



Conjunctures of Silence:

Aphonias in the Prosecution of
Conflict Related Sexual Violence
in Sri Lanka -
The Vishvamadu Case

Danushka Medawatte, Neloufer de Mel,
Sandani N. Yapa Abeywardena, Ranitha Gnanaraj

Conjunctures of Silence: Aphonias in the Prosecution of Conflict Related Sexual Violence in Sri Lanka – the Vishvamadu Case

© 2022 The Gender, Justice and Security Hub

The London School of Economics and Political Science
Houghton Street
London WC2A 2AE

This publication is based on research supported by the UKRI GCRF Gender, Justice and Security Hub. Copyright to this publication belongs to the Gender, Justice and Security Hub. Any part of this publication may be reproduced with due acknowledgement to the authors and publisher. The interpretations and conclusions expressed in the publication are those of the authors and do not necessarily reflect the views and policies of the Gender, Justice and Security Hub or the donor.

Contents

Acknowledgements	3
Conjunctures of Silence: Aphonias in the Prosecution of Conflict Related Sexual Violence in Sri Lanka - The Vishvamadu Case	
Abstract	4
A Conspiracy of Silence: Aphonias in the Prosecution of Conflict Related Sexual Violence in Sri Lanka - The Vishvamadu Case	
Executive Summary	5
Introduction	5
Key Findings	5
Key Recommendations	6
Conjunctures of Silence: Aphonias in the Prosecution of Conflict Related Sexual Violence in Sri Lanka - The Vishvamadu Case	
1. Introduction	7
1.1 Speech and Silence on Sexual Violence	8
1.2 The Vishvamadu Case	9
2. Pre-Trial Gags	10
2.1 The Police Station	10
2.2 The Judicial Medical Officer	11
2.3 The Law's Silence	12
2.4 The State	14
2.5 Witness Protection	16
3. A Transformative Justice for CRSV	17
Conclusion	19
End Notes	20
References	21
Legislation and Policy Documents	24
Case Law	24
Interviews	24

Acknowledgements

This publication is based on activities and research supported by the UKRI GCRF Gender, Justice and Security Hub. The research was carried out under the Hub's Transformation and Empowerment stream, and we wish to thank the funder as well as members of the Hub for their support and encouragement throughout the research process. Special thanks are due to Prof. Christine Chinkin, Emerita Professor of International Law and founding Director of the Center of Women, Peace and Security at the London School of Economics who, as Principal Investigator of the Hub research project and a peer reviewer of this publication, provided many insightful comments. We also wish to thank all those who engaged with our research at two seminars organized by the Gender, Justice and Security Hub, and the Women and Media Collective respectively at which we presented our research findings. Appreciation is also due to the University of Colombo, the institutional affiliation of the first two authors of this publication, and the International Centre for Ethnic Studies for project management and support. We are especially grateful to Aaravi (pseudonym), a victim of CRSV, who spoke to us at length on her experiences of pursuing formal justice, and the legal and forensic experts whom we interviewed, including Prashanthi Mahindaratne, Attorney-at-Law, a former prosecutor at the Attorney General's Department and the United Nations War Crimes Tribunal (UNICTY). We also wish to acknowledge Sudath Attanayake for the digital layout of this publication.

Conjunctures of Silence: Aphonias in the Prosecution of Conflict Related Sexual Violence in Sri Lanka - The Vishvamadu Case

Danushka Medawatte,¹ Neloufer de Mel,² Sandani N. Yapa Abeywardena,³ Ranitha Gnanaraj⁴

1. Department of Public and International Law, Faculty of Law, University of Colombo

2. Department of English, Faculty of Arts, University of Colombo

3. Independent Researcher 4. Independent Researcher

ABSTRACT

Prosecution of conflict related sexual violence (CRSV) in Sri Lanka remains notoriously intractable. Through an analysis of the Vishvamadu case, this study examines a variety of silences and disablements across a range of articulations and practices that work against the successful prosecution of CRSV in Sri Lanka, and thereby the delivery of justice to women victim-survivors who seek redress through a formal judicial process. Drawing on a literature review of feminist scholarship on gender based sexual violence against women in contexts of armed conflict, analysis of national and international legal provisions, and in-depth interviews with stakeholders in the case, it provides an in-depth analysis of the systemic shortfalls, gaps in the law, and procedural blind spots which work against the delivery of due justice to victim-survivors of the crime. By doing so it calls attention to the multiple registers, other than the cultural, on which victim-survivors are marginalized and silenced, and based on its findings, provides recommendations on how a more transformative, consultative and participatory environment can be built towards providing victim-survivors due justice.

A Conspiracy of Silence: Aphonias in the Prosecution of Conflict Related Sexual Violence in Sri Lanka - The Vishvamadu Case¹

Danushka Medawatte, Neloufer de Mel, Sandani N. Yapa Abeywardena, Ranitha Gnanaraj

Executive Summary Introduction

Prosecution of conflict related sexual violence (CRSV) in Sri Lanka remains notoriously intractable. State denials of the crime and its states of exception have led to an impunity which complements the gendered cultural attitudes that stigmatize the victim-survivor into silence. The lack of witness protection, particularly in highly militarized contexts, has also resulted in underreporting.

While a robust body of feminist literature on the silence, and silencing, of women victims of CRSV exist, less attention has been paid to aphonias that emerge from the specificities of the Sri Lankan law, the evidence record, and the investigative and judicial process. This study attempts to fill this gap by examining a variety of shortfalls and communicative acts across a range of articulations and practices that mitigate against successful prosecutions of CRSV and the delivery of justice to victim-survivors. It asks, what do these silences correspond to from the time a victim-survivor approaches the police to make a complaint? Following the sequence a victim-survivor of CRSV who seeks formal justice would have to follow, it discusses shortfalls, paradoxes and inefficiencies at the police station, at the office of the judicial medical officer, and the trial itself. It also analyzes silences in legal definitions, the judicial quest for consent and corroboration, the appropriation by the State of the victim's voice in criminal prosecutions, conflicts of interest and the political will required to proceed with the prosecution of such crimes. Additionally, it asks questions about situating witness protection in relation to the perceived "finality" of the law. The discussion points to how the crisis of institutions in Sri Lanka impact on women victim-survivors of such crimes and suggests recommendations for a more transformative process in which they can become equal partners in the prosecutions of CRSV in a manner that also works towards greater gender security and justice.

The study draws on a literature review of feminist scholarship on gender based sexual violence against women, analysis of national and international legal provisions, and in-depth interviews with selected stakeholders in CRSV prosecutions. It provides an in-depth analysis of the Vishvamadu case which was on the sexual violence experienced by two Tamil women allegedly at the hands of four Sri Lanka army personnel, as its case study.

Key Findings

The study found that women victim-survivors of CRSV face multiple challenges, exacerbated in a context of ethnic conflict and militarization. The manner in which sexual violence itself is recorded in complaints at police stations, and the gaps in the judicial medical examination, the guidelines followed in compiling the medical legal report, and the reporting of its findings to the court displayed inefficiencies and systemic shortfalls. The Vishvamadu case has also taken eleven years to date, indicative of the long delays in the Sri Lankan judicial process.

In criminal cases, the prosecution procedure itself becomes a primary site of marginalizing victim-survivors as the State prosecutes and speaks on their behalf. In such circumstances, the victim's role is limited to that of a witness. In the case of the Vishvamadu women, the prosecutor from the Attorney General's department neither spoke to them nor to their lawyers about how charges were being framed. It was left to the police to communicate with them about dates of the trial etc., and that interaction too stopped at the High Court. Under the Assistance to and Protection of Victims of Crime and Witnesses Act No. 04 of 2015, popularly referred to as the Witness Protection Act, even if information on the case is not explicitly requested, a victim has a right to be present at all judicial proceedings including the Appeal - a right that cannot be exercised if the victim is not informed of the proceedings. These lapses meant that the principle

of consultation and the participatory rights of the victim-survivor in her case were severely undermined. Witness protection itself, which the women sought during the High Court trial, was also not provided by the State.

The silence of a legal definition of CRSV in the Sri Lankan law is another major obstacle to the prosecution of the crime with an appropriate threshold of penalty. In the absence of specific provisions for CRSV, the crime is currently prosecuted under Section 363 of the Penal Code as amended by Act No. 22 of 1995. This law is inadequate as it neither takes into account the highly militarized conditions under which CRSV occurs, nor the range of sexual violence that occurs in its context. In the case of rape, the language of the legal provision also accounts only for the violation of women's bodies, thereby leaving out male victims of rape, including detainees. At court, moreover, consent and corroboration are often sought even though the law does not require it. The silence in the legal definition also affects the legal recognition of victims and their families which in turn, prevents them from receiving adequate compensation. Punishments also falls short of a higher order of penalty that is called for, given the nature of the abuse of power that enables such crimes.

Key Recommendations

Based on the findings, and towards delivering due justice to victims of CRSV which also includes a transformative process, the study makes the following recommendations:

Gender Training: Mandatory and more robust training of police officers and judicial medical officers in SGBV and trauma to ensure gender sensitivity and the protection

of the dignity and rights of the victim-survivor. It is also recommended that a police officer of whatever gender preferred by the victim-survivor be present when the complaint is made at the police station, and a person of choice be also present at the medico-legal examination.

Guiding principles and user-friendly standard operating procedures (SOPs) in an easily accessible format to be developed which would provide both a practical step by step set of directives to stakeholders in cases of sexual violence (victims, befrienders and human rights defenders, the police, the JMOs, the prosecutors) to ensure that due process takes place and that the process itself is in the public domain.

Law Reform: A legal definition of CRSV to be included in the substantive law, and a review of legal standards on consent and corroboration in cases of sexual violence, the recognition of the impact of trauma on witness statements particularly in the context of intimidation and militarization, to be conducted. Existing legislation such as the Witness Protection Act which grants victim protection and recognizes victim statements to be fully implemented, and best practices from elsewhere be adapted to guarantee the participatory rights of victims in court.

-
1. This study is supported by the UKRI GCRF Research Hub on Gender, Justice and Security, under the stream of Transformation and Empowerment. We thank all those involved in the project for their invaluable support.

Conjunctures of Silence: Aphonias in the Prosecution of Conflict Related Sexual Violence in Sri Lanka - The Vishvamadu Case¹

Danushka Medawatte, Neloufer de Mel, Sandani N. Yapa Abeywardena, Ranitha Gnanaraj

1. Introduction

Prosecution of conflict related sexual violence (CRSV) in Sri Lanka remains notoriously intractable. State denial and exceptionalities leading to impunity, gendered cultural attitudes that stigmatize victims and prevent them from coming forward, and lack of witness protection “create strong incentives not to report experiences of violence” (Davies & True, 2017, p.2; Medawatte, 2020).² Erosion of the rule of law, underrepresentation of women in the justice and security sectors, and extra judicial and societal “vigilante justice” have also been identified as contributing to the impunity and lack of accountability at all levels] (United Nations, 2018). If, as Kravertz (2017) notes, prosecutions demonstrate a will to stamping out CRSV, the very few successful prosecutions of the crime in Sri Lanka to date indicates the lack of will on the part of a number of actors. This has also prevented the redirection of shame and stigma from the victim to the perpetrator that successful prosecutions would otherwise achieve.

Within Sri Lanka, prosecution of rape (not associated with conflict) itself remains below 10 per cent of all reported cases (Fulu et al, 2013), indicating a systemic failure to prosecute the crime. In relation to CRSV, as Davies and True (2017) note, the Sri Lankan response falls “far short of international legal standards on transitional justice, due process, and investigation” (p. 2). Although Sri Lanka has been a party to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) since 1981, CEDAW’s General Recommendations, particularly Nos. 30 and 33 on measures towards the preservation of women’s rights before, during, and after conflict, and their access to justice, remain largely ignored, pointing to the Sri Lanka’s insufficient commitment to these standards. Prosecuting CRSV, however, is also complicated by the different claims victim-survivors make on justice. While some seek a formal legal process towards accountability and punishment, others prefer to distance

themselves from retributive justice. A victim-survivor’s demands of justice can also change during her lifetime, so that while accountability and punishment through a formal legal process is pursued at first, a combination of factors - whether these be intimidations and threats, challenges faced during the trial, family commitments, or personal attitudinal changes - may result in a shift to the restorative. This oscillation, which is common in highly fraught and militarized conflict zones, works against the consistency and linearity that the formal justice process demands.

While there is a robust body of feminist literature on the silence, and silencing, of women victims of CRSV (Centre for Equality and Justice, 2018a, George & Kent, 2017; Fokus Women, 2017; Pinto- Jayawardena & Guthrie, 2016; Chinkin, 1994), less attention has been paid to other aphonias that emerge from definitions (or lack of) in the Sri Lankan law, the evidence record, and the investigative and judicial processes relating to a case. Our study attempts to fill this gap by examining a variety of communicative acts across a range of articulations and practices that mitigate against successful prosecutions of CRSV and the delivery of justice to victim-survivors. It asks, what do these silences correspond to, whether in legal definitions which contribute to the lack, or inability to hold onto, prosecutions of CRSV in the Sri Lankan context, or in the push-pull factors that make a government proceed or withhold prosecution of such cases? What silences emerge from the crisis of institutions which impact on women victim-survivors of the crime? Additionally, it asks, how do we situate witness protection in relation to the perceived “finality” of the law, and what is required for a more transformative process in which women victim-survivors become equal partners in the prosecution of CRSV in a manner that also works towards greater gender security and justice?

The study seeks to answer these questions by examining what is known in the legal record as “The Vishvamadu

Case”, which is of two women of Tamil ethnicity (whom we call Aaravi and Banu) who experienced sexual violence allegedly at the hands of four members of the Sri Lanka Army (SLA) attached to the Vishvamadu army camp in the northern province – an area that was a fierce battleground in the war fought between the Sri Lankan government’s security forces and the Liberation Tigers of Tamil Eelam (LTTE) over the formation of a separate Tamil State. It draws on a literature review of feminist scholarship on sexual and gender-based violence against women in general, CRSV cases in Sri Lanka, and national and international legal provisions. It also draws on two in-depth interviews with Aaravi, the woman who was gang raped in the Vishvamadu case who spoke to us with informed consent, and interviews with one of her legal representatives, a former Judicial Medical Officer (JMO) and expert in forensics and toxicology, and a former state prosecutor of CRSV. It also provides an analysis of relevant provisions in the Sri Lankan Penal Code, and the Vishvamadu legal record including statements by the JMO who examined the women, as well as the judgements. By doing so it examines a range of incidents, actions and actors, whether they play cameo roles or not, in the prosecution of the Vishvamadu case. It thereby builds an argument for institutional reform that could be transformative for enabling an environment in which women victim-survivors *partner* the State, the judiciary and society to stamp out CRSV. Such a transformation would also relieve women victim-survivors of shouldering the larger proportion of the burden, as they currently do, in coming forward to challenge such crimes.

1.1 Speech and Silence on Sexual Violence

Sexual violence in Sri Lanka has been kept in the public eye by many local women’s groups which have documented incidents, written about them for CEDAW shadow reports and held public vigils and private memorials.³ Analysis of the 1996 Krishanthi Kumaraswamy case by feminist scholars has also kept its emblematic status as a rare successful prosecution alive (Thomson-Senanayake, 2014; Kodikara & Emmanuel, 2016; Pinto-Jayawardena & Anantharajah, 2016). On an entirely different register, however, is the misogynist and sensationalized speech on sexual violence in the media (even when the victims are minors (UNICEF, 2017; Goonesekere & Amarasuriya, 2013)), as well as from the judicial bench. Abeywardena (2016), whose study was a Critical Discourse Analysis of judgements on rape cases,

noted that gender-based stereotypes are “invoked in judicial decisions [on rape] as a discursive practice” with women victims presented as revengeful, angry, deceitful, indecisive and seductive (p. 41). Such speech impedes, if not represses, due process and thus undermines justice and the rule of law.

Counterweighing such speech are the silences which are thorniest in contexts of CRSV, notably in the case of war time rapes. Shame that results from being targeted by both “friendly” and “enemy” forces, and the “mobilization of shame” that accompanies CRSV can lead to victim- survivors being subjected to sexual abuse by multiple parties active in an armed conflict (Chinkin, 1994, 326). Therefore, rape in war is not a matter of “chance” but indicative of “power and control structured by male soldiers” (p. 328). Other reasons that contribute to the CRSV story being “untold” are tied to stereotypical attitudes to sexual abuse. Kohn (1994) argues that “[m] any cultures view the rape of women as an affront to men” (203). These views on masculinity, community and nation are then consciously used by those who plan and execute such violence. This includes those who engage in custodial sexual violence. In the Sri Lankan context, Chulani Kodikara and Sarala Emmanuel (2016) have noted that neither the custodial sexual violence experienced by male detainees, nor the cases of sexualized torture and/or rape of women (including women detainees) have earned much acknowledgement from either the Sri Lankan public or the State.

Feminists have also pointed, however, to how the silence of women victims of sexual violence can be strategic and agentive in a context of intimidation and re-traumatization. George & Kent (2017) have observed, for instance, that an active choice to remain silent could signify a victim’s refusal to being shamed, thereby robbing the perpetrator of the “ambition to harm psychologically and physically” (p.5). They also contend that “exposure to conflict related SGBV may not be as identity consuming as much of the global discourse on its eradication suggests”, and that the “fate worse than death” framing ignores transactional contexts, often for food/personal security, or as acts of atonement and sacrifice for similar brutalities perpetrated by their own community (p. 5). Kodikara and Emmanuel (2016) make the claim, moreover, that we should not “automatically privilege disclosure over the right to silence” (p.28),

noting that accountability also includes restoration of the dignity and wellbeing of the survivor throughout her life-cycle. Acknowledging the validity of each of these arguments, it remains pertinent, nevertheless, to focus on systems of accountability for those victim-survivors who do seek redress through courts of law, as Aaravi and Banu did.

1.2 The Vishvamadu Case

The Vishvamadu case is of two Tamil women who, on 6 June 2010, suffered sexual violence allegedly at the hands of four Sri Lanka army soldiers stationed at the Vishvamadu army camp. Although the assault occurred after the armed conflict ended in May 2009, the case is indexical of how, as the CEDAW Committee noted in its General Recommendation 30, transition from conflict to post-conflict is not a linear process (para. 4). What is meant by “conflict related” should, therefore, be interpreted not strictly in relation to temporality, but in relation to circumstances, actors, victims, and the power-dynamics bearing on the situation.

Aaravi was a mother of two children and twenty-eight years old at the time she was gang raped. Banu, a mother of five, who was thirty-eight years old, had her arms tied and “checked” as to whether she was menstruating. Due to war related displacement, both women had earlier lived in the Ramanathan Refugee Camp in Vavuniya and had returned to a house belonging to Aaravi in Vishvamadu on 4 June 2010 in order to continue their livelihood slicing copra. The sexual violence took place two days after their return to Vishvamadu. The Inspector of Police who had visited the scene of the crime upon receiving a complaint from Banu’s mother on 7 June 2010, testified in court that Aaravi’s house was a hut made of sticks, 6 feet high with a floor area of 8’ X 10’ and located in the midst of a deserted “jungle area with thorny bushes” (C.A Case No. 250-252/2015, p.103-104).

When Aaravi went to the police station two days later to make her complaint (on finishing the medical examination), two police officers recorded her statement. Subsequently, the police team working on the preliminary inquiry took into custody the clothes she wore (black undergarment, frock and underskirt) as well as clothes worn by the SLA suspects (trousers, army T-shirts, a military scarf). During an identification parade held at

the Kilinochchi Magistrate’s Court on 14 June 2010, Aaravi, Banu, and Banu’s mother identified four of the suspects. After a trial at the Jaffna High Court, Judge M. Elancheleyan found the four accused guilty of committing gang rape on Aaravi by penetration and guilty of sexually abusing Banu. On 7 October 2015 they were sentenced to 20 years rigorous imprisonment, a fine of Rs.25,000 and compensation of Rs.500,000 to Aaravi. Their guilt was established “beyond a reasonable doubt” with the judge noting that Aaravi had shown “maximum resistance”, had not consented to sexual acts with the accused, that her evidence has not been rebutted, and that the medical evidence provided (despite its flaws as we discuss later) corroborated her account.

A sense of closure with the conclusion of the case at the High Court did not last long, however, as the convicted soldiers appealed against their conviction under Section 331 of the Code of Criminal Procedure Act No. 15 of 1979. In a decision dated 10 October 2019, the Court of Appeal decided that the trial judge had not “considered the infirmities of the identification” and that “therefore it will not be safe to act on the evidence available” (p. 4). Accordingly, the conviction of the accused appellants was set aside, and they were acquitted of all charges. In response, Aaravi lodged an appeal against the acquittals at the Supreme Court – a legal process yet to conclude. In the meantime, fearing for her safety, Aaravi and her family felt compelled to seek refugee status and relocate overseas.

Aaravi pushed back all attempts to silence her including from those within her own community (she called them “local people”) whom she alleged colluded with the security forces. They had urged her to withdraw her case promising “millions [to] send [them] abroad” (Aaravi, Interview, Sept. 2019). In this context her perseverance to continue with the legal process demonstrated courageous resistance. She was supported in this endeavour by women’s rights activists who, once the legal proceedings began, provided her safe shelter, psychosocial counselling, solidarity, and financial assistance to farm and develop her husband’s grocery store. This vital support, together with Aaravi’s resolve to seek formal justice reflected an understanding that what was being fought for was something bigger than an individual’s case.

2. Pre-Trial Gags

2.1 The Police Station

A common stumbling block for a victim of a crime such as CRSV in Sri Lanka, is in the recording of statements and gathering of evidence. When a crime takes place, the formal legal process begins at the local police station at which the victim or her family members make a complaint. Multiple concerns relating to power, gender and language arise at this stage. A victim of CRSV subject to sexual violence at the hands of State actors goes to the police mistrustful of the State and its agents (security forces, police) in the first place. As Purvis & Blanco (2020) observe specifically in relation to the non-reporting of sexual violence perpetrated by the police, victims “do not believe that the police will protect them” because the perpetrator may be a fellow officer. Research has also shown that victims are vulnerable to intimidation and reprisals against family members due to their reporting of a sexual assault particularly in “(post) conflict situations when perpetrators hold political power” (Traummuller et al, 2019, p. 2016; International Crisis Group, 2017). In Sri Lanka, a victim also has to often explain the sexual assault in detail to a male officer as the presence of a woman police officer is currently not mandatory either at the reporting stage or throughout the legal process. The inconsistent implementation of a policy adopted in the late 1990s of Women and Children’s Desks at police stations to provide gender sensitive focal points at each station remains a significant lack in this regard (Kodikara & Piyadasa, 2012). As studies have shown (Miller & Segal, 2018; Amaral et al, 2019), a strong correlative exists between an increase in reporting incidents of violence against women and greater numbers of women officers handling such cases. The need for increased female representation in the Sri Lankan police force was, in fact, recommended both in the United Nations Secretary General’s Report of 2018 and the International Crisis Group (2017) with the latter further recommending the deployment of more Tamil-speaking police officers trained to respond to GBV. However, there has been no consistent reporting by the Sri Lanka Police on these recommendations to date.⁴

Police bias against women, ethnic prejudice and non-safeguarding of minority language rights have also been well documented in the Sri Lankan context (Jayatilleke et al, 2010; Wijesekera et al, 2014; Wickrematunge, 2016; Women’s Action Network, 2016; Davis, 2020). In Aaravi’s

case, while there were two police officers present, one of whom spoke Sinhala, the other Tamil, her statement itself was recorded in Sinhala by the officer who spoke Sinhala based on the translation of her narrative by the Tamil speaking officer. Once recorded in Sinhala, a back translation of her statement was read out to her in accordance with the law.⁵ While the officers followed due process as required here, such a translation process risks semantic loss. It also shows that documentation of a narrative as important as this is unavailable to the victim in her primary language.

The recording of sexual violence itself at police stations is problematic given that, in cases of statutory rape, the complaints are logged according to two categories titled “with consent” and “statutory rape without consent”.⁶ This paradoxical classification (which accepts that in a rape there can be consent) has occurred without legal backing and contravenes Section 363(e) of the Penal Code which makes rape an offence against the body (although in the eyes of the Sri Lankan law this body can only be that of a woman) when committed “with or without her consent when she is under sixteen years of age, unless the woman is his wife who is over twelve years of age and is not judicially separated from the man.”⁷ In fact, on questioning the police for another research project, it was revealed that this classification of with, or without consent developed from internal decisions based on what was referred to as “grassroots level realities” where girls under the age of sixteen cohabit voluntarily with men and are subsequently brought before the police and the courts as prosecutrices by parents. The police classification is also a logical fallacy and an illegality because the applicable law does not consider girls under sixteen as having the legal capacity to consent to sexual intercourse. This points to how the police ignore or (mis) interpret the Penal Code in ways that can impact negatively on women, including victims of CRSV. This is because when consent is structural to how the police records complaints of sexual violence, indifference to cases of “with consent” can follow, resulting in non-prosecution or unsound judgements on such cases.

When a crime is reported at the police station, the police are required to immediately inform the Magistrate’s Court and obtain the appropriate orders to conduct further investigations.⁸ When the case is called, the Officer in Charge (OIC) and supporting police officer on the

investigation update the court on its progress by way of filing further reports. Once the police investigation is over, the Magistrate holds a preliminary inquiry. If he/she is satisfied that there is sufficient evidence to frame charges against the suspect/s to stand trial in the High Court, the case is forwarded to the Attorney-General with a copy of the proceedings and other relevant documents.⁹ This process took a year in the Vishvamadu case. Thereafter, if the Attorney General is satisfied that there is sufficient evidence, an indictment is forwarded to the High Court. This took yet another year as the Vishvamadu Indictments were served in the Jaffna High Court only in late 2012. Therefore, while the preliminary investigation took place in a timely manner, it took two years for the Indictments to be served and a further six months for the trial to begin on 1st April 2013. By the time the judgement was delivered in 2015, the entire case had taken five years.

2.2 The Judicial Medical Officer

The next point of contact for victims of CRSV in the legal process is the Judicial Medical Officer (JMO) who produces a Medico-Legal Report (MLR) to court. In the Vishvamadu case, the shortfalls in the JMO's investigative and reporting process marked other troubling layers of aphony and speech. To begin with, the lack of well trained, specialist JMOs in sufficient numbers in all parts of the country was, and remains, a major obstacle. Aaravi and Banu were examined by the JMO of the Vavuniya district and not Kilinochchi where the crimes occurred, because, as the latter stated apologetically in court, he had to "single handedly" manage four districts in the Northern Province "because there were no qualified JMOs" (C.A Case No. 250-252/2015, p. 85). Delays, or failure to conduct a detailed medical forensic examination also hinder the collection of evidence. As a former JMO and forensic and toxicology expert who spoke to us declared, "A victim who comes to us immediately is like a gem!". In the Vishvamadu case this did not happen. When questioned in court as to whether semen was found in Aaravi's vagina, the JMO responded in the negative, noting that she was sent to him two days after the incident at which point "she was having her periods" (C.A Case No. 250-252/2015, p. 94). In relation to Banu who was also menstruating at the time, the JMO used this to justify his lapse of not obtaining a vaginal swab (C.A Case No. 250252/2015, p. 96). The JMO clearly failed, in this instance, to summon the women at a slightly later date for a more detailed examination.

Although the Vishvamadu judgements did not consider the MLR to be defective, its gaps were nevertheless, seized upon by the prosecution. When questioned as to whether he had recorded the incidents Aaravi had disclosed to him in his MLR, the JMO responded, "Your Honour, I did not record *completely*, I had mentioned *briefly* in the column of 'history'" (C.A Case No. 250252/2015, p. 88. Our emphases). The JMO fails to explain the reasons for not recording Aaravi's account in full which is of paramount significance to her case. He also admits to having only partially recorded Banu's account "due to lack of space in the report" (C.A Case No. 250- 252/2015, p. 92). Furthermore, he uses the term "sexual abuse" instead of "rape" in his report on Aaravi. When probed during cross examination as to the reasons for this, he responds: "[t]his is a sentence commonly used by us. It cannot be termed as rape" (p. 95-6).¹⁰ In this response, the JMO was complying (even though he does not say so during cross-examination) with the *National Guidelines on Examination, Reporting and Management of Sexually Abused Survivors for Medico-Legal Purposes* compiled by the College of Forensic Pathologists of Sri Lanka in 2014 which states that "It is not the responsibility of the medico-legal examiner to determine whether a person has been 'raped' since that is a legal determination. Therefore the word 'rape' should not be used in the report" (p.16). This distancing from the legal definition does not, however, preclude a JMO from contending that there was penetration.¹¹ However, what was reported in the Vishvamadu MLR, according to the JMO, was his own summary of what the victim had said, in "ordinary" and "common" sentences, despite stating when cross-examined, that he knew the difference between rape and what he called "sexual nuisance" (C.A Case No. 250-252/2015, p. 95). The MLR is a document heavily relied on in court to corroborate the victim's narrative, and when it fails to provide a full record, it can stand in the way of a victim and due justice.

The medical examination itself is an invasive and daunting procedure. Until 2010 (the year Aaravi was raped) it included, as Thangarajah (2016) notes, the "two finger test" to access the hymeneal orificial diameter to assess the "history of the vagina" (p.173), a practice that lingers even though the law does not require it. It "epitomizes the understanding of sexual violence as mainly intercourse, and also highlights the lack of will to understand women's bodies or states of mind holistically in instances of sexual violence" (Thangarajah, 2016,

p.173). As a result, “the practice, among others, in spite of being an integral part of the continuum of violence, is almost never viewed as such” (Thangarajah, 2016, p.173). Thangarajah’s reference to “the continuum of violence” points to feminist knowledge of how such practices, even though they may take different guises, build on familiar everyday forms of violence against women, and that it is this normality which prevents them from being recognized and acknowledged as violent in the first place.

Today, the use of a Sexual Assault Forensic Evidence (SAFE) kit (commonly referred to as “the rape kit”) to standardize evidence collection is advocated with guidelines issued by the Ministry of Health. They include the following recommendations: that the kit be used for evidence collection if the alleged incident took place within 72 hours of examination, although the period may be extended as necessary; that a record be made of all collected samples and the name of the person who collects them and that separate envelopes be used for materials collected from different locations (The College of Forensic Pathologists of Sri Lanka, 2014). The recommendations also provide for the collection and recording of information on the victim’s history and DNA evidence towards corroboration of the victim’s narrative (Thangarajah, 2016). However, as Thangarajah (2016) argues, although the SAFE kit assumes an objective neutrality and standardizes the evidence gathered, it “systemiz[es] the very same gendered violence upon women’s bodies in the process of evidence collection” (p. 174) because the medical history form, which is part of the kit, remains a subjective assessment, and the requirement that the victim’s oral narrative must match the signs of violence on her body corroborating non-consensuality remains intact. Such corroboration remains, then, a “default discriminatory assumption that in cases involving sexual abuse, a woman victim’s evidence is unreliable” (Wijayatilake cited in Thangarajah, 2016, p.174). In its expectation of a linear, “rational” narrative by the victim it also fails to account for the impact of trauma (Thangarajah, 2016, p.174).

In the absence of trauma counselling and women JMOs who may be more empathetic when evidence extraction takes place, victims could be dissuaded at this stage from pursuing justice any further. In an article on rape survivors based on interviews with eight such women in Chicago, Ahrens (2006) notes that the accumulated

blame women victims gather from their interactions with “insensitive”, “cold”, and “unsympathetic” “community system personnel” such as police officers, medical staff and even counsellors, led the women to question “the effectiveness of disclosure” of the crime they suffered (p.271). The same insensitivity of JMOs to victims in Sri Lanka as evident in the Vishvamadu case record amounts to a pre-trial silencing of what actually occurred. In Aaravi’s case, however, her own determination and support from women’s groups and human rights defenders propelled her forward.

2.3 The Law’s Silence

The lack of a legal definition for CRSV in the Sri Lankan Penal Code constitutes a significant obstacle to its successful prosecution. Gomez & Rana (2017) note that while the Penal Code criminalizes several offences such as rape, grave sexual abuse and sexual harassment, the legal definitions of these crimes provide limited recourse to a CRSV survivor. Noting moreover, that the Convention Against Torture Act (1994) also contains several gaps and does not address CRSV directly, Gomez & Rana (2017) argue for special legislation that would prosecute CRSV as a crime against humanity and a war crime. In the absence of specific provisions, existing ones have to suffice. Section 363 of the Sri Lankan Penal Code as amended by Act No. 22 of 1995 is the law which provides a substantive definition of rape, along with explanations relevant to its interpretation followed by the punishment for rape, gang rape and custodial gang rape in Section 364. But this provision is woefully inadequate as it does not cover the many sexual offences that occur in the context of conflict which range from rape to sexual slavery, forced prostitution, forced pregnancy, forced abortion, enforced sterilization, forced marriage and other forms of sexual violence of comparable gravity (United Nations, 2019). The silence in the legal definition also affects the legal recognition of a victim. Commenting on CRSV in the Ukraine, the Office of the High Commissioner for Human Rights (Strategy for Prevention of and Response to Conflict Related Sexual Violence, 2018) stated that victims of CRSV should be recognized as victims collectively or individually, and that their family members and other dependents could also be recognized as victims. But none of this is currently possible in Sri Lanka because it has not adopted a domestic legal definition of CRSV (Center for Equality & Justice, 2018b).

Despite Section 363 recognizing rape as a criminal offence, there are several obstacles to prosecution posed by this substantive provision. First, it requires the victim-survivors to prove non-consent to sexual intercourse. Second, the law continues to declare which bodies “can be raped” and by whom because the language of the provision only imagines rape as an offence committed by a man against a woman (Thangarajah, 2016; Abeywardena, 2016). This leaves men who are raped, including those in custodial detention, with no redress. Third, conflict as a crucial context and an aggravating circumstance that requires the imposition of a higher penalty similar to that which is envisioned by Section 364(2) remains unaccounted for; which, if included, justifies the imposition of a higher penalty because of the severity of the crime and the nature of misuse and/or abuse of power and authority (by taking advantage of one’s official position) in its commission.¹² Each of these obstacles mark aphonias which work against justice and accountability.

Due to this lacuna in definitions, judges often proceed to look for consent and fail to take into account the highly militarized power relations that exist in contexts of conflict. Consent, as we know, “unnecessarily points to the behaviour of the victim and ultimately contradicts itself” by drawing on substantive law that is meant to be applied to sexual violence in “times of peace” (Schomburg & Peterson, 2007, p.140). What kind of consent remains another grey area. Even though explanation (ii) of Section 363 in the Sri Lanka Penal Code states that “[e]vidence of resistance such as physical injuries to the body is not essential to prove that sexual intercourse took place without consent”, this threshold has not been completely dispelled in Sri Lankan courts of law given how the necessity of proving force remains a recurring motif in judgements on sexual violence. For instance, in *Kamal Addararachchi v. The State* [2000] 3 SLR 393, the judges’ speech carrying this quest for consent noted that:

“Absence of such tell-tale marks is a circumstance that was strongly supportive of the sexual act having taken place with her consent...there being no injuries either on the prosecutrix or on the accused-appellant there appears to be no independent corroboration relating the act of sexual intercourse having been committed on the prosecutrix against her will or without her consent.”

Corroboration is another area in which legal regression occurs as judges rely on corroboration as a “rule of prudence” although this requirement was legislatively removed from the Sri Lanka Penal Code in 1995 (Act No.22). Accordingly, in 2002, Justice J.A.N. de Silva held that,

“Corroboration is not a sine qua non for a conviction in a rape case. It is only a rule of prudence. If the evidence of the victim does not suffer from basic infirmity and the probability factor does not render it unworthy of credence, as a general rule there is no reason to insist on corroboration. But, in a trial without a jury there must be an indication in the judgment that the judge had this rule in mind” (*Inoka Gallage v. Kamal Addararachchi and Another* [2002] 1 Sri LR 307, 308).

This dictum in *Inoka Gallage v. Kamal Addararachchi and Another* [2002] was cited by the High Court in the Vishvamadu case which had to proceed to the Appellate Court because the evidence given at the High Court trial was considered insufficient.

The quest for corroboration can, moreover, collapse into a search for consent. This happens when the court places the onus on the woman victim-survivor to prove her innocence and if the court deems the woman “sexually immoral”, her account of the sexual violence runs the risk of being devalued at best and disregarded at worst. In such situations, the court could demand “corroborative” evidence because it approaches the allegation of rape “from the position that the prosecutrix is providing false evidence and therefore, should be looked at with suspicion” (Abeywardena, 2016, p. 38). In such trials the general approach has been to say that “if a conviction is based on the evidence of a prosecutrix with no corroboration, it would not be illegal on that sole ground. However, in the case of a grown-up and married woman, it is always safe to insist on such corroboration” (C.A Case No. 250-252/2015, p. 224). This is partly animated by the court’s consciousness “of the fact that it is dealing with the evidence of a person who is interested in the outcome of the charge levelled by her” (C.A Case No. 250-252/2015, p. 226). even though all victims of crime would be interested in the outcome of the case, whether married or not! While, in the Vishvamadu case, the acquittals at the Court of Appeal were not based on consent and corroboration (as part of the victims’

conduct) but infirmity of the identification parade, the High Court judge's reference to Aaravi's utmost resistance to the sexual violence was indicative of the continuing importance of these twin rubrics in adjudications.

2.4 The State

Sexual violence is deemed an offence against the State, which is why the Attorney General represents the victim, the reason being that the victim is a State subject whose victimization is equivalent to a harm against the State. Christie (1977) observes that in a modern criminal trial because the conflict between two parties (i.e., a perpetrator and a victim) is converted into a conflict between one of the parties (the perpetrator) and the State, the victim is represented by the State. The rationale that is presented for this conversion is that any crime consists of "wrongdoing which directly and in serious degree threatens the security or well-being of society" (Allen, 1931, as cited in Ormerod, 2008, p.10). Even though one of the primary drivers for State prosecution of crimes is the maintenance of law and order and protection of the rights of victims, it results in an *appropriation* and thereby weakening of the victim's own voice. Christie (1977) observes,

[the victim] has lost participation in his own case. It is the Crown that comes into the spotlight, not the victim. It is the Crown that describes the losses, not the victim. It is the Crown that appears in the newspaper, very seldom the victim. It is the Crown that gets a chance to talk to the offender, and neither the Crown nor the offender are particularly interested in carrying on that conversation. The prosecutor is fed-up long since. The victim would not have been. He might have been scared to death, panic-stricken, or furious. But he would not have been uninvolved. It would have been one of the important days in his life. Something that belonged to him has been taken away from that victim" (p. 7-8).

Once a case reaches the Attorney General's Department, these concerns heighten. The victim's role as a witness, a provider of information relevant to the investigation or the prosecutor, becomes a limited one. Prosecutors rarely brief the victim when framing the charges, nor do they check the evidence with the victim even though they speak on the latter's behalf in court. In the Vishvamadu case, neither Aaravi nor her legal counsel were spoken to by the prosecutors of the Attorney General's department.

It was only the police that communicated with her, informing her about case dates and when she was required to give evidence, but this too was only up to the trial at the High Court. When it came to the Appeals process there was no information provided to her or her lawyers by either the police or the AG's department. This appropriation by the State of the victim's voice occurs even when she takes the witness stand, as Aaravi did in the Vishvamadu case, because her role in court is essentially a cameo one, "guided" by the prosecutor to answer in particular ways and dwarfed by other actors in court. Aaravi told us, "...judge listens to the police officers. They listen to police and do what has been requested by them. Judge never listens to our story" (Aaravi, Interview, 2019).

Aaravi's marginality became even more stark when, in the Court of Appeal which led to the acquittal of the four accused in 2019, she was totally absent from her own case. The Attorney General's Department failed to inform Aaravi of the appeals process. Information on one's case on request is a right of a victim under the Assistance to and Protection of Victims of Crime and Witnesses Act No. 04 of 2015. Even if information on the case is not explicitly requested, a victim has a right to be present at all judicial proceedings including the appeal - a right that cannot be exercised if the victim is not informed of the proceedings. In Aaravi's case, she was unable to exercise this right as she got to know of the acquittals through a neighbour who had heard the news on the radio (Interview with Legal Representative of the victim, March 2020). By failing to provide information regarding the appeal process to Aaravi, the Attorney General's Department went, therefore, against the spirit of the law. The victim's participatory rights were undermined, and she became, as Christie (1977) noted of what happens to the victim when the State takes over, a mere "triggerer-off of the whole thing" (p.3). Sachithanandan and O'Reilly (2017) make a similar point when they state that "... historically, victims of crime [have] had no role in criminal proceedings in Sri Lanka, beyond making an initial complaint and perhaps testifying as a witness" (p.233). The desire to be an "integral part of the case procedure" given the impact its outcome can have on their lives (Antonsdóttir, 2018, p. 351) is thereby denied to victims. They become "a sort of double loser" firstly, vis-a-vis the offender and secondly in being denied rights to full participation in what is often one of the more important ritual/healing encounters in their life (Christie, 1977, p. 3).

The pursuit of justice becomes altogether more fraught when the alleged perpetrator(s) belongs to the State military. In this context, as happened in the Vishvamadu case, the State has to investigate and prosecute another State party as *well* as represent the victim. The State thereby mediates the voices of *all* parties involved in the crime. This conflict of interest led Pinto-Jayawardena and Anantharajah (2016) to observe that the Attorney General's Department demonstrates a "historical reticence" in prosecuting cases of rape particularly when State parties are the alleged perpetrators (p.54). It must be acknowledged, however, that institutional responsibility does not fall solely on the shoulders of one specific State office such as the AG's Department. Prosecutorial functions are based on the nature of the evidence that is provided to it by other State agents such as the police and the JMO. How robustly the evidence has been gathered has an impact on whether, or not, a case concludes in a manner favourable to the prosecution. In the Vishvamadu case, the alleged flaws in the identification parade that led to the acquittals of the accused at the Court of Appeal lay outside the scope of the AG's Department, but adversely affected the outcome Aaravi sought from the court.

The relationship between the AG's Department and police is, however, an undeniable site of disablement for the victim-survivor particularly when both agencies shrug off responsibility to each other, blurring the division of labour. As Pinto-Jayawardena and Anantharajah (2016) contend "the historical relationship of complicity between the Attorney General and the police undermines the transparency of Sri Lanka's justice mechanisms, and can make it difficult to identify with clarity where the onus for progressing with a matter lies" (p.56). This relationship could be why lawyers from the AG's Department often stop short of blaming the police for ineffectual investigation and vice versa (Centre for Policy Alternatives, 2019). As Amnesty International (2009) noted of Sri Lanka's Commissions of Inquiry, one of their major shortcomings has been that while they focused on conducting their own confidential investigations as well as public inquiries, they failed to highlight the failures of the police and the AG's Department. Following on, Amnesty International (2009) declared that "a detailed critique of the performance of these two institutions is urgently needed, as they have consistently failed to bring to justice perpetrators of criminal offences associated with gross violations of human rights" (p. 13).¹³

It is important to remember, nevertheless, that when all the State actors do come together, and there is political will to prosecute (as happened in the Krishanthi Kumaraswamy case (1996-1998) which had the support of the then President Chandrika Kumaratunga, the military police, the CID and the AG's Department, it does make all the difference to the successful prosecution of a case (P. Mahindaratne, Interview, November 2020). This political-military consensus becomes doubly important when investigations have to be carried out in conflict zones during an ongoing war (P. Mahindaratne, Interview, November 2020). Under the black letter of the law, a Trial-at-Bar is a prerogative granted by the Chief Justice. That this procedure is now commonly categorized in Sri Lanka as arising from Presidential will is, therefore, a misrecognition, but one that is telling for pointing to both the political pressure brought to bear on the judiciary and the exceptionalities carved out by successive Sri Lankan governments whether for, or against, prosecution. While the Krishanthi Kumaraswamy case and the Vidya case (the gang rape of a teenage girl in Jaffna in 2015) are examples, respectively, of successful and quick prosecutions because of conducive political conditions under the President Chandrika Bandaranaike Kumaratunga and the Yahapalanaya governments respectively,¹⁴ impunity has been far more common. Take, for instance, the Sri Lanka government's periodic report to the CEDAW Committee (2013) in which it noted,

It is worthwhile to note that only 18 incidents out of a total of 375 reported incidents during the conflict and in the post conflict periods (January 2007-May 2012) can be attributed to the Security Forces. Therefore, the inference that the presence of the military contributes to insecurity of women and girls in the former conflict affected areas is baseless and disingenuous (our emphasis) (p.7,9).

The use of the adverb "only" to describe eighteen incidents of CRSV at the hands of the military points, in effect, to a political attitude that underwrites states of exception for the security forces. It completely ignores the concluding remarks on CRSV by the CEDAW committee which requested Sri Lanka to implement a "zero tolerance policy for sexual violence perpetrated by the army and the police" (CEDAW Concluding Observations on the Eighth Periodic Report of Sri Lanka, 3 March 2017, para. 25(a)). This command failure in implementing a zero tolerance on CRSV has paved the way, historically, for

direct political interference into police investigations and the condoning of transactional relationships (bribery, collegiality) between those in custody and the police in favor of the former (Thomson-Senanayake 2014). As Laurel Baig (2016) averred, reflecting on sexual violence cases prosecuted under the ICTY, under-investigation and prosecutorial lapses are a result of an inherited “legacy of historical silence” on sexual violence (p. 333). Political will that either denies, downplays, or rights the wrongs play a major role in whether there is a continuum or rupture of this “historical silence”.

2.5 Witness Protection

The lack of witness protection is another significant contributory factor to the complete or partial silencing of victim-survivors of sexual violence. Under the Assistance to and Protection of Victims of Crime and Witnesses Act No. 04 of 2015 (Section 21), “A victim of crime or a witness who has reasonable grounds to believe that any harm may be inflicted on him due to his cooperation with, or participation in, any investigation or inquiry into an offence or into the infringement of a fundamental right or the violation of a human right being conducted or his intended attendance at or participation in any judicial or quasi-judicial proceeding, shall be entitled to seek protection from such real or anticipatory harm.”¹⁵ However, the implementation of this law has been found wanting (Borham, 2019; Gomez & Rana, 2017). The consequence of this has been witness intimidation leading to displacement from homes when the threat of secondary violence becomes a high probability (Pinto-Jayawardena & Anantharajah, 2016). In the Vishvamadu case, the Attorney – at – Law appearing on behalf of the victims drew attention in court to this issue. He argued that Aaravi is an “important witness” and as such, should be provided appropriate police protection. He also noted that Aaravi “wishes to live in another place with her husband and two children” (C.A Case No. 250-252/2015, p. 44). Furthermore, her lawyers objected to the bail request of the suspects when the case was first heard, contending that if bail was granted it would create fear and conflict amongst her community leading to a disruption of the post-war resettlement process. They also argued that bail for the accused would create mistrust of court procedure and “in the event of the suspects being released, the victims, the two women [could] be exposed to more possibilities of threats and intimidation” (C.A Case No. 250-252/2015, p. 62). This

was exactly what Aaravi experienced. Regular army patrols in her area were a source of intimidation (Aaravi, Interview, Sept 2019). She also noted that on the Order Day (the final day of the Trial when the judgement is delivered), the wives and relatives of the accused had “made [her] scared”, threatened her and “acted like beating” her as they came out of the courtroom (Aaravi, Interview, Sept 2019). She credited her safety on that day only to the lawyers and activists who had accompanied her to court (Aaravi, Interview, June 2021) indicating an absolute failure on the part of State to provide her the protection to which she was entitled.

Witness protection becomes a real concern following acquittals. When the accused are discharged in court, societal and legal perception is that these former convicts are no longer guilty and are, thereby, absolved of committing the crime. The victim, on the other hand, is looked upon as a source of false accusations. Acquittals also leave victim-survivors outside the scope of witness protection as the case is deemed concluded. However, this need not be the case because the provision stipulates that a request for protection can be made to the court “where the relevant judicial proceedings are scheduled to commence or where proceedings are pending or have been conducted” implying that even subsequent to the conclusion of a judicial proceeding (even if it is in the Supreme Court), a request for protection can still be made. When a request is made, the granting of protection depends on several conditions such as its actual need, the availability of resources, and other prevailing laws (Section 22). Therefore, the victim has to show a valid need for protection, meaning that the burden of proof must be met. In a context where protection was sought at the High Court but not granted, as in the Vishvamadu case, and where the formerly convicted persons are free, victim-witnesses are vulnerable to threats - an insecurity all the more keenly felt when those acquitted are from the security forces. This was evident in how Aaravi and her family were harassed following the acquittals. She was arrested twice on what she called “fake” charges, including one in which she and her son were taken into custody for “hitting the police”. No formal charges were framed against her, giving credence to her view that these arrests were harassment and intimidation rather than a breach of law and order on her part. Aaravi noted that she “got justice”, yet the release of the men meant that no woman would get justice for such crimes

and that there was no real closure the law could provide (Aaravi, Interview, Sept. 2019).

3. A Transformative Justice for CRSV

To counter the authorizing practices that silence victims and prevents the prosecution of CRSV as noted above, a sharper spotlight is required on both individual State actors and its institutions if the crime is to be successfully prosecuted in ways that confer due justice on victim-survivors. As Gomez & Rana (2017) have also argued, a legal definition of CRSV must be included in the substantive law. A review of legal standards involving consent and corroboration should also take place affirming the validity of fragmented witness narratives in the context of trauma and intimidation. Reform should also include ways to mitigating delays in the legal process – a frequent critique of the Sri Lankan legal system, evident also in the length of time of the Vishvamadu case. Removal of non-summary proceedings as advocated in December 2007 by the Attorney General at the time, C.R.de Silva when he spoke at the Asian Crime Prevention Foundation (Satyapalan, 2007), is also an option to consider.

Beyond legal reform, transparency in decision-making and a predictable investigative and judicial process are prerequisites without which there can also be no public confidence in the system. In fact, the CEDAW Committee observed in *Fatma Yildirim (deceased) v Austria* (2007) that the political will that brings about such legal reform “must be supported by State actors, who adhere to the State party’s due diligence obligations.” Given this emphasis on due diligence, the proposal that “guiding principles, policies and standard operating procedures should be written, and easily accessible to the public” (Sachithanandan & O’Reilly, 2017, p. 226) is pertinent. The benefit of such SOPs would be both as a practical step by step set of directives to officials (thereby cutting down on bureaucratic discretion and bias), and information in the public domain on due process. The latter would also keep to the spirit of Article 14A of the Sri Lanka Constitution which recognizes the need to “foster a culture of transparency and accountability in public authorities” and promote a society where citizens can participate fully in public life “through combating corruption and promoting accountability and good governance” – goals towards which the Right to Information Act, No. 12 of 2016 was adopted. Once a set of SOPs on due process is made public, the gaps

that occur thereafter, or a process that falls short of expectations which emerge from the SOPs alerts victim-survivors that something is amiss. In the absence of such SOPs, the “small expressions of reluctance not to investigate”¹⁶ or file a full account in a MLR cannot be determined by the victim for sure, because such acts reside in the grey area of official discretion which keeps the victim guessing.

While sets of circulars already exist and function as directives to police officers, JMOs and prosecuting authorities, they are not centralized but fragmented and, as a result, authorities act in an ad hoc manner without exchanging information with each other (Mahindaratne, February 2021). At times they require updating to coincide with legislative change. There is a clear need, therefore, for a set of SOPs to be available in one document and digital site, which acts as a guide when making and taking down complaints of CRSV at the police station to conducting investigations, prosecution, discontinuation of prosecution and issuance of reasons for such decisions, along with the laws and/or regulations that give these principles legal force. The development of SOPs for the various stakeholders would contribute towards streamlining and standardizing these procedures. SOPs for the Judicial Medical Officer (JMO) and nurses, for instance, would call for the medical examination to be conducted under conditions that ensure the dignity of the victim and that the victim’s account of what happened is recorded in detail in the Medico-Legal Report. While prosecutors at the AG’s Department do undergo comprehensive training on procedures, a set of “go-to” SOPs when checking the case record, verifying evidence, and communicating with victims in a manner that ensures their protection and right to information is an urgent necessity. A checklist in Sinhala, Tamil and English for persons accompanying victims to the Police Station would also be beneficial.¹⁶ The SOPs should be user-friendly, and guide the victim, moreover, on the importance of keeping the details of the incident in mind and preserving evidence, including the safe keeping of all documents, clothing and other items of interest, receipts and reference numbers of complaints and the case as provided by the authorities.

The rights of the victim have often been invoked as the rationale for the existence of transitional justice mechanisms (McEvoy & McConnachie, 2012). It has also been argued, however, that the victim produced

by these mechanisms remains, by and large, a passive subject, dependent on other agents and organizations to speak on his/her behalf (Gready & Robins, 2014). A transformative approach would be fundamentally victim-survivor oriented and envision change in the very *forms* of how they participate in the processes at hand including legal ones, enabling them to be subjects in their own case (Lambourne, 2014). Such participatory agency can take many forms and should go beyond merely recognizing the rights of the victim-survivor. A sustainable two-step roadmap towards this objective would be first, to implement to the fullest extent already existing legislation in Sri Lanka such as the Witness Protection Act Sri Lanka (also in the interest of speed), and second, to amend or create new legislation adopting best practices from elsewhere.

The Assistance to and Protection of Victims of Crime and Witness Act No. 04 of 2015 (commonly known as the Victims and Witness Protection Act) is crucial in this regard. While historically, the victim's participation in criminal proceedings has been limited to reporting the offence to the police and subsequently serving as a witness during the trial (Sachithanandan & O'Reilly, 2017), the Act allows for victim-survivors to make a statement regarding how the offence has impacted his/her life, including his/her "body, state of mind, employment, profession or occupation, income, quality of life, property and any other aspects". This statement can be submitted to court in three instances: (1) following the conviction of the offender and prior to the determination of the sentence, (2) in the event of an appeal, and (3) in the event of any person in authority considering the grant of a pardon or remission of an imposed sentence. This is similar to provisions made in other jurisdictions such as the United Kingdom where victims are given the "opportunity to explain in their own words how a crime has affected them, whether physically, emotionally, financially or in any other way" (European Union Agency for Fundamental Rights, 2019).

Such victim impact statements allow victim-survivors a greater degree of engagement in the proceedings. Furthermore, the Act provides not only for victims to "receive prompt, appropriate and fair redress, including reparation and restitution" in consideration of the harm, damage or loss suffered by them due to an offence, but also guarantees the right to be informed of legal

remedies (including civil remedies), the progress of the investigation and the dates of the criminal proceedings. Under the Act they also have the right to be represented by a legal counsel without prejudice to the prosecution. These rights are very similar to those vested in victims and the procedures followed in the civil law-based civil party system (*partie civile*) adopted in France.¹⁸ Therefore, the Witness Protection Act already recognizes a number of victim rights and provides for greater measures of victim participation than previously envisioned within the Sri Lankan legal system. The effective enforcement and creative deployment of these provisions by the judiciary is, however, what is at stake.

While recent Sri Lankan legislation has moved beyond recognition of victims merely as witnesses and adopted principles visible in the *partie-civile* system, it is important to note that the recognition of such victim rights stems from the position that he/she has suffered damage due to an offence and so it allows for civil-law claims to be made alongside the criminal proceedings. A similar observation is made regarding the *partie-civile* system as exists in France (European Union Agency for Fundamental Rights, 2019). This is consistent with the understanding and practice that criminal proceedings remain a matter between the State and an Accused, and the responsibility of prosecution remains with the State prosecutor. A rights-based approach would, however, ensure comprehensive participatory rights to the victim. It would accept that a violent offence such as CRSV is a violation of the rights and legitimate interests of an individual, and would, in addition to recognizing his/her rights to legal representation as in a *partie-civile* system, also permit the victim "full fair trial rights" by joining the proceedings as a "joint prosecutor". This, in the German judicial system is known as *Anschluss als Nebenklager*, or as a party assisting the prosecutor while in the Portuguese system the term used is *assistente* (European Union Agency for Fundamental Rights, 2019). This ensures the active participation of victim-survivors in criminal proceedings, and includes further rights, as in Austria, opportunities for them to question any person heard during the trial, to ask that criminal proceedings be continued even if the prosecutor discontinues them, and, as in Germany, to summon witnesses. Sri Lankan common law is yet to adopt these practices which acknowledge the severity of the harm and grants the victim a legitimate and recognized platform from which to speak.

CONCLUSION

Analyzing the gaps and aphonias in substantive and procedural law, the police investigative procedure, the judicial medical record, the AG's department and witness protection in the Vishvamadu case, this study highlights conjunctures of silence that complement, and at times feed off, the highly intimidatory effects of militarization and the cultural conditions that censor victims of CRSV. It built an argument for paying attention to the cameo roles in an investigative and prosecution process, and what occurs on the side lines of a trial, which, nevertheless, play an important role in how justice is dispensed - particularly from a victim-survivor's perspective. What happens, for instance, when a woman police officer is absent when a complaint is being made by a woman victim of CRSV, or when the language of the complaint is not the victim's primary language, or when the Court Sergeant from the police station appointed to be present at court is not the same officer who recorded the complaint or investigated the case? What happens when there is a dearth of experienced consultant JMOs with adequate training on gender and trauma? How does a victim seek justice when there are alleged technical procedural lapses in identification parades? Who takes responsibility for such lapses?

At the same time, this study highlighted gaps in the law and its implementation, and towards standardizing and making more transparent the complaint, investigative and prosecutorial processes, recommended the development of a set of user-friendly publicly available SOPs for victims, befrienders/ human rights defenders, the police, JMOs, and prosecutors. It also argued for greater participatory rights of victim-survivors in court.

The National Action Plan on Women, Peace, and Security (NAP on WPS) of Sri Lanka which is currently at validation stage, seeks to introduce law reforms and issue SOPs to expedite court processes in a gender sensitive manner. It recognizes that all individuals who come into contact with victim-survivors of sexual violence need to undergo training in gender sensitization to avoid some of the pitfalls highlighted in this study.¹⁹ Under the thematic area "Women's Protection and Security", the draft NAP also recognizes that sexual violence associated with displacement and other conflict related issues require special remedial measures. In doing so, it lays down the preliminary foundations that, if adopted, will contribute to bringing Sri Lanka's legal framework

within the goals of the WPS agenda. There are, however, significant gaps in both the substantive and procedural law in Sri Lanka such as the lack of a legal definition for CRSV, prosecutorial appropriation of the victim's voice in court, and breaches in witness protection that ought to be addressed if the reforms we have identified in relation to the Vishvamadu case are to be proactively responded to through multiple interventions including the NAP on WPS. There is also a question as to whether, or not, the content of the draft NAP on WPS will be diluted particularly in the context of UNHCR resolution 46/1 of March 2021 titled "Promoting reconciliation, accountability and human rights in Sri Lanka" which has been met with stiff resistance by the Sri Lankan government.²⁰

Christine Chinkin and Mary Kaldor (2013) wrote of prosecutions of gender based violence and sexual violence in war:

The number of cases prosecuted at the international or national level remains low. The low reporting rate, fear, gender stereotypes, and myths about sexual violence all inhibit access to justice and contribute to a climate of impunity. Other significant obstacles to preventing, investigating, and prosecuting the killings of women include the failure of police intervention, a lack of implementation of security measures for women, repeated attacks on law-enforcement officials and women's rights advocates, and inaccessible detention locations in areas under the control of insurgents and other illegally armed groups. Institutional weakness also results in impunity in cases of gender related killings of women, as a lack of respect for the rule of law, corruption, and poor administration of justice are the norm." (179).

The points raised above such as low reporting rates, failures in investigations, the non-implementation of measures towards gender security (and protecting witnesses), and institutional weaknesses can be seen in CRSV cases in Sri Lanka more generally, and in the Vishvamadu case in particular. Aaravi and her family bear deep scars resulting from the consequences of all these failures. After her rape, she was cast out by three of her nine siblings. She became the victim of domestic violence. Her family life, which she noted was joyful before, was irrevocably damaged due to these multiple forces of violence. She expressed fear especially concerning her children when recalling an incident in

which the daughter of a woman from her area who had stood up to some men had been kidnapped, raped, and murdered. She declared that she no longer felt safe in Sri Lanka. After the acquittals of the suspects in her case, she sought refugee status for herself and her family overseas.

Kodikara and Emmanuel (2016) argue that it is important that formal judicial processes should not displace feminist ones and advocate restorative feminist practices such as prioritizing acknowledgment of what happened, private memorials, communal performance of last rites, and circles of care – all of which would break the silence around sexual crimes and maintain “longterm relationships so as to move beyond a fixed point of interaction that is only about the sexual violence” (p. 24-5). At the level of official reparations and restoration, this would entail compensation to the victim and the family, and acknowledgement of the crime through, for instance, recording the actual cause of death in death certificates where women who have been killed following sexual violence. Kodikara and Emmanuel (2016) do not exclude the judicial process. Rather, their argument is about going beyond the violence of the crime itself towards a lifetime of care for the victim-survivor. This study accounted for women victims of CRSV such as Aaravi and Banu who actively sought formal justice but were silenced on various registers. It contends that for both women, coping with what happened required both public accountability and due judicial process, as well as more informal circles of care.

ENDNOTES

- 1 This study is supported by the UKRI GCRF Research Hub on Gender, Justice and Security, under the stream of Transformation and Empowerment. We thank all those involved in the project for their invaluable support.
- 2 In this study we use the terms “victim” and “victim-survivor” in ways that reflect temporality. Victim is used to depict a state in the immediate aftermath of the crime, and victim-survivor is used to describe a state associated with more long-term coping with the trauma.
- 3 Amongst these were the Sooriya Women’s Development Centre, the Women and Media Collective (WMC), the Mannar Women’s Development Federation (MWDF), and the Women Action Network (WAN).
- 4 Comparing the data provided by the Sri Lanka Police and the National Police Commission Bulletin Board, the Centre for Women’s Research (2019) noted that the total approved cadre of the police was 83,872 (as displayed at the National Police Commission Headquarters in September 2018), but that the actual cadre was 75,371. It was further observed that the total number of approved women police cadre as a percentage of the total service is 13.4% but the actual number of women police officers amounts to only 11.7% of the total service. Furthermore, the report noted that it was difficult to obtain statistics on the ethnic composition of the Sri Lanka Police.
- 5 Section 110 of the Code of Criminal Procedure Act requires a police officer to reduce into writing any statement made, and this record is to be shown or read to the person making the statement, or, if they do not understand the language in which it is written, interpret it to the person in a language they understand. Such a person will then be at the liberty to explain or add to the statement.
- 6 What the police mean by the second categorization is that the under-aged girl had engaged in ‘voluntary’ sexual intercourse with a romantic partner who may or may not himself be under-aged. The applicable law does not consider girls under 16 as having the legal capacity to consent to intercourse. However, due to this categorization, the police adopt an indifferent attitude when investigating such offences which often lead to non-prosecution.
- 7 The Muslim Marriage and Divorce Act No. 41 of 1975 allows for the marriage of a Muslim girl who has attained the age of twelve years (see Section 23).
- 8 Section 136 of the Code of Criminal Procedure Act.
- 9 Section 145 or Section 136(e) of the Code of Criminal Procedure Act.
- 10 The National Guidelines on Examination, Reporting and Management of Sexually Abused Survivors for Medico-Legal Purposes compiled by the College of Forensic Pathologists of Sri Lanka in 2014 states that “It is not the responsibility of the medico-legal examiner to determine whether a person has been ‘raped’ since that is a legal determination. Therefore the word ‘rape’ should not be used in the report.” (p.16).
- 11 Interview with former Judicial Medical Officer, November 17, 2021.
- 12 The Penal Code provides for rigorous imprisonment for a term not less than ten years and not exceeding twenty years, a fine, and an order to pay compensation to the victim for injuries caused for offences committed in respect of Section 364(2). Furthermore, Section 364(3) of the Penal

Code provides for a punishment of rigorous imprisonment for a term not less than fifteen years and not exceeding twenty years with a fine, in respect of a person who commits the offence of incest in raping a woman under 16 years of age.

- 13 Under the Presidential Commission on Inquiry Act No. 17 of 1948, a series of Commissions of Inquiry (COIs) have been created. The first was created by President Ranasinghe Premadasa into 'involuntary removals of persons' in January 1991. Since then, until 2009, there have been 9 COIs tasked with the mandate of investigating enforced disappearances and other human rights-related inquiries. One of the most notable COIs during this time included the Commission of Inquiry to Investigate and Inquire into Serious Violations of Human Rights (The Udalagama Commission) which listed 15 serious cases of alleged human rights violations. However, as Amnesty International (2009) notes, while the COIs predominantly identified the alleged perpetrators, very few prosecutions took place. Subsequent to 2009, notable COIs include the Lessons Learnt and Reconciliation Commission (LLRC) and the Commission to investigate Complaints regarding Missing Persons (The Paranagama Commission) (for critique of the Paranagama Commission, see: Centre for Policy Alternatives. (2014). The Presidential Commission to Investigate into Complaints regarding Missing Persons: Trends, Practices and Implications.
- 14 The governments led by President Chandrika Bandaranaike Kumaratunga (1994-2005) and President Maithripala Sirisena (known as the Yahapalanaya (Good Governance) government (2015-2019) were both relatively liberal governments that enabled the political conditions necessary for prosecution of cases of sexual violence.
- 15 Under the Assistance to and Protection of Victims of Crime and Witnesses Act No. 04 of 2015, a request for protection can be made to the Authority, the Division, a Court, a Commission or the officer-in-charge of a police station, or by the Court on its own volition. (See further Sections 21-25 of the Act). When a request is made, the granting of protection will depend on a consideration of the need for protection, the availability of resources, and other prevailing laws (Section 22). Therefore, the Victim has to show there is a need for protection i.e. the burden of proof must be met.
- 16 K. Grewal, at a discussion organised by the Women and Media Collective on an earlier draft of this paper, June 15, 2021.
- 17 S. Emmanuel, at a discussion organised by the Women and Media Collective on an earlier draft of this paper, June 15, 2021.
- 18 In the Partie-Civile system allows a victim to, if they so choose, bring a civil-law based claim for compensation within the criminal proceedings itself. This system not

only recognises the right of a victim to be a civil party in a criminal proceeding, but vests victims with additional rights including the right to receive information about both the progress of an investigation as well as the case, make requests in a case, access the case file (and obtain a copy of it), and be informed of important decisions (European Union Agency for Fundamental Rights, 2019). As the partie-civile does not challenge the notion that the criminal proceedings remain a matter between the state and an Accused, and the responsibility of prosecution continues to remain with the prosecutor, the adoption the principles of a partie-civil approach in Sri Lanka is consistent with the existing procedural practices of the state maintaining the responsibility of prosecution.

- 19 The first author was the National Lead Consultant engaged in the formulation of this National Action Plan on Women, Peace and Security in Sri Lanka.
- 20 The Resolution notes the lack of accountability in domestic mechanisms and stresses the importance of a process of accountability for all human rights violations. It also calls upon the Sri Lankan Government to fulfil its commitments on devolution of political authority, ensure impartial investigation and prosecution, if warranted, of human rights violations, ensure effective and independent functioning of local institutions relating to human rights such as on missing persons and reparations, and protect civil society actors. The Resolution also expresses serious concern at emerging trends over the last year inter alia of sexual and gender-based violence, and emphasizes the importance of allowing the Office on Missing Persons and the Office for Reparations to proceed with interim relief measures for those affected.

REFERENCES

- Abeywardena, S. N. Y. (2016). Images, myths and stereotypes: A critical discourse analysis of the construction of the 'female' in judicial pronouncements on rape in Sri Lanka. *LST Review*, 28(341), 37-44.
- Adhikari, P., & Hansen, W. L. (2013). Reparation and reconciliation in the aftermath of the Civil War. *Journal of Human Rights*, 12(4), 423-446. <https://doi.org/10.1080/14754835.2013.812465>
- Ahrens, C. E. (2006). Being silenced: the impact of negative social reactions on the disclosure of rape. *American Journal of Community Psychology*, 38(3-4), 263-274. <https://doi.org/10.1007/s10464-006-9069-9>
- Allen, C. (1931). The nature of a crime. *Journal of Comparative Legislation and International Law*, 13(1), 1-25.

- Amaral, S., Bhalotra, S., & Prakash, N. (2021). *Gender, crime and punishment: Evidence from women police stations in India* (IZA DP No. 14250). Discussion Paper Series. Retrieved from: <https://www.iza.org/publications/dp/14250/gender-crime-and-punishment-evidence-from-women-police-stations-in-india>
- Amnesty International. (2002). *Sri Lanka: Rape in custody*. Retrieved from: <https://www.amnesty.org/download/Documents/116000/asa370012002en.pdf>.
- Amnesty International. (2009). *Twenty years of make-believe: Sri Lanka's commissions of inquiry*. Retrieved from: <https://www.amnesty.org/download/Documents/48000/asa370052009eng.pdf>.
- Antonsdóttir, H, F. (2018). 'A witness in my own case': Victim-survivors' views on the criminal justice process in Iceland. *Feminist Legal Studies*, 26, 307-330.
- Baig, L. (2016). Sentencing for sexual violence crimes. In S. Brammertz & M. Jarvis (Eds.), *Prosecuting Sexual Violence at the ICTY* (pp. 262-298). Oxford University Press.
- Borham, M. (2019, February). Witness protection authority: Still faltering after three years. *Sunday Observer*.
- Bouris, E. (2007). *Complex political victims*. Kumarian Press.
- Centre for Equality and Justice. (2018a). 'The social scar': Stigma arising from conflict related sexual violence in Sri Lanka. Retrieved from: <http://cejsrilanka.org/wp-content/uploads/The-Social-Scar-Research-Study-.pdf>.
- Centre for Equality and Justice. (2018b). *Rape and sexual violence in conflict: Definitions under domestic and international law*. Retrieved from: <http://cejsrilanka.org/wp-content/uploads/Rape-and-Sexual-Violence.pdf>.
- Centre for Policy Alternatives. (2019). *The need for accountability in Sri Lanka's criminal justice system: A glance at seven emblematic cases*. Retrieved from: https://reliefweb.int/sites/reliefweb.int/files/resources/CPA_Criminal-Justice.pdf
- Chinkin, C. (1994). Rape and Sexual Abuse of Women in International Law. *European Journal of International Law*, 5 (3), 326-341.
- Christie, N. (1977). Conflicts as property. *The British Journal of Criminology*, 17(1), 1-15.
- David, R., & Choi, S, Y, P. (2005). Victims on transitional justice: Lessons from the reparation of human rights abuses in the Czech Republic. *Human Rights Quarterly*, 27(2), pp. 392-435.
- Davies, S. E., & True, J. (2017). When there is no justice: Gendered violence and harm in post- conflict Sri Lanka. *The International Journal of Human Rights*, DOI: 10.1080/13642987.2017.1366025
- Davis, C., P. 2020. Trilingual blunders: Signboards, social media, and transnational Sri Lankan Tamil publics. *Signs and Society*, 8(1). <https://doi.org/10.1086/706036>.
- Duff, R., A. (2009). *Answering for crime: Responsibility and liability in the criminal law*. Hart Publishing.
- European Union Agency for Fundamental Rights. (2019). *Victims' rights as standards of criminal justice: Justice for victims of violence crime Part I*. Retrieved from: https://fra.europa.eu/sites/default/files/fra_uploads/fra-2019justice-for-victims-of-violent-crime-part-1-standards_en.pdf
- Fokus Women & British High Commission Colombo. (2017). *Report: Tackling stigma of conflict related sexual violence through the Sri Lanka national action plan on sexual and gender-based violence (SGBV NAP)*. Retrieved from: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/645640/SV_Workshop_Report_-_Sri_Lanka.pdf.
- Fulu, E., Warner, X., Miedema, S., Jewkes, R., Roselli, T. & Lang, J. (2013). *Why do some men use violence against women and how can we prevent it? Quantitative findings from the United Nations multi-country study on men and violence in Asia and the Pacific*. Retrieved from: <http://www.partners4prevention.org/sites/default/files/resources/p4preport.pdf>.
- George, N., & Kent, L. (2017). Sexual Violence and hybrid peacebuilding: how does silence 'speak'? *Third World Thematics: A TWQ Journal*, 2(4), 518-537. doi:10.1080/23802014.2017.1395710
- Gomez, S., & Rana, P, S. (2017). *Case Studies from Sri Lanka and Nepal*. In Conflict-related Sexual Violence in Asia-Pacific: Putting Victims/Survivors First. Asia-Pacific: United Nations Entity for Gender Equality and the Empowerment of Women. UN Women. Retrieved from: <https://asiapacific.unwomen.org/-/media/field%20office%20eseasia/docs/publications/2017/05/wps-00-final-crsv- package.pdf?la=en&vs=318>.
- Goonesekere, S., & Amarasuriya, H. (2013). *Emerging concerns and case studies on child marriage in Sri Lanka*. Retrieved from: <http://www.iccnwispncanarc.org/upload/pdf/2501970655EMERGING%20CONCERNS%20AND%20CASE%20STUDIES%20ON%20CHILD%20MARRIAGE%20IN%20SRI%20LANKA%20%20.pdf>.

- Gready, P., & Robins, S. (2014). From transitional to transformative justice: A new agenda for practice. *The International Journal of Transitional Justice*, 8, 339–361, doi:10.1093/ijtj/iju013
- International Crisis Group (2017). *Sri Lanka's conflict-affected women: Dealing with the legacy of War* (Asia Report No289). Retrieved from: <https://www.crisisgroup.org/asia/south-asia/sri-lanka/289-sri-lankas-conflict-affectedwomen-dealing-legacy-war>.
- Jamar, A. (2018). *Victims' inclusion and transitional justice: attending to the exclusivity of inclusion politics*. Retrieved from: www.politicalsettlements.org/wp-content/uploads/2018/12/2018_Jamar_Victims-Report.pdf.
- Jayatilleke, A. C., Poudel, K. C., Yasuoka, J., Jayatilleke, A. U., Jimba, M. (2010). Intimate partner violence in Sri Lanka. *BioScience Trends*, 4(3), 90-95.
- Kaldor, M., & Chinkin, C. (2013). Gender and New Wars. *Journal of International Affairs* 67 (1), 167-187.
- Kodikara, C., & Emmanuel, S. (2016). Global discourses and local realities: armed conflict and the pursuit of justice. In K. Jayawardena & K. Pinto-Jayawardena (Eds.), *The Sri Lanka Papers* (pp. 1-31). Zubaan.
- Kodikara, C., & Piyadasa, T. (2012). *An exploratory mapping of domestic violence intervention services in Sri Lanka*. Retrieved from: <http://ices.lk/wp-content/uploads/2018/07/Domestic-Violence-1.pdf>.
- Kravetz, D., (2017). Promoting domestic accountability for conflict-related sexual violence: The cases of Guatemala, Peru, and Colombia. *American University of International Law Review*, 32(3).
- Lambourne, W. (2014). Transformative justice, reconciliation and peacebuilding. In Buckley- Zistel, S., Beck, T., K., Braun, C., & Mieth, F. (Eds.) *Transitional Justice Theories* (pp. 19-39). Routledge.
- McEvoy, K., & McConnachie, K. (2012). Victimology in transitional justice: Victimhood, innocence and hierarchy. *European Journal of Criminology*, 9(5), 527-538.
- Medawatte, D, S. (2020). Conflict related sexual violence: Patriarchy's bugle call. *XXI Georgetown Journal of Gender and the Law*, 21(3), 671-703.
- Miller, A. R., & Segal, C. (2019). Do female officers improve law enforcement quality? Effects on crime reporting and domestic violence. *The Review of Economic Studies*, 86(5), 2220-2247. <https://doi.org/10.1093/restud/rdy051>
- Ormerod, D. (2008). *Smith and Hogan's Criminal Law*. Oxford University Press.
- Pinto-Jayawardena, K., & Anantharajah, K. (2016). A crisis of 'legal indeterminacy' and state impunity. In K. Jayawardena & K. Pinto-Jayawardena (Eds.), *The Sri Lanka Papers* (pp. 36-169). Zubaan.
- Pinto-Jayawardena, K., & Guthrie, J. (2016). Introduction. In K. Jayawardena & K. Pinto-Jayawardena (Eds.), *The Sri Lanka Papers* (pp. xix-xvi). Zubaan.
- Purvis, D. E., & Blanco, M. (2020). Police sexual violence: Police brutality, #metoo, and masculinities. *California Law Review*, 108(5).
- Robins, S. (2011). Towards victim-centred transitional justice: Understanding the needs of families of the disappeared in post conflict Nepal. *The International Journal of Transitional Justice*, 5(1), 75–98.
- Sachithanandan, P., & O'Reilly, A. (2017). A post-conflict criminal justice mechanism for Sri Lanka: Practical challenges and next steps. In B. Fonseka (Ed.), *Transitional justice in Sri Lanka: Moving beyond promises* (pp. 212-244). Centre for Policy Alternatives.
- Satyapalan, F. R. (2007, December). AG blames non-summary proceedings for laws' delay. *The Island*.
- Schomburg, W., & Peterson, I. (2007). Genuine consent to sexual violence under international criminal law. *American Journal of International Law*, 101(1), 121-140.
- Strategy for Prevention of and Response to Conflict Related Sexual Violence. (2018). Retrieved from: <https://www2.unwomen.org/-/media/field%20office%20eca/attachments/publications/country/ukraine/crsv%20strategy%20en.pdf?la=en&vs=2115>.
- Thangarajah, P. (2016). Rape and the evidentiary process in Sri Lanka. In K. Jayawardena & K. Pinto-Jayawardena (Eds.), *The Sri Lanka Papers* (pp. 170-192). Zubaan.
- The College of Forensic Pathologists of Sri Lanka. (2014). *National guidelines on examination, reporting and management of sexually abused survivors for medico-legal purposes*. Retrieved from: <http://medical.sjp.ac.lk/downloads/forensic-medicine/Medico%20Legal%20Purposes.pdf>.
- The Government of Sri Lanka. (2013). *Concluding observations on the combined fifth to seventh periodic reports of Sri Lanka (Addendum)*. Retrieved from: <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPpRiCAqhKb7yhsvxlFhYepfYmW0eRMA3oVuthnMhmvjmrbiBuwH11Ql0Gs500QvO9T%2FhW0IezDXwWnVHTb5WfN9JRM03VY5bcASRNEXUOQ6jBXtzhmfYqp4LbHOAHwymcr%2Bx6hEQA2uxuw%3D%3D>

Thomson-Senanayake, J. (2014). *A sociological exploration of disappearances in Sri Lanka: "Not even a person, not even a word..."* Asian Human Rights Commission.

Traunmuller, R., Kijewski, S., & Freitag, M. (2019). The silent victims of sexual violence during war: Evidence from a list experiment in Sri Lanka. *Journal of Conflict Resolution*, 63(9), 2015-2042. DOI: 10.1177/0022002719828053

UNICEF. (2017). *Preventing violence against children in Sri Lanka: Country discussion paper*. Retrieved from: <https://www.stopchildcruelty.com/media/doc/1554788404.pdf>.

United Nations (2018). Report of the Secretary General on Conflict-related Sexual Violence. S/2018/250. Available at: <https://www.un.org/sexualviolenceinconflict/wp-content/uploads/reports/sg-reports/SG-REPORT-2017-CRSVSPREAD.pdf>

United Nations (2019). *Report of the Secretary General on conflict-related sexual violence (S/2019/280)*. Retrieved from: <https://www.un.org/sexualviolenceinconflict/wp-content/uploads/2019/04/report/s-2019-280/Annualreport-2018.pdf>.

United Nations. (2018). *Report of the Secretary General on conflict-related sexual violence (S/2018/250)*. Retrieved from: <https://peacekeeping.un.org/sites/default/files/sg-report-2017-crsv-spread.pdf>.

Wickrematunge, R. (2016, May 30). *A tale of two languages: Sri Lanka's efforts to implement a sound language policy*. Himal Southasian. <https://www.himalmag.com/a-tale-of-two-languages/Wijesekera, P., Samuel, K., Kodikara, C., Haniffa, A., Saroor, S., Sachithanandam, S., Wijesekera, S., Divakara, P. 2014. Report of the Leader of the Opposition's Commission on the prevention of violence against women and the girl child. Retrieved from: http://gbvforum.lk/r-library/document/Report%20of%20the%20Leader.pdf>.

Women's Action Network. (2016). *Women's access to justice in the North and East of Sri Lanka: CEDAW shadow report submitted by Women's Action Network (WAN)*. Retrieved from: https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/LKA/INT_CEDAW_NGO_LKA_25964_E.pdf.

Woodworth, A. (2017). Judicial accountability for conflict related sexual violence in Sri Lanka. In B. Fonseka (Ed.), *Transitional justice in Sri Lanka: Moving beyond promises* (pp. 245-271). Centre for Policy Alternatives.

Legislation and Policy Documents

Assistance to and Protection of Victims of Crime and Witness Act No. 04 of 2015

Code of Criminal Procedure Act No. 15 of 1979

Convention Against Torture Act (1994)

National Action Plan on Women, Peace, and Security (NAP on WPS)

Penal Code Ordinance 1883

Case Law

Inoka Gallage v. Kamal Addararachchi and Another [2002] 1 Sri LR 307

Kamal Addararachchi v. The State [2000] 3 SLR 393

P. Shantha Subasinghe and Others v. Hon. Attorney General (the Vishvamadu Case) (C.A Case No. 250-252/2015; H.C. Jaffna Case No. 1569/2012)

Prosecutor v. Dragoljub Kunarac Radomir Kovac and Zoran Vukovic Case No. IT-96-23-T & IT- 96-23/1-T dated 22 February 2001)

Somarathne Rajapakshe and Others v. Hon. Attorney General (Krishanthi Kumaraswamy Rape Case) [2010] 2 SLR 113

Interviews

Aaravi, Interview, Sept 2019

Aaravi, Interview, June 2021

Interview with Legal Representative of the victim, March 2020

Mahindaratne, P, Interview, November 2020

Mahindaratne, P, Phone Interview, February 2021

Interview with a former Judicial Medical Officer, November 2021