

PROJECT PROFILE

The Potentialities and Politics of Transformation

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About the Project

This study engages with the politics and potential of transformative justice in Sri Lanka in the wake of its multi-decade civil war (1983-2009). It does so by analysing rural women's access to justice in the aftermath of the war, as well as the specific legal recourses and systems to support victim-survivors of conflict related sexual violence (CRSV).

It is well documented that in Sri Lanka, women (and men) rarely seek formal justice for CRSV. The project is interested in understanding how and why this is the case. It looks at cases where women had sought formal justice but were faced with substantial challenges. In doing so, the project found a variety of challenges that work against the successful prosecution of CRSV in Sri Lanka.

The project took two sites of study: a) A rural border village and b) The Vishvamadhu case as an example of CRSV and the judicial process. Each of these case studies have gender (as a socio-cultural trope, a practice, and a lived identity), law enforcement, evidence-gathering and institutional reform as cross-cutting themes. The project engaged directly with victim-survivors, the police, judicial medical officers, and human rights defenders through a series of training workshops in several districts across the country to develop and raise awareness on a set of standard operating procedures developed by the research team based on its findings with key recommendations for future good practice.

Key Findings

- **Rural Sri Lankan women do not have homogenous experiences of living through the civil war.** The narratives of rural Sri Lankan women who experienced grave trauma in Sri Lanka's civil war point to differing memories and dissenting views on accessing the formal criminal justice system for war time harms.
- **The assumptions made about victim-survivors' motivations for formal justice need to be re-examined.** The data points to the need for nuancing a common assumption that anger and resentment against perpetrators of conflict-related violence is the norm – a conjecture also informed by an adversarial legal system. Local cultural norms and religious beliefs can weigh in, particularly when the formal judicial process is experienced as daunting and distanced. When this occurs, victim-survivors of conflict related violence can opt to walk away from the judicial process altogether.
- **Victim-survivors of conflict related sexual violence (CRSV) face multiple challenges when seeking formal justice.** There are systemic inefficiencies and shortfalls in the criminal justice system, as evidenced by the inconsistent way sexual violence is recorded in complaints at police stations, 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.
- **There are both long delays on the Sri Lankan legal process and inadequate communication with victim-survivors, circumventing their legal rights.** The Vishvamadu case took 11 years, indicative of the long delays in the Sri Lankan judicial process. In addition to this, the prosecutor from the Attorney General's department neither spoke to the complainant nor to her lawyers about how charges were being framed, or the subsequent appeals process. Communication from the police stopped at the High Court. These lapses meant that the principle of consultation and the participatory rights of the victim-survivor were severely undermined.



What actually happens in practice at the police station is different. For instance, one of the women police officers told me the complainant quite often comes with a male. And then the male speaks on her behalf again. And the male tends to know a little bit more Sinhala. So then, when the Sinhalese police officer takes down the complaint, your ear goes to the language you're familiar with. Right? So, at that level a kind of patriarchy as well as dominant linguistic patterns prevail. "

PROFESSOR NELOUFER DE MEL

- **The definition of rape in the Sri Lankan penal code is based solely on penetration. There is no definition of conflict related sexual violence.** By defining these forms of violence narrowly, or not defining them at all, the state enacts a form of silencing that ignores and marginalises groups of victim-survivors. This silencing shapes how complaints are taken, how evidence is presented, and how judgements are made. It leaves the victim-survivor of CRSV out of the language of the law, and inadequately supported at a practical level.
- **Victim-survivors' voice is removed, and they are spoken for.** In the Sri Lankan legal system victim-survivors cannot give an impact statement in court. Instead, they are spoken for, and their role becomes limited to that of a witness. Here the prosecution procedure itself becomes a primary site of marginalising victim-survivors as the state prosecutes and speaks on their behalf.
- **Prosecutorial decisions and poor evidence gathering systems hamper efforts for justice for survivor-victims.** There is concern that an over-focus on the narrow legal definition of rape takes away a much-needed emphasis on the wider range of trauma of other forms of sexual violence. Furthermore, perpetrators are often not convicted based on technical grounds and the burden of evidence not being met. It was found that in certain cases, such as the Vishvamadhu case, the Judicial Medical Officers (JMO) report was inadequate, and evidence had not been gathered in a way where it stood up in court.

Recommendations

Police and Judicial Medical Officers Dealing with Gender-Based Sexual Violence

- **Adequate gender training must be provided to the police and the judicial medical officers dealing with sexual violence cases.** There must be mandatory and more robust training of police officers and judicial medical officers in sexual and gender-based violence, trauma, legal and medical procedures, and the law related to SGBV to ensure gender sensitivity and the protection of the dignity and rights of the victim-survivor.
- **Victim-survivors should be adequately supported at the point of reporting.** A police officer of whatever gender and fluent in the language preferred by the victim-survivor should be present when the complaint is made at the police station, and it is recommended that a person of choice in whom the victim-survivor has trust should be present at the medico-legal examination.

- **Standard Operating Procedures (SOPs) need to be available in easily accessible formats.** Guiding principles and user-friendly SOPs in an easily accessible format must be developed. These materials would provide both a practical step-by-step guide 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. The project created four such sets of SOPs for the police, judicial medical officers, victim-survivors, and human rights organisations.

The Sri Lankan State and Legal System

- **A definition of conflict-related sexual violence (CRSV) must be legally established and the vocabulary of the law expanded to include this definition.** A legal definition of CRSV must be included in the substantive law, and a review of legal standards on consent and corroboration in cases of sexual violence must be conducted. In addition to this, there must be recognition of the impact of trauma on witness statements particularly in the context of intimidation and militarisation.
- **Legislation and existing legal provisions must be fully implemented.** Existing legislation such as the Witness Protection Act which grants victims protection and recognises victim statements must be fully implemented, and best practices from elsewhere be adapted to guarantee the participatory rights of victims in court.



To learn more about this research project and read its publications visit:
<https://thegenderhub.com/stories/the-potentialities-and-politics-of-transformation/>

This Project Profile was first published in the Hub's final report, *Gender, Justice and Security: Structural Challenges, Feminist Innovations and Radical Futures*. Go to www.TheGenderHub.com to read the full report and to learn more about all 38 research projects in the Hub.



This research is part of the UKRI GCRF Gender, Justice and Security Hub. The Hub is an interdisciplinary, transnational research network working with local and global civil society, practitioners, governments and international organisations to advance the delivery of Sustainable Development Goal (SDG) 5 on gender equality; SDG 16 on peace, justice and strong institutions; and the implementation of the UN Security Council's Women, Peace and Security (WPS) agenda.

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Design: Claire Harrison and West9 Design. Illustrations: Hayfaa Chalabi.