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Post-war Sri Lanka: Specific Needs of Sexual Violence Victim Survivors and Children Born of Rape

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This paper was commissioned by UN Women and the Government of the United Kingdom. The views expressed in this publication are those of the author, and do not necessarily represent the views of the Government of the United Kingdom, UN Women, the United Nations or any of its affiliated organizations.

With special thanks to the UN Women Regional Office for Asia and the Pacific, particularly Hanny Cueva-Beteta, Ketsara Naunpunyong, Miwa Kato and the Regional Communications Team; and the Government of the United Kingdom Foreign & Commonwealth office especially Izumi Wakugawa at the British Embassy Tokyo.

Copy Editor: Anthony Burnett

Designer: Kung Termvanich

Photos: Field photos provided by UN Women / Betsy Davis, Mayank Pratap Singh, Guilherme Valle, Piyavit Thongsas-Ard, Sangita Budhathoki, Pathumporn Thongking.

ISBN 978-974-680-412-7

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1. INTRODUCTION

Official statistics indicate that one in every four households in the country are female-headed, many of which have been affected by the war.¹ It is estimated that over 90,000 female heads of households are living in the north and east.² Women from the Sinhala, Tamil and Muslim communities have borne the brunt of the war, facing innumerable challenges as they struggle to rebuild their lives. Sri Lanka faces an uphill task in dealing with the past and holding those accountable for atrocities perpetrated during the war, including sexual violence against women.

1.1 CONTEXT

The Batticaloa district in the east was affected by the war. A women's organization working in Batticaloa has documented 31 cases of sexual violence perpetrated by armed actors between 1996 and 2014.³ The war ended in 2009 but cases of sexual violence continue to be documented by such organizations. The same organization reveals that between 2004 and 2014, there were 3,279 cases of gender-based violence reported to their organization, which average at approximately 300 women affected by violence each year. These reported cases include 143 grave crimes such as rape, murder, child rape, incest, sexual abuse, trafficking and sexual harassment.⁴ Incidents of violence have been documented by women's organizations working in the north.⁵ In October 2015, four military personnel were convicted by the Jaffna High Court for the rape of a Tamil woman and the sexual abuse of another.⁶ Sexual exploitation of female heads of household in the north by government officials has been recently documented.⁷

According to the government's reply to the List of Issues sent by the CEDAW Committee, *"Instructions have been issued to all branches of the security forces as well as the Police that strict action will be taken against all members of the Armed forces and Police who engage in Human Rights violations which includes torture, rape and sexual and gender based violence."*⁸ A monitoring mechanism that will oversee these instructions is required in order to ensure compliance with the instructions.

1.2 DEFINING CONFLICT-RELATED SEXUAL VIOLENCE (CRSV) IN SRI LANKA

For the purposes of this case study, conflict-related sexual violence (CRSV) includes early or forced marriage, sexual exploitation, rape, gang rape, sexual abuse, sexual harassment, continuous checkpoint harassment, domestic violence, trafficking, unwanted pregnancies, forced contraception, sexual torture, marital rape, sexual harassment and violence and harassment during military surveillance.

1 <http://www.statistics.gov.lk/HIES/PreReportHIES2009Eng.pdf>

2 This is a conservative estimate given that the State does not have a clear categorisation of who a female head of household is.

3 Suriya Women's Development Centre.

4 Suriya Women's Development Centre.

5 Shadow Report submitted by Women's Action Network (WAN) to CEDAW, 66th session, Sri Lanka Review, February 2017.

6 <http://srilankabrief.org/2015/10/vishwamadu-military-rape-case-these-crimes-are-not-committed-by-the-military-alone-wan/>, accessed on 28 February 2017.

7 Sexual Exploitation of Female Heads of Households in the North: Twenty-Five Case Studies, FOKUS WOMEN, January 2016.

8 http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/LKA/CEDAW_C_LKA_Q_8_Add-1_26040_E.pdf

Militarisation of the war-affected areas has also resulted in other forms of sexual violence (SV), such as sexual humiliation, SV during arrests, forced sexual servicing and sexual slavery for armed actors, sexual threats and other forms of SV during surveillance efforts.⁹ These forms of SV continue post-war. The continuum of violence is seen in the pre-conflict violence, violence during war and violence in the post-war context.

2. INTERNATIONAL AND NATIONAL FRAMEWORK OF CRSV IN SRI LANKA

2.1 UN SECURITY COUNCIL RESOLUTION 1325 AND SUBSEQUENT RESOLUTIONS

United Nations Security Council Resolution (UNSCR) 1325 calls upon States to take special measures during armed conflict to protect women and girls from gender-based violence (GBV), particularly rape and other forms of sexual abuse and other forms of violence. The Resolution also emphasises that the “*special needs of women and girls during repatriation and resettlement and for rehabilitation, reintegration and post-conflict reconstruction*” must be addressed through a gender perspective.¹⁰ State responsibility to end impunity and to prosecute those responsible for sexual violence against women and girls is also stressed in Resolution 1325.

The subsequent Security Council Resolutions 1820, 1888 and 1889 recognise sexual violence as a tactic of war. However, they fail to recognise the other forms of sexual violence that are perpetrated during and after war, and that these resolutions do not address the reality that other forms of CRSV exist.

2.2 THE LACK OF A NATIONAL ACTION PLAN ON WOMEN, PEACE AND SECURITY (NAP-WPS)

Sri Lanka has a plethora of action plans and policies that are slow to be implemented or remain unimplemented. Examples include the recently adopted GBV National Action Plan and the Prevention of Domestic Violence Action Plan.

Several attempts were made by the government to formulate a National Action Plan on Women, Peace and Security (NAP-WPS) for Sri Lanka. The government initiated several consultations with civil society and women’s organizations to kick-start the process. Initially, the idea was to adopt a separate NAP on WPS. Subsequently, this plan was abandoned and it was decided to include a section on WPS in the draft National Plan of Action for Women, which is yet to be adopted. Subsequently, a Resolution 1325 NAP was developed by the Ministry of Women’s Affairs (MoWA) in early-2016. There were no consultations held with women’s organizations and the NAP has not been shared publicly yet. With the proliferation of NAPs and policies in Sri Lanka, a separate 1325 NAP is likely to result only in the State having another NAP that will remain unimplemented. Several civil society organizations (CSOs) continue to work on WPS issues with war-affected women from the Sinhala, Tamil and Muslim communities without a 1325 NAP, and this strategy has not affected civil society’s work on WPS.

⁹ Suriya Women’s Development Centre.

¹⁰ Section 8 of the UN Security Council Resolution 1325.

In the absence of a NAP-WPS, different strategies and responses are required. It is possible to rely on the existing policies and plans if there is a coordinated effort towards implementation. This will obviate the need to have multiple plans and policies. A new National Human Rights Action Plan 2017-2021 (NHRAP) was recently endorsed by the Cabinet of Ministers. The different sub-sections of the NAP were drafted by sub-committees that consisted of civil society representatives and officials from the different Ministries. The women's rights section of the NHRAP includes several action points to address the needs of CRSV survivors, including female heads of households.

During the operationalisation of the previous NHRAP (2011-2016), an Inter-Ministerial Committee on Human Rights, consisting of secretaries of relevant ministries was set up to oversee its implementation. A more effective mechanism should be set up once the new NHRAP comes into operation in 2017.

2.3 HOW ARE THE NEEDS OF CRSV SURVIVORS MET THROUGH THE CURRENT LEGAL FRAMEWORK?

The current legal framework fails to adequately provide for CRSV survivors. The Victim and Witness Protection Act was passed in 2015. The Act details a victim and witness protection regime and establishes an authority to oversee the process. However, the law has been severely criticised due to its failure to address the rights of victims and witnesses adequately. Currently there are moves to introduce amendments to strengthen the law.

The Penal Code contains several offences including rape, grave sexual abuse and sexual harassment. These offences provide limited recourse to a CRSV survivor. The Convention Against Torture Act of 1994 also contains several gaps and does not address CRSV directly. Separate legislation is required to include SV as a crime against humanity or as a war crime.

3. THE NEEDS OF CRSV SURVIVORS AND MECHANISMS OF RESPONSE

3.1 CRSV SURVIVORS AND THEIR SOCIO-ECONOMIC NEEDS AND ACCESS TO JUSTICE

CRSV survivors, including female heads of households that have been subject to SV require access to socio-economic opportunities and access to justice. These include access to livelihood opportunities, access to health and sexual and reproductive health care, land ownership, access to water and other socio-economic rights. Survivors, in order to access the criminal justice system to seek justice for violations committed against them, require psycho-social support, legal support, psychological and psychiatric services, professional counseling and support services and the guarantee of physical protection due to fear of retaliation from perpetrators. When accessing the criminal justice system, Tamil-speaking CRSV survivors (including Tamil and Muslim women) face a language barrier throughout the criminal justice process in the courts, when accessing health services and when they approach law enforcement officers.

A National Initiative for Empowering Women Headed Households (WHHs) was approved by the Cabinet in late-2016.¹¹ It aims to reach 6,500 WHHs in 25 districts within a four-year time frame. The

¹¹ A Programme Proposal for the Government of Sri Lanka by UNFPA as Chair and on Behalf of the Gender Theme Group of the United Nations, August 2016.

five intervention areas are health, livelihoods, support services, security and social protection. The security intervention includes the provision of legal services at police stations for SGBV, child sexual abuse, exploitation and child labour-related issues and fast response services for these issues. This initiative is limited in scope and does not address the needs of women in a holistic manner and there is no specific focus on CRSV survivors.

Stigma and CRSV

Stigma affects women from different communities differently. Stigma of sexual violence survivors has not been documented and there have been no strategic interventions targeting the reducing of stigma among CRSV survivors. Social and cultural barriers prevent women from coming forward to seek any form of support services. Tackling stigma among CRSV survivors can strengthen communities through their engagement in public life and participation in political processes.

Transitional justice and CRSV survivors

There is a significant lack of awareness in the war-affected districts of the north and east on what transitional justice entails. A similar situation prevails in the south. There is more awareness among CRSV survivors.¹² The State does not have a communication strategy that reaches out to the war-affected communities and to those in the south. In keeping with the commitment made at the Human Rights Council¹³ on the setting up of transitional justice mechanisms, the State will need to improve its communication strategy to ensure that these mechanisms will be used by those affected by the war, including CRSV survivors. The State must also provide psycho-social and counseling services, accompaniment and protection to survivors of SV who wish to approach the Special Court, the Truth Commission, the Office on Missing Persons (OMP) and the Office for Reparations. A gendered approach to memorialising must also be taken into consideration by the State, so that different approaches to memorialisation can be debated and consensus reached by women in the different communities. The sequencing of these mechanisms will impact on the lives of CRSV survivors who have been denied justice for many years. A gendered policy on reparations is needed to ensure that women are provided with redress for the sexual violence they have been subjected to during and after the war. CRSV survivors also may wish to access the Truth Commission to seek justice.¹⁴ CRSV survivors who are female heads of households due to the enforced disappearance of their husbands, missing husbands or those who are widowed, need to be provided with protection. Awareness of these processes is critical if women are to seek justice through these mechanisms.

3.2 HIGHLIGHTING THE NEEDS OF CRSV SURVIVORS AT INTERNATIONAL LEVEL

Many international processes provide an opportunity to highlight the needs of CRSV survivors in Sri Lanka, in the absence of a NAP-WPS. For example, the Universal Periodic Review (UPR), the CEDAW review process and the missions of United Nations Special Rapporteurs. Sri Lanka is due to report under the UPR process in August 2017 and the review will take place in November 2017. Similarly, the CEDAW Sri Lanka review took place in February 2017 and women's organizations that have submitted shadow reports have stressed on the needs of sexual violence survivors, including female heads of households, and urged the State to take measures to address their specific needs. The Committee under the United Nations Convention on Economic, Social and Cultural Rights is

¹² Reports of consultations held in Jaffna and in Batticaloa with local level government officials and women leaders on transitional justice and taking women into account, FOKUS WOMEN, January and February 2017.

¹³ Human Rights Council Resolution 30/1 on Promoting Reconciliation, accountability and human rights in Sri Lanka. <https://documents-dds-ny.un.org/doc/UNDOC/LTD/G15/220/93/PDF/G1522093.pdf?OpenElement>

¹⁴ The government of Sri Lanka in its statement at the Human Rights Council session in February 2017 has committed to having draft legislation to establish a Truth-Seeking Commission in the next two months. See <http://www.news.lk/fetures/item/16053-statement-by-minister-of-foreign-affairs-at-the-34th-session-of-the-unhrc>

also due to review the Sri Lanka State Report in mid-2017. These United Nations processes provide a platform to make visible the urgent needs of CRSV survivors and to urge the State to expedite measures to address their needs.

The missions of United Nations Special Rapporteurs that visited Sri Lanka in the recent past have also provided the opportunity to raise CRSV survivors' concerns. Examples include visits by the Special Rapporteur (SR) on Minorities, Rita Izsák-Ndiaye and the SR on Transitional Justice, Pablo de Grieff. Civil society needs to continue to lobby and pressurise the government to address the specific needs of CRSV survivors. The United Nations Committee against Torture that met in 2016 to review the Sri Lanka State Report, raised the issue of the increase in rape and sexual violence after the war, and asked the government to outline the steps it has taken to investigate and prosecute all cases of sexual violence, particularly those committed by the military. The Committee also asked the government to explain how many cases of sexual violence had been prosecuted after the end of the war.¹⁵

4. CHILDREN BORN OF WAR (CBW) AND CHILDREN BORN OF RAPE (CBR)

There is very little research in Sri Lanka on children born of war (CBW) and children born of rape (CBR). Such cases have not been documented in a systematic manner (although anecdotal data possibly exists of isolated cases).¹⁶ The stigma attached to CBR and CBW would also differ depending on who the mother of the child is. For example, a CBW whose mother is an ex-combatant would face different challenges from a child whose mother is a female head of household who lost her husband in the war or whose husband is among the disappeared. A CBR would face more challenges than a CBW due to the stigma attached to rape. During the war, women who had been raped and became pregnant were sent to India by boat for their protection, having been forced to have abortions prior to leaving.¹⁷ No documenting of these instances was carried out according to one activist.¹⁸ A case where a woman was sexually exploited and raped is illustrated below. The rapes allegedly carried out by military officers resulted in her having two pregnancies that were aborted.

CASE STUDY¹⁹

The military camp is only 3 km from P's home. If she did not report on the fixed date, then the military CID would come in search of her frequently and sometimes many uniformed men surrounded her house. Every time P went to the camp she was asked to get into a room. The same officer would talk to her, touch her body (regardless of her hitting and shouting at him) and rape her...P conceived twice in 2008, as a result of the rapes and aborted the pregnancy in a private clinic in another district with the help of an activist. When she told this to the military guy who raped her regularly, he gave her contraception pills. She bled a lot when she terminated the pregnancy and a women's group took her to a hospital.

15 <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20880&LangID=E>, accessed on 10 February 2017.

16 Efforts to find evidence did not reveal any significant data on CBW and CBR.

17 Email conversation with woman activist from the north on 26 February 2017. The researcher was unable to find any other information in this regard.

18 Sexual Exploitation of Female Heads of Households in the North: Twenty-Five Case Studies, FOKUS WOMEN, January 2016.

19 The CEDAW Concluding Observations will be issued in March 2017. Right to Information Act No. 12 of 2016. No. 22 of 1994.

5. CONCLUSION

While internationally, pressure has been built on addressing the needs of CRSV survivors, there needs to be an acknowledgement from the government that CRSV is an issue in Sri Lanka that needs to be dealt with. Political will is needed to deal with CRSV in a cohesive manner. The proliferation of NAPs and policies does not ensure their implementation. Resources need to be allocated for the specific needs of CRSV survivors to be addressed.

Cases of CRSV must be documented in a more systematic manner, maintaining the confidentiality of the survivor, so that these cases can be accessed as an evidence-base for future interventions. If the specific needs of CRSV are to be met, the first step is to ensure the proper compilation of records. CRSV survivors need immediate assistance so that they can move on with their lives. It is imperative that any State intervention must take into account the fact that CRSV survivors are from all three communities: Tamil, Muslim and Sinhala. Interventions must be tailor-made to cater to the needs of CRSV survivors from each community.

6. SPECIFIC NEEDS OF CRSV SURVIVORS

General recommendations

The State must define CRSV survivors within the Sri Lankan context and this definition must take into account the multiple identities of victim survivors.

A global and/regional mapping of the different types of psycho-social services provided for CRSV survivors must be carried out, to be used as best practices.

In the absence of a NAP-WPS, the State must devise strategies and means of addressing WPS issues through existing NAPs and policies, such as the National FHH policy and the National Human Rights Action Plan.

Stakeholders must devise means of making use of or finding ways to address the needs of CRSV survivors through existing NAPs; for example, the National Initiative for Empowering Women Headed Households, National Human Rights Action Plan and the recently-adopted GBV National Action Plan.

Integrate tackling stigma of SV survivors into ongoing initiatives with different stakeholders, such as the judiciary, service providers, legal profession, psycho-social service providers, police, and faith leaders. Tackling stigma among CRSV survivors needs to be handled sensitively and must take a nuanced approach that takes into consideration the specific needs of women from Sinhala, Tamil and Muslim communities.

The State must address the root causes of stigma among CRSV survivors through well-designed state interventions.

The State must address the stigma of CRSV survivors through NAPs such as the National Human Rights Action Plan and the GBV National Action Plan.

Suitable reparations must be provided, taking into consideration the specific needs of CRSV survivors; and their voices must be heard in the reparations that they receive.

The war-affected areas must be demilitarised. Demilitarisation would contribute towards improving the physical security of women who have lived with the fear of violence due to the military presence for decades.

Devise strategies to address CRSV survivors' specific needs based on their vulnerability, ethnicity etc.; for example, female heads of households, female ex-combatants, military widows, Muslim, Sinhala and Tamil war-affected women and the specific types of SV they face.

A multi-level, multi-sectoral approach is needed to address CRSV survivors' practical and strategic needs.

A particular focus must be given to CRSV survivors who are female heads of households, as their needs differ, due to their vulnerability to sexual exploitation and their lack of physical security.

The State must initiate investigations into alleged sexual violence perpetrated against women during and after the war and prosecute and punish perpetrators found guilty of such offences.

The State must address the specific protection needs of female ex-combatants who are subjected to sexual violence after the war by the military.

Whilst the transitional justice mechanisms are being set up, it is imperative that CRSV survivors – especially in cases where the alleged perpetrators are from the armed forces and the police – are given support in terms of awareness, capacity and psycho-social support, so that they are prepared to approach these mechanisms.

CRSV survivors must be provided with information and support to access the recently set up independent commissions, to file their complaints concerning the sexual violence they have been subjected to. These include the Police Commission, Bribery Commission and the Human Rights Commission.

The State must conduct awareness on the transitional justice process among grassroots communities to encourage women in these communities to use the transitional justice mechanisms when they are set up.

The State must design more interventions to address post-war violence in war-affected areas, and thereby reduce the incidence of CRSV.

The socio-economic rights of CRSV survivors need to be met so that they can provide for their households and be able to participate in public life. Survivors must be able to access government services for their socio-economic needs, such as land registration and ownership, birth certificates for their children, welfare benefits and state-sponsored benefits such as pensions.

The State must provide opportunities for CRSV survivors to voice their opinions in the public space; for example, when interventions are designed for CRSV survivors, it is imperative that survivors are consulted.

The State must provide opportunities for CRSV survivors to play a role in decision-making at local level, so that their specific needs are met.

Meeting the specific needs of CRSV survivors by raising their needs at international level

The needs of CRSV survivors must be tackled by the State, by addressing the Concluding Observations of the CEDAW Committee, to be issued after its 66th Session in February 2017 that will deal with sexual violence during and after the war.²⁰

Civil society must continue to pressurise the international community, to in turn, put pressure on the government to address the needs of CRSV survivors.

Civil society organizations must send in shadow reports and alternate reports to forums such as CEDAW, the Human Rights Committee under the ICCPR and the ESC Committee under the ICESCR. In the absence of a WPS NAP, these reports will provide the required information to the various committees for concluding observations to address CRSV survivors' needs.

Meeting the specific needs of CRSV survivors through law and policy reform

Constitutional reform should necessarily ensure that the rights of CRSV survivors are included in a separate chapter on women's rights through a victim-centred approach. The right to be free from violence should be included as a fundamental right.

The Victim and Witness Protection Act should be amended to strengthen the protection mechanisms available for CRSV survivors and witnesses.

The State must take steps to build awareness among CRSV survivors on how they can make use of the newly-enacted Right to Information Act to seek information from public authorities that will assist them in their search for justice.²¹

The State must make amendments to the Penal Code to include mandatory payment of compensation for sexual violence victims where the perpetrators are State Officers.

The Convention against Torture and other Cruel, Inhuman, Degrading Treatment or Punishment Act²² should be amended to broaden the definition of 'torture' to include sexual violence as a form of torture and to include non-state actors.

The directive issued by the President to the armed forces and the police in 2016 on the adoption of zero tolerance for sexual violence must be strictly adhered to through the setting up of a monitoring mechanism to monitor progress.

The provisions of the National Policy on Female Heads of Households and the National Human Rights Action Plan and other policies and plans that deal with conflict-related sexual violence must be implemented.

Transitional justice, transitional justice mechanisms and how they will address the needs of CRSV survivors

A State communication strategy on transitional justice and transitional justice mechanisms to build awareness among communities affected by the war must be formulated to encourage those affected, including CRSV survivors to approach these mechanisms.

²⁰ The CEDAW Concluding Observations will be issued in March 2017.

²¹ Right to Information Act No. 12 of 2016.

²² No. 22 of 1994.

The State must provide accompaniment services to CRSV survivors to access the transitional justice mechanisms that will be set up and also provide support services in the giving of testimonies.

The State must expedite reparations for CRSV survivors taking into consideration their specific requests.

The State must take into consideration the voices and needs of CRSV survivors in providing space to communities to memorialise their experiences.

Children born of war and children born of rape

Recommendations

Generate more data and research on children born of war (CBW) and children born of rape (CBR) to design systematic interventions and make visible their issues while ensuring confidentiality to their cases.

National Policies and Action Plans need to address the specific needs of CBW and CBR through the inclusion of CBW and CBR in these policies and plans.

Policy also needs to address the specific needs of mothers of CBR during and after conflict.

The National Child Protection Authority (NCPA) and the Ministry of Women and Child Affairs must adopt long-term plans to deal with CBW and CBR, to deal with the specific needs of CRSV survivors and their children.

Raise awareness on the issue of CBR and CBW with the communities affected by war, on strategies to provide protection and support systems for these children.

