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Executive Summary

This report is a joint submission by the Centre for Policy Alternatives (CPA),¹ and the Family Planning Association of Sri Lanka (FPASL)²; developed through national and regional consultations. The report examines the current situation and the legal framework in terms of Sexual and Reproductive Health and Rights (SRHR) and gender equality in Sri Lanka.

The report makes all attempts to encompass a range of SRHR issues prevalent in Sri Lanka; yet, it must be taken into account that this is not an exhaustive list.

Methodology

1. This report has been compiled after an extensive research and a literature review as well as discussions with the relevant stakeholders. An initial national-level stakeholder discussion bringing together 10 National CSOs and independent advocates was held to discuss issues relating to SRHR in Sri Lanka. The participants were encouraged to submit their recommendations to strengthen universal SRHR and address gaps in addressing gender inequality in Sri Lanka. Following the national discussion, a number of regional focus group discussions (FGDs) were conducted in the North, North Central, Central, Uva, and Southern Provinces, where participants voiced the issues faced with regards to SRHR standards in the country. It should be noted that participants at the FGDs were mainly stakeholders with direct experiences. Meanwhile, some participants were community members with a genuine interest in the subject matter discussed. The topics discussed below encompass the recommendations received by the participants of the FGDs and participants at the national stakeholder discussion, along with an analysis and review of the current laws and regulations in Sri Lanka.

General overview of Laws

1. Sri Lanka has been signatory to international treaties supporting equal rights for all citizens of the country including The International Convention on the Elimination of all forms of Racial Discrimination, The International Covenant on Economic Social and Cultural Rights, The International Covenant on Civil and Political Rights, The Convention on the Elimination of all

¹ The Centre for Policy Alternatives (CPA) was formed in the firm belief that there is an urgent need to strengthen institution and capacity-building for good governance and conflict transformation in Sri Lanka and that non-partisan civil society groups have an important and constructive contribution to make to this process. Its mission is to strengthen the civil society contribution to public policy making through programmes of research and advocacy in the areas of democratic governance and peace with human rights as an overarching priority.

² Established in 1953, The Family Planning Association of Sri Lanka (FPA Sri Lanka) serves as a non-governmental organization (NGO) that explores innovative and challenging processes of family planning in Sri Lanka. We are proud to be one of the most expansive and well known NGO's in the country that focuses on family planning, Sexual and Reproductive Health and welfare.

forms of Discrimination against Women³, and the Convention on the Rights of the Child, that aim to empower minority populations in Sri Lanka. Yet, certain legislation (such as sections in the Penal Code) that discriminate based on sexual orientation and gender identity, as well as women's bodily autonomy still exist giving reason to believe that international obligations are not being and/or implemented at the national level.

Based on the recommendations of the Public Representation Committee for Constitutional reforms; established to gather public representations for the revision of Sri Lanka's constitution, a list of submissions were submitted to the Steering Committee of the Constitutional Assembly. Among its many noteworthy recommendations was the chapter on Fundamental Rights; an impressively structured list of recommendations stressing the importance of non-discrimination based on sexual orientation and gender identity. Furthermore, the possible inclusion of Economic, Social and Cultural Rights in the new Constitution could also bolster support for women and marginalized communities with respect to SRHR.

2. The move to appoint an independent UN investigator for LGBTIQ persons was met with much appreciation from civil society organizations in Sri Lanka. Sri Lanka's positive stance in influencing the investigator's ability to continue his mandated work⁴ also received the commendation of civil society. These events lead key stakeholders to believe that the current Government of Sri Lanka (GoSL) would be progressive in their stance in relation to legislation intended towards strengthening rights sexual orientation and gender identity (SOGI). This expectation was short-lived when the Sri Lankan Cabinet chaired by the President rejected the proposal to add sexual orientation and gender identity as grounds for nondiscrimination in the 2017 National Human Rights Plan of Action.

³ The eighth State report on the implementation status of the CEDAW was submitted by the (GoSL) for review by the Committee on the Elimination of Discrimination of Women and was in turn deliberated on 22/02/2017. The CEDAW committee issued a review of the State, and raised a number of issues, including, but not limited to, the limited knowledge on gender equality among legal practitioners and law enforcement officials/language barriers causing issues when reporting grievances/ cultural and social stigmas associated with reporting sexual and gender-based violence instances barring women from coming forth, the lack of a timeline or a published budgetary allocation for the National Commission on Women, the lack of availability and quality of health care services for women in conflict affected areas and the plantation sector, as well as the existence of programmes and support to address the psycho-social trauma of war-affected women, the availability and accessibility of sexual health information that takes into account the needs of all women and girls, and the lack of data on prevalence of HIV/AIDS, including among women and girls, and the existence of programmes for early prevention and early detection of HIV/AIDS. The committee strongly recommended to address these issues, which could significantly improve the quality of life for many Sri Lankans facing a myriad issues with regards to such topics.

⁴ See "UN creates LGBT expert post; SL votes in favour" - <http://www.dailymirror.lk/article/UN-creates-LGBT-expert-post-SL-votes-in-favour-119590.html>

3. The unavailability of national statistics on commercial sex work has also hindered progress with regards to SRHR related issues in Sri Lanka.⁵ Sex Workers are among the key populations most at risk of being infected with for HIV/AIDS prevalence, and whilst the STI Clinic of Sri Lanka⁶ engage in commendable work in seeking out areas where sex workers are known to be concentrated and engage in awareness generation and provide free medical support, the lack of accurate data on the number of commercial sex workers⁷ in Sri Lanka (especially in the Northern Province where post-war situations have given rise to a spike in the number of commercial sex workers, *discussed below*), means that there are still a number of persons that go untreated or unaware of the dangers of HIV/AIDS.
4. The same is the case for the population estimates for Men having Sex with Men (MSM); one of the key population for HIV and AIDS. Due to the criminalization of homosexuality, these numbers are still not accurately captured; a grave cause for concern, especially taking into consideration that the key population with the highest prevalence of HIV/AIDS in Sri Lanka is now MSM⁸.
5. The discussion on repealing abortion laws has yielded positive outcomes. Reports indicate that there were no objections by the Sri Lankan cabinet to the NHRAP proposal calling for the legalization of abortion in instances of rape, incest, and severe fetal abnormalities⁹. Although this is welcomed the lack of political will to decriminalize abortion on any other grounds is concerning. Given the statistics regarding the number of illegal abortions being conducted in Sri Lanka, such draconian measures will give women no choice but to continue using unsafe methods to terminate a pregnancy, leading to many other medical complications.
6. Also significant is the recent government circular published in June 2016, providing guidelines for the issuing of Gender Identification Certificates for Transgender persons¹⁰. This is witnessed as a progressive step towards providing equal rights to persons with diverse gender identities; yet, Transgender persons still face much discrimination with regards to employment prospects and the accessing of equal opportunities.

⁵See "Rajitha negates President's statement legalising gay rights" - <http://srilankabrief.org/2017/01/rajitha-negates-presidents-statement-re-legalizing-gay-rights/>

⁶ National STD/AIDS control program - <http://www.aidscontrol.gov.lk/>

⁷ See recommendations from the "National STD/AIDS Control Programme Sri Lanka, Annual Report 2015"

⁸ "Key Assessment of Policy Framework regarding HIV/AIDS control in Sri Lanka" issued by FPASL

⁹ See "Limited Abortion" To Be Legalized In Sri Lanka" - <http://www.asianmirror.lk/news/item/2104-limited-amortion-to-be-legalized-in-sri-lanka>

¹⁰ See "For 'Mind and Soul': Sri Lanka Eases Way To Legal Recognition of Transgender People" - https://globalpressjournal.com/asia/sri_lanka/mind-soul-sri-lanka-eases-way-legal-recognition-transgender-people/

7. Legislation such as the Vagrants Ordinance¹¹, the Brothels Ordinance¹², as well as certain sections of the Penal Code still indiscriminately marginalize and discriminate against the LGBTIQ community, as well as sex workers, by means of criminalizing these lifestyles; allowing persons in positions of authority (such as police officers) to detain, torture, and verbally and physically discriminate members of these communities.
8. The establishment of a Sectoral Oversight Committee on Women and Gender¹³ for the new Constitution is seen as another positive initiative towards gaining equality and equity for women, by ensuring women's concerns are adequately represented in the new Constitution.
9. The advocacy on increasing women's representation in governance structures yielded positive results in the form of an amendment to the Local Authorities Election (Amendment) Act¹⁴, mandating a 25% quota for women at a Local Government level. The manner in which this is to be implemented, coupled with the lack of capacity building initiatives for women at regional levels to engage purposefully and strategically in governance, dilutes the effectiveness of this legislation¹⁵.
10. The lack of Comprehensive Sexuality and relationship Education (CSE) at school level is a major contributing factor to poor SRHR outcomes in Sri Lanka (further discussed below). Currently, Sri Lanka has a basic reproductive health curriculum, compartmentalized under the Civic Education, as well as the Health Science text books. What is lacking, however, is the recognition of the importance of all seven components within CSE (gender, sexual and reproductive health and HIV, equal rights, sexual citizenship, pleasure, violence, diversity, relationships), which could only be achieved through the development of a comprehensive curriculum.

Sexual and Gender-Based Violence

¹¹ Vagrants Ordinance - http://hrlibrary.umn.edu/research/srilanka/statutes/Vagrants_Ordinance.pdf

¹² Brothels Ordinance -

http://www.aidscontrol.gov.lk/web/images/web_uploads/Policy_or_Law/Brothels%20Ordinance.pdf

¹³ For functions of Sectoral Oversight Committees, see

<https://www.parliament.lk/en/component/committees/categories?id=6&Itemid=106>

For details on Sectoral Oversight Committee for Women and Gender, see

<http://www.parliament.lk/en/component/committees/committee/showCommittee?id=171&type=committee&Itemid=106>

¹⁴ See "25 percent quota comes into effect for first time: Around 2,000 women to contest LG elections" -

<http://www.dailynews.lk/?q=2016/09/08/local/92655>

¹⁵ Studies have suggested that introducing a mandatory quota for women's representation in governance structures have directly contributed to the improvement of women's rights in the country. See

http://scholar.harvard.edu/files/rpande/files/gender_quotas_-_april_2011.pdf

11. The Prevention of Domestic Violence Act (PDVA) of 2005¹⁶ is the predominant legislation in Sri Lanka that enables women to seek redress in the event they face domestic violence or are likely to be abused. The Act, introduced amidst mixed reactions from the political arena at the time¹⁷, was heralded as hallmark legislation for the empowerment of women experiencing intimate partner violence. Yet, glaring inadequacies in the Act prevail¹⁸, providing room to believe that the Act was drafted without consideration of its practical usage or effectiveness at a grassroots level¹⁹. The national Helpline for Women (1938) established under the National Committee on Women, received 667 total complaints for the year 2015, 90 of which were domestic violence incidents²⁰. The national statistics from the same complaint centre in 2014 said that 12.34% of all complaints were attributed to Domestic Violence (the third highest category of complaints the helpline received for that year)²¹. The lack of awareness on the existence of such a helpline or services provided by the Ministry for Women and Children's Affairs is also a contributing factor to the current statistics of GBV.
12. Sexual violence has been a constant concern in Sri Lanka and its prevalence has only increased since the end of the armed conflict in 2009, especially in the war-affected regions²². Statistics derived from the national police website indicate that for the year 2015, 379 cases of Rape was recorded; all of which were still pending conviction at the time of publication²³. A particular case, where a young school girl from the Northern Province was gang raped and murdered in the Jaffna District received widespread coverage and led to protests across the country²⁴. Although the perpetrators were arrested no convictions have still been made. The lack of

¹⁶ Prevention of Domestic Violence Act No. 34 of 2005,

http://www.childprotection.gov.lk/Child_Related_ACTs/Prevention%20of%20Domestic%20Violence%20Act,%20No.%2034%20of%202005.pdf

¹⁷ See 'The Parliamentary Debate' of '*Only until the Rice is Cooked? The Domestic Violence Act, Familial Ideology, and Cultural narratives in Sri Lanka*' by Kodikara, C. Accessed

<http://www.wluml.org/sites/wluml.org/files/ICES%20Working%20Paper%20Series.pdf>

¹⁸ Such as the limited period of incarceration for the perpetrator (maximum one year), and the fact that the Act has not taken into account the overwhelming majority of men in the judicial system (Judges included) who have previously brought in their personal biases to the courtroom when dealing with domestic violence cases.

¹⁹ See "The prevention of Domestic Violence Act and implementation problems" by Kodikara, C. Accessed

<http://womenandmedia.org/the-prevention-of-domestic-violence-act-and-implementation-problems/>

²¹ See 1938 Women's Help Line website, accessed <http://www.childwomenmin.gov.lk/English/institutes/national-committee-on-women/1938-women-shelpline>

²² Based on anecdotal evidence received by community members in the region. Sexual abuse and violence has also been a tool of intimidation during the time of the conflict, and perpetrators were rarely brought to justice due to their positions in influential circles including the security forces. "*Ethno-Religious Nationalism and Sexual and Reproductive Health and Rights in Sri Lanka: A social media, print media and policy review*" is a research document conducted by the Women and Media Collective (WMC) and provides an interesting analysis of SRHR related issues during and post-conflict Sri Lanka.

²³ "Grave Crime Abstract for the Year 2015" published by the National Police Force website, accessed

http://www.police.lk/images/others/crime_trends/2015/grave_crime_abstract_for_the_year_2015.pdf

²⁴ "Outrage in Sri Lanka over teenager's rape and murder" by BBC News, accessed

<http://www.bbc.com/news/world-asia-32820033>

expediency in trying and convicting the perpetrators has fostered a culture of impunity for rapists, whilst exposing a severe inadequacy in the justice system²⁵.

13. Child sexual exploitation and violence in Sri Lanka is also noteworthy. The total number of SGBV Complaints received by the National Child Protection Authority (NCPA) in the year 2014 amounted to 1,777; over 1000 of those cases were attributed to sexual harassment and/or rape²⁶. Reflective of such statistics was the case reported from the Gampaha District in the Western Province, where a four-year old female child was found raped and killed in 2015²⁷ which drew widespread condemnation. The culture of impunity discussed in *paragraph. 13* stands true for cases of child sexual exploitation as well; however, there is reason to believe that cases of this nature are given more consideration than cases of sexual assault and rape of women above the age of 18²⁸.
14. Cultural perceptions entrenched in patriarchal, dogmatic views pose severe impediments to addressing SGBV in Sri Lanka. A culture of shame is practiced in relation to the discussion on sexuality, sexual offences, or crimes relating to sex. It has often been noted that families tend to hide an incident of rape or sexual assault of a child for fear of “tarnishing” their family names and bringing “shame” upon the family. Such regressive views (systematically practiced for a long period of time), have been absorbed into structures of authority as well. Especially in war-affected regions in the North and East, police officers are reportedly unresponsive to complaints of SGBV, and have even discouraged complaints of such nature²⁹. The lack of implementation of the Official Languages Policy has also been an issue when transcribing

²⁵ See pg. 153 of the *Policy Framework and National Plan of Action to address Sexual and Gender-based Violence in Sri Lanka 2016-2020* for statistical evidence of the progress of action taken on complaints on Rape and Incest in 2013, which indicate that from the total number of complaints received (2175), 1410 were still pending investigations, whilst only 7 convictions were achieved. Such evidence points to an inefficiency in the justice system to expedite cases of sexual violence, and substantiates the mistrust and wariness of the public towards the justice system which deters them from coming forth with complaints.

²⁶ NPASGBV pg. 21 under ‘Child Sector’, accessed

https://www.dropbox.com/s/6t4elkp60ist42d/Policy%20Framework%20and%20National%20Plan%20of%20Action%20to%20address%20SGBV%20in%20Sri%20Lanka%202016-2020%20English%20Web_CC.pdf?dl=0

²⁷ “Brutal Murder of little Seya and the relevance of the OHCHR Investigation Report” by Sri Lankan Guardian, accessed <http://www.sguardian.org/2015/09/brutal-murder-of-little-seya-and-the-relevance-of-the-ohchr-investigation-report/>

²⁸ See the “*Report of the Leader of the Opposition’s Commission on the Prevention of Violence against Women and the Girl Child*” for an oversight of the practical realities facing women and the girl child in relation to sexual violence and abuse in Sri Lanka. Also interesting is the comparative analysis of the response received for the case of the young girl and that received for the case of the 18 year old girl – although both cases were received with outrage within Sri Lanka, the case was expedited and perpetrators given swift judgment in the case of the young girl as opposed to the case of the 18 year old where the investigation was lengthened unnecessarily. The pressure exerted from civil society for this case was arguably the predominant reason the investigation was given any prominence.

²⁹ Anecdotal evidence provided by community members in the District of Jaffna

actual events necessary in order to take action³⁰. These practices have caused many victims of SGBV to refrain from pursuing a complaint with the necessary authorities, contributing to a much larger statistic pool for instances of SGBV that have gone unrecorded.

15. In adhering to the specifications of the National Action Plan for the Protection and Promotion of Human Rights³¹: drafted as a result of the pledges made by the GoSL during the last UPR cycle, a Policy Framework and National Plan of Action to address Sexual and Gender-Based Violence in Sri Lanka from 2016 – 2020 (NPASGBV)³² was drafted and publicized in an effort to curb the instances of SGBV occurrence among key populations. The plan itself is comprehensive and extensive, with many positive initiatives noted. A considerable budgetary allocation has also been made³³, as dictated in the SGBV action plan. What is needed is to monitor so as to ensure that the initiatives proposed in the action plan are followed accordingly³⁴.
16. The issues faced by female Migrant workers are also complex and multi-faceted. Statistics from the Foreign Employment Bureau indicate that from over 245,000 Sri Lankans that sought foreign employment overseas in 2015, 34.44% were female³⁵. A socially accepted norm prevails that if a woman leaves the country for economic gain; her children are more susceptible to juvenile delinquencies, or sexual abuse/incest, more commonly at the hands of a family member/relative/family associate. Further to this is the theory that the male of the household is more prone to alcoholism if the female is abroad on work capacity. Provisions for migrant workers have also been made in the action plan on SGBV, and must be followed through accordingly.
17. Discrepancies in relation to the accepted age of marriage, and the accepted age of consent to sex (without it being considered a Statutory Rape), as stipulated in the Penal Code, has also led to a number of issues. This inconsistency in national policy is further exacerbated in relation to Muslim Marriage and Divorce Act which does not dictate a specific age for marriage. The campaign to repeal the Muslim law or to standardize marriage laws irrespective of religion was revitalised upon the receipt of such recommendations to the Public Representation Committee for Constitutional Reform³⁶.

³⁰ “Vidhya Sivaloganathan’s Family in Pungudutheevu is Waiting for Justice” by DBSJeyaraj.com, accessed <http://dbsjeyaraj.com/dbsj/archives/41688>

³¹ Accessed http://www.ohchr.org/Documents/Issues/NHRA/NPASriLanka2011_2016.pdf

³² Op. ct. 27

³³ Ibid.

³⁴ See the monitoring schedule of the action plan, accessed <https://www.dropbox.com/s/j28koz5ul0xl81h/Action%20Plan%20-%20%202016.pdf?dl=0>

³⁵ Sri Lanka Bureau of Foreign Employment 2015 Highlights, accessed <http://www.slbfe.lk/file.php?FID=254>

³⁶ “A minimum age of marriage for all citizens in Sri Lanka”, accessed <http://www.wercsl.org/establishing-a-minimum-age-of-marriage-for-all-citizens/>

Abortion

18. Sri Lanka is in a markedly better positioning than most South Asian countries in relation to infant mortality rates (latest figures indicating the rate at 9.9 per 1000 LB)³⁷. Yet, the practice of abortion is widespread. Abortion in Sri Lanka was made an illegal practice via Section 303-307 of the Penal Code³⁸. According to legislation, abortion is only considered in instances where it could be proven that the decision to not terminate a pregnancy would be detrimental to the health and safety of the mother.
19. Adolescent pregnancies are also cause for concern, with 2009 statistics showing 6.5% of all pregnancies occurring in Sri Lanka to be teenage pregnancies (i.e. pregnancies between the ages of 15-19). Although surveys show a steady decline in these numbers, post-war affected regions of the North and East did not see a change in these trends³⁹. Among these numbers are married couples as well as ‘cohabitating’ couples. A UNICEF Child Marriage Baseline Estimate in 2015 purports that over 20, 780 girls between the ages of 12 -17 are in a married or cohabitating relationship⁴⁰. Teenage pregnancies are arguably high risk for the mother in terms of medical complications, in addition to the social barriers the teenage mother faces, including impediments to education and economic prospects. When questioned, most adolescent pregnant girls claimed that the lack of awareness on contraceptive methods was a major contributing factor⁴¹.
20. For a number of years, Civil Society Organisations (CSOs) and independent advocates have worked to repeal the abortion legislation⁴². Experts estimate at least 1,000 abortions are being conducted illegally in Sri Lanka per day⁴³. These same experts have said they have reason to believe that the actual numbers are much higher. The crackdown on clinics during the last regime was perceived as a major regression in terms of progress in providing sexual and reproductive health services in a regulated and certified manner. As a result, the circulation of

³⁷ Vital Statistics: Family Health Bureau. Accessed [file:///C:/Users/Ruwendi/Downloads/VITAL%20STATISTICS%20-%20FAMILY%20HEALTH%20BUREAU%202017%20\(1\).pdf](file:///C:/Users/Ruwendi/Downloads/VITAL%20STATISTICS%20-%20FAMILY%20HEALTH%20BUREAU%202017%20(1).pdf)

³⁸ Penal Code of 1885 - http://www.commonlii.org/lk/legis/consol_act/pc25130.pdf

³⁹ “Teenage Pregnancy – What are the facts?” by UNFPASL, accessed

<https://unfpasilanka.wordpress.com/tag/teen-pregnancy/>

⁴⁰ “Action sought to end teenage pregnancy in Sri Lanka”, accessed

<http://colombogazette.com/2016/10/12/action-sought-to-end-teenage-pregnancy-in-sri-lanka/>

⁴¹ Op. cit. 40

⁴² “Abortion: Reform the obsolete laws now”, accessed <http://www.sundaytimes.lk/150531/sunday-times-2/abortion-reform-the-obsolete-laws-now-151388.html>

⁴³ “Over 1,000 Fetuses Illegally Aborted in Sri Lanka Daily”, accessed <http://www.frontpage.lk/page/Over-1-000-Fetuses-Illegally-Aborted-in-Sri-Lanka-Daily-/16656>

unregulated abortion pills has increased exponentially in the past number of years⁴⁴ (owing to various factors such as the reduction in reproductive age, as well as the lack of awareness on contraceptive methods), with alarming anecdotes received from the Anuradhapura District where it is believed that around 100 unregulated ‘abortion pills’ are being sold under the counter at pharmacies every day.

21. The recent legislation passed by the GoSL to amend the Penal Code to allow abortions in the occasion of rape or incest is welcomed: yet, the leeway allowed only in these circumstances show a disregard for the practical issues with regard to abortions in Sri Lanka, since most women choose to terminate their pregnancies due to economic liabilities, were unaware of contraceptive methods, or simply not ready to raise a child. While abortions sought for pregnancies occurring as a result of rape or incest is certainly concerning and prevalent in Sri Lanka. The resistance to repealing the abortion law for other occasions is not only exemplary of the control of a woman’s body by State institutions, but also contributes to an increase in unregulated, unsafe abortion methods, which causes major medical implications for the mother.

Comprehensive Sexuality Education (CSE)

22. Lack of CSE is identified as a predominant cause of many SRHR related issues worldwide, as well as in the Sri Lankan context. The lack of a rights-based, extensive discussion on sexual and reproductive health – including but not limited to sexual orientation and gender identity, reproductive stages, contraceptive methods, services related to reproductive and sexual health and relationship from gender perspective – is seen as the principal cause of cultural predispositions, traditionalist norms and values disallowing for progressive laws to be made in relation to sexual and reproductive health, and the establishment of a regressive and discriminate society overall.
23. Currently, ‘reproductive health’, limited to the teaching of reproductive organs, is included in the school Health textbooks. Besides this, brief details regarding HIV/AIDS prevention are mentioned in a vague manner. From 2006 -2013, the textbook information on same-sex relationships was referred to as an ‘unnatural sex conduct’, along with many other negative connotations, including being categorised under sexual abuse. Although these details have now changed, the information given on the topic is still vague and oblique. The aversion to mentioning condom usage in a school textbook found it instead discussed in fashion with ‘identifying risky situations in society’⁴⁵.
24. Even with the limited scope of CSE presented in such a manner, the culture of shame associated with this subject and with the discussion of sex overall has resulted in most, if not all subject

⁴⁴ “Misoprostol and women’s health in Sri Lanka”, accessed http://www.island.lk/index.php?page_cat=article-details&page=article-details&code_title=31532

⁴⁵ Billimoria, H. Grassrooted Trust.

teachers to refrain from teaching this chapter. The influential role teachers have in shaping the mindset of adolescents is severely understated and underappreciated in Sri Lanka; the aversion to teaching CSE in schools by school teachers lead children to adopt the same culturally steeped outlook in life with regards to discussing sex, contributing to a cycle of ignorance⁴⁶.

25. The implications of the lack of comprehensive education on sexuality and relationships can be witnessed from the grassroots level up to national levels: prevalence of HIV/AIDS among the youth population (although decreasing due to the efforts by institutions such as the STD Clinic of Sri Lanka) is still an issue, with many affected personnel claiming the lack of awareness on the use of condoms was a predominant factor. Sexual and gender-based violence is a serious concern in Sri Lanka and has risen to alarming rates (as discussed under *Sexual and Gender Based Violence*). At a national level, misinformation and lack of political will to progress the agenda on CSE are notable. An example of this includes that the Minister for Education wrongly assumed that HIV can be transmitted by sleeping next to a person living with HIV⁴⁷. It is also worth noting that Sri Lanka has long since held the world record for the nation that most googled the word ‘sex’ for a number of years⁴⁸, exposing the unique issues that stem from the lack of CSE in a rapidly progressing cyber culture that piques the curiosity of young children in the absence of scientific, accurate, and balanced information provided in school.
26. The aversion to introducing CSE into school curricula is based on inaccurate and ideological positions that posit that teaching of sexuality, sex, and contraceptive methods will enable children to practice what is being taught. Anecdotes were gathered during consultations at a regional level to substantiate these claims. However, this argument is nullified when taking into consideration the repercussions of the lack of CSE in schools as well as the level of success such programs have achieved internationally⁴⁹. Educationalists are identified as a major stakeholder in this process, and their support in the advancement of such a policy would contribute significantly in educating the younger generation on CSE.
27. Advocates of CSE also give emphasis to the importance of going beyond sexuality education to encompass relationship education. Patriarchal predisposition is commonplace in Sri Lankan society, which victimises and appropriates blame on the woman rather than the man in

⁴⁶ Thoughts shared by participants at all regional discussions. Also, see “Sri Lanka urgently needs Comprehensive Sexuality Education!” by Soysa, S, accessed <http://options.womenandmedia.org/2015/10/sri-lanka-urgently-needs-comprehensive-sexuality-education/>

⁴⁷ “Kuliyapitiya Child Could Be Infected With HIV Since He Sleeps Under Mother's Protection, Says Education Minister”, accessed <http://asianmirror.lk/news/item/15237-kuliyapitiya-child-hiv-mother-education-minister> also see “Open Letter to Education Minister: Introduce CSRE in Sri Lanka”, accessed <http://srilankabrief.org/2016/03/open-letter-to-education-minister-introduce-comprehensive-sexuality-and-relationship-education-in-sri-lanka/>

⁴⁸ “Sri Lanka to regain NO.1 world rank googling SEX”, accessed <http://grassrooted.net/2016/12/08/sri-lanka-to-regain-no-1-world-rank-googling-sex/>

⁴⁹ See “Why Support Comprehensive Sexuality Education?” by IPPF, accessed https://www.plannedparenthood.org/files/6914/0080/0572/2013-04UpdatedWhyCompeSexEd_handout.pdf as well as “Advancing Sexuality Education in Developing Countries: Evidence and Implications”, accessed <https://www.guttmacher.org/gpr/2011/08/advancing-sexuality-education-developing-countries-evidence-and-implications>

instances of sexual assault or violence. Patriarchal views within society also contribute to lack of equality and gross discrimination of women across Sri Lanka. Such values can be evidenced even in instances where CSE is implemented. Regional discussions on this subject exposed a common characteristic: discussions on sexual violence tended to lean heavily on the protection of the girl child from instances of rape and violence, and hardly towards preventing the boy child from inciting sexual violence. This highlights the importance of CSE and relationship education using a rights-based approach of mutual respect, equality, and non-discrimination towards all society members in its structure.

Sexual Orientation and Gender Identity (SOGI)

28. Homosexuality is illegal and a punishable offence under Article 365 A of the Penal Code of Sri Lanka⁵⁰. Moves to repeal this obsolete Victorian law has been campaigned for a number of years by civil society activists and organisations, which culminated in its latest attempt to decriminalise the lifestyle by adding a provision of non-discrimination based on sexual orientation in a list of recommendations for the new human rights Plan of Action. This, however, was soon defeated in Parliament by an overwhelming majority, and steps were taken by prominent Parliamentarians and the President himself publicly declaring the legalisation of homosexuality is in contravention to Sri Lanka's culture⁵¹.
29. Evidence purports that the LGBTIQ community of Sri Lanka has routinely been subjected to societal pressures and discrimination based on their sexual orientation. Many instances have been evidenced where LGBTIQ persons have been shunned from their homes, discriminated in the work place, and even find it difficult to find work, all based on their sexual orientation⁵². The LGBTIQ community is also repeatedly in contention with police forces that use the provisions set forth in the Vagrants Ordinance to lock up and discriminate against these particular members of society. Although it is acknowledged that repealing legislation will not change the collective mentality of a society overnight, it is indeed an important first step in the direction of progress, and a sign that the government supports the right to treat all its citizens with equal respect and dignity. A strong political will is therefore needed, as a potent symbolic evidence of progression towards equality.

⁵⁰ Op. ct. 39

⁵¹ "Cabinet blocks move to decriminalize homosexuality", accessed <http://www.frontpage.lk/page/Cabinet-blocks-move-to-decriminalize-homosexuality-/18285> also see response of LGBTIQ activists in "'Don't cheat on us' - Rosanna Flamer-Caldera", accessed <http://www.frontpage.lk/page/-Don-t-cheat-on-us-Rosanna-Flamer-Caldera/18350>, as well as "Submission on LGBTIQ Persons and Transitional Justice Mechanisms", accessed <http://womenandmedia.org/submission-on-lgbtig-persons-and-transitional-justice-mechanisms/>

⁵² "'All Five Fingers Are Not the Same': Discrimination on Grounds of Gender Identity and Sexual Orientation in Sri Lanka" by the Human Rights Watch (video included). Accessed <https://www.hrw.org/report/2016/08/14/all-five-fingers-are-not-same/discrimination-grounds-gender-identity-and-sexual>

30. The Transgender community also faces myriad issues in relation to societal pressures and economic difficulties as a result of limited work opportunities⁵³. However, the issuing of a government Circular allowing Transgender persons to legally change their names on their birth certificates was a welcomed move from the side of the government.
31. Religion plays a pivotal role in preventing⁵⁴ or promoting⁵⁵ the campaign for equality based on SOGI. Public denouncements of homosexuality by leading religious leaders of the country espouse the culturally and traditionally entrenched groupthink of society, especially the followers of this religion.
32. It is heartening to note the progressive stance taken by media outlets – print, electronic, and social – in relation to fostering a discussion on SOGI in Sri Lanka⁵⁶. From popular culture to newspaper articles, the media community is evidently contributing to a deconstruction of cultural predispositions by offering counter-narratives and approaching the subject from a humanistic angle, and this work must continue in order to create a rights-based discourse on the subject.

Commercial Sex Work (CSW)

33. Evidence indicates that over 50,000 women are engaged in sex work in Sri Lanka; however, the statistics are not representative as many sex workers are not identified due to the enforced criminal status⁵⁷. Sex work is criminalised by provisions set forth in the Vagrants Ordinance and Brothels Ordinance, which enable officers of the law to arrest and fine who they think would be commercial sex workers, and prohibit the establishment of brothels respectively.
34. CSWs are a key target population for HIV/AIDS, and as such must be reached for awareness on STDS and HIV prevalence, and encouraged to attend routine screening tests. The work of the STD clinic is severely stifled in this regard. In addition to this is the aspect of sexual violence that CSWs routinely have to be cautious about⁵⁸.
35. The women of post-war affected regions especially in the North face unique issues in this regard. War widows, as well as wives of men with disabilities owing to the conflict, were automatically given the position of sole bread-winners of their families. These women; some of whom have never worked before, were then forced to become sex workers in an attempt to sustain their families. Such women are not identified easily in society, especially due to the

⁵³ Ibid.

⁵⁴ “Church against homosexual marriage - Archbishop Malcolm Cardinal Ranjith”, accessed <http://www.frontpage.lk/page/Church-against-homosexual-marriage-Archbishop-Malcolm-Cardinal-Ranjith/17062>

⁵⁵ “Asgiriya Chapter calls for the right to equality for LGBT”, accessed <http://srilankabrief.org/2016/08/asgiriya-chapter-calls-for-the-right-to-equality-for-lgbt/>

⁵⁶ See “On being transgender in Sri Lanka”, accessed <http://www.commonwealthwriters.org/being-transgender-in-sri-lanka-smriti-daniel/>, “What It Means To Be Transgender In Sri Lanka”, accessed <http://roar.lk/features/means-transgender-sri-lanka/>. In addition to this, a number of articles have been identified in popular Sinhala print media outlets, discussing topics such as homosexuality and transgender in an empathetic manner.

⁵⁷ “The demand for sex workers is overlooked; laws would protect sex workers from violence and harassment” accessed: <http://www.dailymirror.lk/96581/legal-recognition-for-sex-workers-in-sri-lanka#sthash.6llApmjL.dpuf>

⁵⁸ Ibid.

dominant culture of shame associated with this line of work, making it increasingly difficult to assist them in relation to screening for HIV and STDS. They are also susceptible to sexual violence, as discussed in *paragraph 36*.

36. The cultural predispositions, especially of the North, will arguably create much tension in the progress towards legalising CSW. During the regional discussions it was noted that communities of the North bore a strong resentment to the legalising of CSW, as they believed it not only contravenes but insults their lifestyles and culture⁵⁹. This provides evidence to the fact that legalising CSW will not be easily received in certain regions of the country, which further emphasises the need for a strong political will in implementing legislation of this nature. It was therefore disappointing to note that the President himself publicly voiced his refusal to legalise CSW in Sri Lanka, proving that the work in this subject has a long and arduous journey ahead.

HIV/AIDS Prevention

37. According to statistics from the National STD Clinic of Sri Lanka for people living with HIV (PLHIV) in 2015, approx. 4000 adults and less than 100 children (under 15) live with HIV in Sri Lanka⁶⁰, while 2016 statistics show an increase to 4100⁶¹. The predominant mode of transmission is identified as engaging in unsafe sex. The most vulnerable age group is identified as 25-40 age groups; yet 2015 recorded 32 cases of HIV in the 15-25 age group. While the main cases of HIV/AIDS have been from the Western Province, the prevalence of HIV among MSM and especially bisexual men has increased. 23 male children (15-25 age groups) were diagnosed with HIV in 2015, of which they were predominantly MSM⁶².
38. Overall, Sri Lanka is known as a low-level HIV epidemic country; however, a number of challenges face further progress in this regard. This includes the lack of identification of MSM and sex workers, due to the criminalisation of their lifestyles. The stigma and social discrimination they face also affect the ability of PLHIV to live to their greatest potential.

⁵⁹ Some participants provided a valid justification for the prevalence of such traditionalist views. The theory is that due to a 30-year conflict, the general North was excluded from progress and development that occurred in the general South of the country. With this, social changes that occurred as a result of modernisation are yet to reach the borders of the North. Added to this is the concept of caste, heavily practiced in the North. This exposes a distinctive policy lacuna that has failed to take into regard post-conflict phenomena, and policies should be targeted with sensitivity towards such realities.

⁶⁰ HIV/AIDS Surveillance Data in Sri Lanka – 2015, accessed http://www.aidscontrol.gov.lk/web/images/pdf/quarterly_reports/HIV4thQ2015new.pdf

⁶¹ HIV/AIDS Surveillance Data in Sri Lanka – 2016, accessed http://www.aidscontrol.gov.lk/web/images/pdf/quarterly_reports/HIV%204th%20Q%202016N.pdf

⁶² Liyanage, S. Director, National STD/AIDS Control Programme

There is also a lack of a specific legislation for HIV⁶³, which will further enhance the low level HIV status accrued to Sri Lanka⁶⁴.

39. Lack of awareness of HIV and modes of transmission in society was exemplified in the incident reported in Kuliypitiya in the North Western Province, where a child was rejected access to education due to an assumption that he was diagnosed with HIV⁶⁵. This incident proved much still needs to be done in terms of awareness of the disease⁶⁶.

Recommendations

- 1) The Judiciary and Legislature must have a broader recognition and response mechanism to SRHR including the recognition of Sexual Orientation and Gender Identity, and take necessary measures to bring justice to a person who's SRHR has been infringed without discrimination. This must be given prominence, especially with regards to the Constitutional reform process currently under way, where the provision of equal rights for SOGI can be secured.
- 2) Cases of rape and incest, (including statutory rape) must be expedited, with penalties imposed on perpetrators.
- 3) An independent commission for women should be established to protect rights of women and to act as a watchdog on bodies that are expected uphold rights of women.
- 4) The health care system of Sri Lanka must be more responsive and sensitive to SRHR needs and must operate on a non-discriminatory policy in providing universal access to health care to all persons. To this end, training and awareness workshops must be mandated by the Ministry of Women and Children's Affairs, the Ministry of Health, the National STI Aids Control Programme

⁶³ Adding to the lack of specific legislation for HIV/AIDS in Sri Lanka is also the existence of legislation such as the Contagious Disease Ordinance of 1866, and the Quarantine and Prevention of Disease Ordinance of 1897. Provisions in these legislations can be construed to obstruct the freedom and autonomy of PLHIV, and gives persons of influence the power to unduly discriminate against them. For more information, see "A Critique: HIV/AIDS and the Legal and Policy Framework in Sri Lanka" by the Centre for Policy Alternatives, accessed: <http://www.cpalanka.org/a-critique-hiv-aids-and-the-legal-and-policy-framework-in-sri-lanka/>

⁶⁴ Op. ct. 8.

⁶⁵ "Kuliypitiya education authorities shun child over health misconceptions", accessed <http://newsfirst.lk/english/2016/02/kuliypitiya-education-authorities-shun-child-over-health-misconceptions/129168>. This was not an isolated incident however; the media recently reported the stifling of a child's education on the suspicion of her having HIV. Parents of other children in her school were seen forcing the child to be tested, in clear contravention of her privacy and right to an education. News coverage provided by BBC Sinhala, accessed: http://www.bbc.com/sinhala/sri-lanka-39333092?ocid=socialflow_twitter. Also see "Archaic Laws Stymie HIV/AIDS Work in Sri Lanka", accessed <http://grassrooted.net/2012/07/26/archaic-laws-stymie-hiv-aids-work-in-sri-lanka/>

⁶⁶ The decision to conduct a discussion forum on legal issues related to people living with HIV by the Legal Aid Commissions (LAC) that resulted in increased funding for LAC to continue conducting discussion forums of this kind is considered a progressive step towards strengthening HIV advocacy and representation for PLHIV. Article accessed <http://www.dailynews.lk/?q=2015/12/28/features/legal-aid-28122015>

and other relevant Ministries in order to sensitize hospital staff and health-care providers on SRHR related issues and to cultivate a more welcoming and positive attitude towards patients.

- 5) Education reform must be targeted with sensitization training given to teachers and reform in school curriculum to include Comprehensive Sexuality and Relationship Education as part and parcel of the curriculum, in a gender responsive, circumstantially sensitive manner.
- 6) Security measures must be in place and implemented to its fullest extent for Human Rights defenders/activists. SRH service providers should not be penalized for providing health services, as it is an infringement of a person's right to access health care. Furthermore, action must be taken against non-state parties that unduly interfere in SRH service provision.
- 7) SRHR advocacy and related activities including awareness raising and access to healthcare must extend beyond the recognized reproductive ages to include preadolescence and post-reproductive ages. This should be especially applied to CSE and the reformation of educational curriculum to support the same.
- 8) Laws on Abortion should be reformed to extend beyond cases of rape/incest, or when it poses a threat to the safety of the mother. The law must enshrine the woman's right to terminate her pregnancy as her choice, in order to regulate Abortion under hygienic and accepted health-care methods, which ensure the health and safety of the woman undergoing the procedure.
- 9) Discriminatory laws such as section 365 A of the Penal Code and sections of the Vagrants Ordinance (including but not limited to Article 7, and 9 (b)) must be reformed, encompassing equal rights for the LGBTIQ community, in par with all other citizens and members of the community.
- 10) Legislation such as the Brothels Ordinance, as well as sections of the Vagrants Ordinance (including but not limited to Article 3 (1) (b), Article 7 (1), and Article 9 (a)) should be revisited and re-drafted, with the view of legalizing commercial sex work for purposes of non-discrimination and ensuring the health and safety (especially in terms of STI and HIV prevention) of commercial sex workers, as well as for purposes of establishing and reviewing national estimates of the same.
- 11) .
- 12) Accountability for Sexual and Gender Based Violence must be given due recognition in areas of Transitional Justice (including internal conflict and displacement), as well as in the context of female migrant workers
- 13) The implementation of the Official Languages Policy must be adhered to by government institutions when providing access to health care and SRHR related services and resources. Police

stations, hospitals, and other institutions providing assistance or services for the public should be mindful of the demographic differences in Sri Lanka and must abide by the languages policy to ensure services are provided in the official language of their preference.

- 14) Sufficient resources must be allocated to SRHR related services and resources by the government. It must also be the responsibility of the government to ensure awareness is raised on relevant services and resources. A separate budget allocation should be marked for SRHR related services, upon extensive discussion with relevant stakeholders.
- 15) SRHR policies must take into consideration the changing demographic of Sri Lanka and its implications, including but not limited to statistics on Total Fertility Rates, Aging population, demographic dividend and associated vulnerabilities of youth when engaging in the employment sector.
- 16) It is important in the context of universal health coverage, that mental health service provision, including psychosocial support and counseling, also be acknowledged and included in the comprehensive service package. Accordingly, this sector should be enhanced by greater resource investment in the area including having trained clinical psychologist in the general health & social care cadre.
- 17) Recognition should be given to SRH Rights of persons with disabilities, as this is another angle that is rarely discussed in national policymaking. Equal access to SRH services must be provided without discrimination.
- 18) Accountability and monitoring mechanisms must be set in place to monitor and ensure these recommendations and other recommendations made to the State are implemented accurately. An independent monitoring body must be established to ensure such recommendations are integrated into the State system and are implemented accordingly, with annual progress reports submitted to Parliament and relevant stakeholders for further advocacy.