy states that sexual harassment by a public officer is an offence. It guarantees the victim redress through an impartial and independent investigation of the complaint, and details penalties in the event guilt is established. Penalties include dismissal or referral to law enforcement officers depending on the seriousness of the offence.

Steps should be taken to amend the definition of sexual harassment in the policy to specifically include sexual bribery. Thus, increasing the complainants' rights and redress.



This Is An Extract Of The Suggested Amendments To The Human Rights Commission's Sexual Harassment Policy:

What is Sexual Harassment

Sexual harassment is considered a criminal offence in Sri Lanka. Sexual harassment includes unwelcome sexually determined behaviour such

as physical contact and advances, sexually coloured remarks, showing pornography and sexual demand, whether by words or actions.



Sexual harassment also comprises sexual bribery. Sexual bribery is a form of corruption where sexual activity, rather than money is the currency of the bribe. It involves (a) a request (whether implicit or explicit) to engage in unwanted sexual activity and (b) a person in a position of authority who solicits or accepts a sexual favour in exchange for exercising the power entrusted to him or her. In the context of sexual bribery, the victim's consent is immaterial when establishing the offence.

Sexual harassment can be humiliating and may constitute a health and safety problem. Moreover, it creates a hostile working environment and affect an individual's employment opportunities.

iv. Challenges Associated with Enforcing Administrative Penalties

Countries that seek to use administrative penalties to prevent sexual bribery are likely to encounter certain challenges. It is essential that these challenges are addressed (and anticipated) in order to strengthen the effectiveness of state responses to sexual bribery. For instance, unless staff members are adequately trained and aware of the existence of the Code of Conduct, it is unlikely to reform offensive behaviour.

Moreover, sexual bribery is often not taken seriously and sanctioned appropriately. This practice can lead to (a) an inconsistent application of the Code of Conduct and (b) outcomes of investigations not corresponding to the gravity of the offence (e.g. the officer being sent for managerial counselling instead of being suspended). The lack of consistent disciplinary action taken in instances of sexual bribery can lead to the Code of Conduct failing to have a deterrent value.

Exercise: Enforcement of Administrative Actions

In the 2018 study conducted on documenting instances of sexual bribery in Sri Lanka participants were not optimistic about the enforcement of sexual bribery in the country. Participants were of the view that victims of sexual bribery were afforded limited opportunities for redress. It was stated that victims were generally not given the necessary information to make a complaint (e.g. process for complaining, officer in charge of processing complaints). Public offices were generally viewed as not being equipped to deal with cases of sexual bribery (e.g. board to assess complaints not constituted). Participants were of the view that these factors reduced the willingness and ability of victims to file complaints. Participants also stated that in certain instances victims that complained of instances of sexual bribery faced additional harassment and interrogation by high ranking male officers in the public body in question. This further disincentivized complaints relating to sexual bribery.

- Divide into groups of 3 - 5
- Take on the role of the Secretary or Chief Officer of a chosen public authority
- Devise an innovative complaint mechanism and process that ensures the enforcement of sexual bribery

LESSON 4: PREVENTING SEXUAL BRIBERY

Recommended Time: 2 Hours



i. Preventing Sexual Bribery: A Change in Behaviour

Preventing sexual bribery will require a behavioural change on the part of victims, offenders, and public institutions.

Victims of sexual bribery will have to learn to recognise when an offence is committed (b) offenders will have to believe that they will be held accountable for their actions and (c) public institutions will have to be equipped with the processes and skills to ensure complaints are investigated and subsequent actions are taken.

ii. Lessons from a Sri Lankan Study on Sexual Bribery

Reasons for Increases in Sexual Bribery

Participants were of the view that sexual bribery was prevalent in the public sector. Particularly, in places such as schools, police stations, and health services.

The vulnerability and discrimination that women face in society were seen as key enablers of sexual bribery in the public sector. For instance, participants were of the view that women were not afforded preference in the allocation of public services and promotions. This factor was perceived as compelling women to offer sexual gratification in exchange for basic public services and merit-based promotions. Moreover, information relating to the criteria on which state benefits are allocated was perceived as being obscure. According to participants, this obscurity created opportunities for sexual bribery within the public sector - as benefits were afforded on the basis of 'favours' rather than on merit.

Participants in the North and East were of the opinion that female heads of households, including widows, were particularly vulnerable to sexual bribery. This was attributed to the fact

that the socio-economic status of such women made them excessively dependent on the state for relief, loans, and housing. Participants were of the view that there were instances where state actors abused this dependency to obtain sexual gratification.

Opposing Views

A number of participants involved in the 2018 study documenting sexual bribery in Sri Lanka expressed their opposition to regulating sexual bribery. This opposition was framed on the basis that: (a) women were manipulating state officers through sexual conduct and (b) women were too weak to resist the 'harmless' advances of state officers. In the case of the former, women were seen to obtain preferential treatment by offering sexual services to the state officer. These women were perceived as being offenders, rather than victims of sexual bribery. For instance, women that failed to 'dress decently' were viewed as being part of the problem of sexual bribery.

In the case of the latter, women were seen as being victimised by certain predispositions attributed to their gender, rather than by offensive conduct on the part of the state officer. Both these views place significant obstacles in the regulation and prosecution of sexual bribery.



Exercise: Innovative Solutions for Changing Behaviour

Divide into groups of 3 - 5

Design a product or a service that would enable either better awareness of or prosecution of sexual bribery

Pitch this product or service to a panel of judges



Encourage the participants to think of how technology platforms and innovative products can help identify, hold accountable and educate stakeholders on sexual bribery

Assemble an independent panel of volunteers to judge the pitches

During the pitch ask probing questions around how the product or service can assist to solve the causes and consequences of sexual bribery (vulnerability of the victim, difficulty of establishing the offence, lack of accountability, failure to understand the 'harm of the offence')

Encourage the participants to use learnings throughout the module to make transformative suggestions for how institutions, and victims can be supported to prosecute and identify sexual bribery

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ISBN 978-624-5847-16-7



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