

TO: MS. IRENE KHAN, SPECIAL RAPPORTEUR ON THE PROMOTION AND PROTECTION OF FREEDOM OF OPINION AND EXPRESSION

RE: Call for Submissions: Gender Justice and the Right to Freedom of Opinion and Expression in Sri Lanka

14 June 2021

Dear Ms Irene Khan,

Legal Action Worldwide (LAW) is an NGO and network of human rights lawyers who provide creative legal assistance in 12 countries around the world. LAW's thematic areas of focus is gender justice, with a particular focus on the needs of women and children victims of sexual violence and abuse. LAW's approach is to empower national actors to drive the justice process, including victims and survivors. LAW established its programme in Sri Lanka in October 2017 providing technical assistance to justice mechanisms particularly in relation to sexual and gender-based violence, domestic violence and child abuse.

LAW has worked with the Sri Lankan Attorney-General's Department, supporting prosecutors to more effectively prosecute crimes of sexual violence and child abuse. LAW has also worked with law faculties of Sri Lankan universities, providing courses on gender and transitional justice, and support in developing clinical curricula. Currently, LAW is working with Sri Lankan civil society organisations to monitor and combat online gendered hate speech and is supporting the Gender Justice Legal Network, a group of victim lawyers to assist victims of sexual and gender-based violence in Sri Lanka navigate the criminal justice system and assert their right to effective and gender-sensitive justice. Through its work, LAW has developed strong working relationships with human rights organisations and with victim communities. LAW is currently developing initial processes to monitor, catalogue, analyse and counter gendered online hate speech and misinformation. Further, LAW Sri Lanka is poised to commence a major four-year project in Sri Lanka concerning civil society strengthening and the right of freedom of association and peaceful assembly.

LAW is therefore delighted to share with you our submission on Gender Justice and the Right to Freedom of Opinion and Expression in Sri Lanka. This report was undertaken with consultation from our civil society partners. We thank you for the opportunity to submit the report and would be eager to speak with you about it further.

Introduction

From speaking up against militarisation and discriminatory policing, fighting poverty and economic inequality, reclaiming democracy and political freedoms, and advancing gender equality, women are drivers of change in Sri Lanka. Disproportionately affected by the conflict, women have also been heavily committed to finding avenues to prevent the recurrence of violence and seeking accountability. The exercise of the rights to opinion and expression is central to these movements and initiatives.

However, the freedoms of opinion and expression guaranteed by the Sri Lankan Constitution to women and members of the LGBTIQ+ community continue to be threatened both online and offline by State and non-State actors. While both women and men face threats of closing civic space, women also experience persistent gendered barriers, discrimination as well as sexual and gender-based violence (SGBV). This is even more severe for women who experience intersecting forms of discrimination, disadvantages and barriers, including because of their age, race, ethnicity, national origin, disability, sexual orientation and/or gender identity. The COVID-19 pandemic has heightened these gendered and intersecting inequalities, threatening to further constrain civic space and freedom of expression.

Key Questions

1.a What barriers, challenges and threats do women in the public sphere face in exercising their freedom of opinion and expression online and offline?

In Sri Lanka, women, girls, LGBTQI+ persons, and other marginalised groups face disproportionate barriers in the exercise of their freedom of opinion and expression due to entrenched gender inequality. Historically, social, cultural and religious norms and beliefs discriminate against these groups and exclude them from public life. Further, patriarchal and ethnic nationalist assumptions permeate the public discourse, enabling women and minority groups' freedom of expression to be regularly dismissed or attacked. This often leads to self-censorship and has a chilling effect on political discourse and participation.

Against this patriarchal backdrop, following the election of Gotabaya Rajapaksa in November 2019¹, Sri Lanka is developing an increasingly authoritarian political culture,² characterized by unfettered militarisation, securitisation³ and Sinhala Buddhist nationalism⁴. This trend has resulted in a rapid and substantial narrowing of civic space which has gendered implications. Ethnic, religious, gender and sexual identity minorities face heightened suspicion by the majority and repression by the State. These developments have significantly curtailed freedom of expression and compounded the issue of self-censorship amidst a culture of fear. In April 2021, Sri Lanka saw the introduction of a proposed draft legislation to combat false and misleading statements on the internet.⁵ Several civil society organizations, human rights activists and media organizations have warned that the Bill could be used as a tool to further curb freedom of expression.⁶

There are numerous examples of freedom of speech being restricted and even resulting in arbitrary arrests in Sri Lanka.⁷ Several provisions of Sri Lanka's Penal Code also criminalise speech-related offences.⁸ More recently, in June 2021, Sri Lanka Police requested members of the public to refrain from sharing fake news on social media, adding that those who do so can be arrested without a warrant.⁹ This announcement came a day after the Criminal Investigations Department (CID) put together a special team of officers to take action against the propagation of false news on social media platforms. Journalists, activists and CSOs have

¹ Meera Srinivasan, *Gotabaya wins in presidential poll*, The Hindu (17 Nov. 2019), available at: <https://www.thehindu.com/news/international/gotabaya-rajapaksa-wins-sri-lankan-presidential-election-official-results/article29998767.ece>.

² Laxmanan Sanjeev, *Is Sri Lanka Becoming a De Facto Junta?*, Foreign Policy (13 April 2021), <https://foreignpolicy.com/2020/07/17/sri-lanka-junta-gotabay-rajapaksa-military/>.

³ Salman Rafi Sheikh, *Rajapaksas marching Sri Lanka towards military rule*, Asia Times (26 Jan. 2021), available at: <https://asiatimes.com/2021/01/rajapaksas-marching-sri-lanka-towards-military-rule/>.

⁴ Emily Schmall, *Buddhist nationalists claim victory in Sri Lankan election*, Associated Press (27 Nov. 2019), available at: <https://apnews.com/article/bf051a4b2673484f8460131a7500b0ec>.

⁵ *Sri Lanka to draft bill against spreading of false & misleading statements via social media*, News Wire (20 April 2021), available at: <https://www.newswire.lk/2021/04/20/sri-lanka-to-draft-bill-against-spreading-of-false-misleading-statements-via-social-media/>.

⁶ *Criminalizing Fake News: Implications on Sri Lankan Society* (15 May 2021), <https://www.nightwatchmansociety.org/criminalizing-fake-news/>. See also *Free Media Movement said 'fake news' bill could undermine freedom of expression*, IFEX (27 April 2021), available at: <https://ifex.org/sri-lanka-free-media-movement-said-fake-news-bill-could-undermine-freedom-of-expression/>.

⁷ In these examples, the International Covenant on Civil and Political Rights (ICCPR) Act and the Prevention Terrorist Act (PTA) have often been relied upon. See, for example, *Misuse Of ICCPR Act and Judicial System To Stifle Freedom Of Expression In Sri Lanka*, CIVICUS Monitor (5 July 2019), <https://monitor.civicus.org/updates/2019/07/05/iccpr-act-and-judicial-system-being-misused-stifle-freedom-expression-sri-lanka/>.

⁸ Sri Lanka: Penal Code, Chapter 19, §120, §291(A), and §291(B), 1 January 1885, available at: <https://www.refworld.org/docid/4c03e2af2.html>.

⁹ Pamodi Waravita, *No warrant needed for 'fake news' arrests*, The Morning (9 June 2021), <https://www.themorning.lk/no-warrant-needed-for-fake-news-arrests/>.

also been subjected to increased harassment.¹⁰ As an example, in a July 13 letter, a group of five UN Special Rapporteurs expressed serious concerns to the government of Sri Lanka regarding the continued harassment of journalist Dharisha Bastians, the former editor of the newspaper Sunday Observer and reporter for the New York Times newspaper in Colombo, as well as her family.¹¹ The rapporteurs were concerned that the continued harassment of Bastians, which included the seizure of her computer and exposure of her telephone records, could endanger and compromise her sources and deter other journalists from reporting on issues of public interest and human rights.¹²

Discriminatory measures preventing freedom of religious expression include recent discussions to ban the niqab or burqa in public places on the basis of national security. After a similar ban was temporarily imposed following the Easter Sunday bombings in 2019, reports emerged of cases Muslim women being abused in public and denied access to public buildings including schools, hospitals, and universities.¹³

Sexual and gender-based violence in Sri Lanka

High levels of SGBV against women and girls results in self-censorship and women withdrawing from exercising their rights to opinion and expression. Violence against girl children, women and members of the LGBTQI+ community is pervasive in all communities and ethnic and religious backgrounds. Impunity is rife, with UN Women finding that only 3% of rapists in Sri Lanka are arrested, one of the lowest proportions in Asia.¹⁴ In 2018, the Attorney-General's Department informally advised LAW that they are facing a backlog of approximately 17,000 child abuse and sexual violence cases. Domestic violence is considered a part of family life. The prevalence of domestic violence in Sri Lanka reflects harmful gendered norms and stereotypes which restrict women's role to a caretaker of the family and discourages women from exercising their freedom of expression. LAW's network of gender justice lawyers who represent survivors of domestic violence, express concerns that these cases are not taken seriously by the police. In November 2011, Roel Raymond, a well-known journalist recalled how she was subjected to physical violence for 'having an opinion and answering back'.¹⁵

Sri Lanka's Legal Aid Commission found that Sri Lanka has the highest rate of sexual harassment in South Asia.¹⁶ From unwanted sexual remarks to unwelcome sexual behaviour and threats of rape, these attacks instil fear and humiliation and impede opinion and expression. The everyday threat of sexual harassment and violence becomes more intensified during peaceful protests, as evident by the conduct of the Police in several peaceful demonstrations in Sri Lanka in 2020.¹⁷ The increased possibility of being victims of violence discourages women's participation in peaceful assemblies and of publicly expressing themselves.

¹⁰ Amnesty International, *Old Ghosts In New Garb: Sri Lanka's Return To Fear* (Feb. 2021), <https://www.amnesty.org/download/Documents/ASA3736592021ENGLISH.PDF>.

¹¹ *Letter from the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the situation of human rights defenders; and the Special Rapporteur on the right to privacy* AL LKA 5/2020 (13 July 2020). Available at: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25415>

¹² *Id.*

¹³ Meenakshi Ganguly, 'Sri Lanka Face Covering Ban Latest Blow for Muslim Women', Human Rights Watch (4th May 2021) available at <https://www.hrw.org/news/2021/05/04/sri-lanka-face-covering-ban-latest-blow-muslim-women>

¹⁴ UNDP *et al.*, *Why some men use violence against women and how can we prevent it* (September 2013) p.45, available at: https://www.undp.org/content/dam/rbap/docs/Research%20&%20Publications/womens_empowerment/RBA-P-Gender-2013-P4P-VAW-Report.pdf.

¹⁵ Roel Raymond, 'Violence Against Women: This is my story', Groundviews (1 April 2012), available at: <https://groundviews.org/2012/01/04/violence-against-women-this-is-my-story/>.

¹⁶ Lakmal Sooriyagoda, *Sri Lanka tops in sexual harassment in South Asia*, DailyFT (1 Dec. 2020), available at: <https://www.ft.lk/Front-Page/sri-lanka-tops-in-sexual-harassment-in-south-asia/44-123094>.

¹⁷ *Police assault women protesters in Colombo; Activists & media silent*, Newshub.lk (26 Feb. 2020), available at: <https://newshub.lk/en/2020/02/26/police-assault-women-protesters-in-colombo-activists-media-silent-video/>.

Mothers of the Disappeared

Sri Lanka's civil war resulted in the forcible disappearance of up to 100,000 people.¹⁸ Many female relatives of the thousands of forcibly disappeared have created a group named 'Mothers of the Disappeared', who have been demanding answers to what happened to their loved ones for decades. For the past four years they have been protesting on the road-sides in the Northern Province. Disappearances affected all communities, but the vast majority of victims were Tamil. Most often, they disappeared at the hands of the State's security forces. Sri Lanka's Office on Missing Persons noted with "deep concern the multiple forms of harassment experienced by families of the missing and the disappeared. Past Commissions of Inquiry, as well as the Consultation Task Force, have reported the incidence of sexual harassment and bribery, where female relatives were asked for sexual favours in exchange for information about their missing relative as well as for the provision of basic administrative services."¹⁹ In addition to risks of sexual violence, this group is also vulnerable to intimidation, including by the CID, to silence them.²⁰

During LAW's consultations in Jaffna in August 2019, one member of the Mothers of the Disappeared explained that intimidation and burn-out are major challenges which exacerbate the hardships they face as female heads of households. These include loss of income, feeling unsafe in their homes without a male to protect them, feeling stigmatized by community members for leaving the house unescorted to the protests, and feeling intimidated by ongoing government surveillance. She highlighted that psycho-social care was needed to help the Mothers of the Disappeared in the exercise of their right to freedom of expression in their continued struggle for information as to the fate of their loved ones.

Online Gendered Violence in Sri Lanka

In recent years, hate speech on social media has become a prevalent force in Sri Lanka, mostly over Facebook. While much of the hate speech content appears aimed at fuelling nationalism and intercommunal conflict, it is also deeply gendered. Online gender-based violence such as cyberstalking, cyberbullying, harassment and misogynist speech has led to women withdrawing from online spaces, limiting their exercise of rights to freedom of opinion and expression.²¹

Women and girls who attempt to report their experiences of online gendered violence are faced with a multitude of barriers including sexist attitudes of law enforcement agents, the fact that most response mechanisms for online violence are located in Colombo, language barriers in reporting content to social media companies, and a lack of resources and capacity within government institutions to address technology-related violence. As recently as May 2020, a woman human rights lawyer, Achala Shanika Seneviratne, filed a second complaint with the CID citing police inaction to men making multiple death threats online across multiple social media platforms as a result of her taking on cases relating to conflict-related disappearances.²²

Women's Political Participation in Sri Lanka

The entrenched nature of gender inequality and high levels of SGBV have also resulted in significant barriers for women being able to participate in public life. This is evidenced by the

¹⁸ Just Security, *Heeding Victim's Voices: The Struggle of Tamil Families of the Disappeared in Sri Lanka* (3 Mar 2021), available at: <https://www.justsecurity.org/75095/heeding-victims-voices-the-struggle-of-tamil-families-of-the-disappeared-in-sri-lanka/>

¹⁹ Office on Missing Persons Annual Report 2018, available at: <https://www.parliament.lk/uploads/documents/paperspresented/annual-report-office-on-missing-persons-2018.pdf>

²⁰ Human Rights Watch, *Sri Lanka's Families of the 'Disappeared'*, 16 Feb 2020, available at: <https://www.hrw.org/news/2020/02/16/sri-lanka-families-disappeared-threatened>

²¹ Amalini de Sayrah & Raisa Wickrematunge, *Invisible Barriers: The Struggle to Combat Violence, Online and Off*, Groundviews (29 May 2018), available at: <https://groundviews.org/2018/05/29/invisible-barriers-the-struggle-to-combat-violence-online-and-off/>.

²² *Sri Lanka: Female human rights lawyer facing continuous death threats*, JDS (1 June 2020) available at: <http://www.jdslanka.org/index.php/news-features/human-rights/950-sri-lanka-female-human-rights-lawyer-facing-continuous-death-threats>

lack of women’s political representation in Sri Lankan Parliament. In 2020, only 5.3 percent (12 out of 225 legislators) in the Sri Lankan parliament are women. Sri Lanka ranks 182nd out of 193 countries on the Inter-Parliamentary Union (IPU), a global database that ranks countries by the percentage share of women in their national parliament.²³ In 2020, when former Human Rights Commissioner Ambika Satkunanathan announced that she was contesting the Parliamentary election, she faced extreme forms of harassment and violent hate messages.²⁴ Women human rights defenders, like Sandhya Eknaligoda, have also faced rampant online harassment, violent hate messages and breaches of privacy, including include rape threats, threats of death by stoning, and numerous comments objectifying her.²⁵

1. b. What are the distinct challenges faced by those who experience multiple and intersecting forms of discrimination?

In Sri Lanka’s current political climate, the increased reliance of the Prevention of Terrorism Act (PTA) and the establishment of a Presidential task force to ensure a “disciplined, virtuous and lawful society” by eradicating “anti-social activities”, freedom of speech has been greatly limited.²⁶ To be vocal about race relations, political opinions, minority experiences, environmental rights,²⁷ the disappeared,²⁸ lives lost during the war,²⁹ Queer rights,³⁰ ethnic minority communities³¹ and women’s rights carry high risks of threats and intimidation, often sexual in nature, impacting safety and wellbeing of many women. There is an undeniable pattern of gendered hate speech and sexual harassment that targets liberal female or queer-identifying activists, political figures, women from minority communities and academics.³²

Members of the LGBTQI+ community also face constant harassment and intimidation from law enforcement authorities.³³ The Police regularly utilise archaic provisions against homosexuality in the Penal Code and Vagrants Ordinance to subject LGBTQI+ persons to

²³ Bansari Kamdar, *Women in Sri Lanka Make up 56% of Voters, But Only 5% of Legislators*, The Diplomat (25 Sept. 2020), available at: <https://thediplomat.com/2020/09/women-in-sri-lanka-make-up-56-of-voters-but-only-5-of-legislators/>.

²⁴ *Sri Lanka- Former HRC member decides not to contest*, MENAFN (10 June 2021), available at: <https://menafn.com/1099877889/Sri-Lanka-Former-HRC-member-decides-not-to-contest>.

²⁵ Amnesty International, *Sri Lanka: Deplorable threats against human rights defender* (26 June 2018), available at: <https://www.amnesty.org/en/latest/news/2018/06/sri-lanka-deplorable-threats-against-human-rights-defender/>.

²⁶ *Sri Lanka President appoints a Presidential Task Force to build a secure country, virtuous society*, ColomboPage (3 June 2020), available at: http://www.colombopage.com/archive_20A/Jun03_1591167448CH.php.

²⁷ Daily Mirror, *Police questions young environmental activist: Little Bhagya unmoved by undemocratic forces*, (19 March 2021), available at: <http://www.dailymirror.lk/news-features/Police-questions-young-environmental-activist-Little-Bhagya-unmoved-by-undemocratic-forces/131-208063>.

²⁸ Human Rights Watch, *Sri Lanka: Families of ‘Disappeared’ Threatened*, (16 Feb. 2020), available at: <https://www.hrw.org/news/2020/02/16/sri-lanka-families-disappeared-threatened>.

²⁹ Tamil Guardian, *Sri Lanka arrests Tamil men and women under terrorism charges over Mullivaikkal commemoration*, (18 May 2021), available at: <https://www.tamilguardian.com/content/sri-lanka-arrests-tamil-men-and-women-under-terrorism-charges-over-mullivaikkal>.

³⁰ Women and Media Collective, *Disrupting the Binary Code: Experiences of LGBT Sri Lankans Online* (Dec. 2017), available at: <https://womenandmedia.org/wp-content/uploads/2018/02/Disrupting-the-Binary-Code--for-web.pdf>. See also: *Counting in LGBT*, Daily Mirror, (22 Jan. 2018), available at: <http://www.dailymirror.lk/article/Counting-in-LGBT-144350.html>.

³¹ Human Rights Watch, Meenakshi Ganguly, *Sri Lanka Face Covering Ban Latest Blow for Muslim Women*, (4 May 2021), available at: <https://www.hrw.org/news/2021/05/04/sri-lanka-face-covering-ban-latest-blow-muslim-women>. See also: *Sri Lanka: Families of ‘Disappeared’ Threatened*, Human Rights Watch (16 Feb. 2020), available at: <https://www.hrw.org/news/2020/02/16/sri-lanka-families-disappeared-threatened>.

³² International Gay and Lesbian Human Rights Commission, *Violence Against Lesbians, Bisexual Women and Transgender Persons in Sri Lanka* (Oct. 2014), available at: <https://outrightinternational.org/sites/default/files/SriLanka1014WCover.pdf>. See also: Groundviews, *Technology-related Violence Against Women and Girls in Sri Lanka: Key Trends*, (15 Jan. 2018), available at: <https://groundviews.org/2018/01/15/technology-related-violence-against-women-and-girls-in-sri-lanka-key-trends/>.

³³ Lihini Ratwatte, *Sri Lanka’s Problem With Women in Power*, The Diplomat, (26 May 2021), available at: <https://thediplomat.com/2021/05/sri-lankas-problem-with-women-in-power/>.

arbitrary arrest, detention, mistreatment and sexual violence.³⁴ This significantly hinders LGBTIQ+ persons from exercising their freedoms of opinion and expression.

1. c. How have the pandemic, economic crises and recent political unrests affected women's ability to communicate, protest and access information online and offline?

COVID-19 has affected women's freedom of expression and opinion online and also their rights to protest. For example, in April 2020, a woman was arrested by the Criminal Investigation Department (CID) for allegedly spreading fake news on the coronavirus on social media.³⁵ Furthermore, in December 2020, the police threatened to quarantine Tamil families of the disappeared in an attempt to stop a peaceful protest of predominantly women marking International Human Rights Day.³⁶

Quarantine, isolation and lockdown policies have exacerbated the conditions for those who already experience, or are vulnerable to, domestic violence, as victims and survivors find themselves in isolation with their abusers. The Chief Nurse at the National Hospital, Pushpa Ramyani de Zoysa has spoken publicly about the increase in women being admitted to the accident ward for domestic violence-related injuries.³⁷ It is also widely reported that local women's organizations and the hotline by National Committee on Women are receiving an increasing number of calls for advice on domestic violence.³⁸

Digital security for human rights lawyers and advocates has also emerged as a key concern in Sri Lanka amidst a period of significant political change and, more recently, in light of the outbreak of COVID-19, as civil society meetings are pushed onto online platforms making them vulnerable to hacks and online surveillance.

LAW's consultation with Sri Lankan civil society activists reveals that the shift of activism or awareness raising/training programs to online excludes a large portion of women who face barriers related to the 'digital divide' such as language, skills in IT or internet access, denying them a sense of community during the pandemic. Having a digital space that is safe and accessible is crucial for the wellbeing of women, queer-identifying persons and stigmatized communities. Remote services, apps and digital spaces have been created in Sri Lanka in the wake of COVID, yet app creators rarely take into account the lack of accessibility to personal devices, the internet, literacy, as well as accessibility issues faced by persons with disabilities such as those who are hearing, sight or speech impaired.

2. What in your view are the key elements of a gendered perspective on the human right to freedom of opinion and expression? What would a feminist perspective add to the understanding of this right?

A feminist perspective allows for the consideration of the varying ways in which different groups can experience rights violations. Understanding these differences will enable states to

³⁴ Equal Ground *et al.*, 'Human Rights Violations Against Lesbian, Gay, Bisexual and Transgender People In Sri Lanka A Shadow Report' (Aug. 2016), available at:

https://tbinternet.ohchr.org/Treaties/CESCR/Shared%20Documents/LKA/INT_CESCR_ICO_LKA_25036_E.pdf.

³⁵ Ceylon Today, *50-year-old woman arrested for spreading fake news*, Ceylon Today (17 April 2020), available at: <https://ceylontoday.lk/news/50-year-old-woman-arrested-for-spreading-fake-news>.

³⁶ Tamil Guardian, *Sri Lankan police threatens to quarantine Tamil families of the disappeared in Batticaloa*, (10 Dec.2020), available at: <https://www.tamilguardian.com/content/sri-lankan-police-threatens-quarantine-tamil-families-disappeared-batticaloa>.

³⁷ Daily News, *Spike in domestic violence cases*, (23 March 2020), available at: <http://www.dailynews.lk/2020/03/23/local/215059/spike-domestic-violence-cases>.

³⁸ *A Study on The Rise Of Domestic Violence Against Women In Sri Lanka During The Lockdown*, Colombo Telegraph (12 March 2021), available at: <https://www.colombotelegraph.com/index.php/a-study-on-the-rise-of-domestic-violence-against-women-in-sri-lanka-during-the-lockdown/>. See also: Mantoe Phakathi, *Report Shows Sri Lanka has Escalation of Violence During COVID-19 Lockdown*, IPS News, 19 Aug. 2020), available at: <http://www.ipsnews.net/2020/08/report-shows-sri-lanka-escalation-violence-covid-19-lockdown/>.

design viable solutions to address human rights abuses, and prevent their recurrence. If the specificity of gendered experiences are not considered from the outset, any programming aimed at amplifying women's freedom of opinion and expression will inevitably fail. It is therefore vital that states and non-state actors including corporations and civil society integrate gender perspectives in the development and implementation of state policies, programmes, legislation, initiatives and approaches to digital technologies.³⁹

A holistic approach, which treats all rights as universal, interdependent and indivisible, is essential for a feminist perspective. The right to freedom of opinion and expression must be placed on a continuum of other rights, including the right to be free from SGBV, to participate in online and offline public life without fear of reprisal, and the right to gender equality including equal socio-economic rights.

3.a Do you see any legal gaps, inconsistencies or controversies that should be clarified in this report, e.g. between protecting the right to freedom of expression and protecting women from ICT violence?

Just as offline impunity normalises discrimination and violence against women, and fuels online violence; impunity for acts committed online has significant offline consequences: Online violence and discrimination against women prevents women from expressing their views both online and offline, and the normalisation of online violence, such as the non-consensual spreading of private images, propagates offline violence against women.⁴⁰ However, existing legal frameworks are frequently poorly prepared to address online violence and discrimination against women due to legal gaps—such as the difficulty of assigning liability to online platforms—and gender blind legal interpretation.⁴¹ It is the responsibility of the state to combat cultures of impunity for sexual violence, harassment, and other crimes, both online and offline.⁴² States and technology firms must collaborate to address this legal vacuum and gaps in the implementation of existing laws. This report can serve to clarify these obligations.

3.b. Please indicate any specific issues in the international legal framework that in your view would benefit from further analysis in this report.

The international legal framework on freedom of expression is largely gender blind. Article 19 of the ICCPR, guaranteeing the rights to freedom of political opinion and expression, is gender blind as written.⁴³ General Comment 34, concerning freedom of expression under Article 19, also makes no mention of gender.⁴⁴ Article 7 of CEDAW guarantees a number of rights of women to participate in public life,⁴⁵ yet, specific protections of women's freedom of

³⁹ Article 19, *Freedom of expression and women's equality: Ensuring comprehensive rights protection* (2020), available at: <https://www.article19.org/wp-content/uploads/2020/10/Gender-Paper-Brief-1.pdf>.

⁴⁰ See Adriane van der Wilk, *Cyber violence and hate speech online against women*, Policy Department for Citizens' Rights and Constitutional Affairs [European Parliament] (Sept. 2018), at 21–22, available at: [https://www.europarl.europa.eu/RegData/etudes/STUD/2018/604979/IPOL_STU\(2018\)604979_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2018/604979/IPOL_STU(2018)604979_EN.pdf).

⁴¹ Divya Srinivasan, *Set me up, knock me down: Legal obligations of dating apps to address sexual violence*, GenderIT (3 Dec. 2020), available at: <https://www.genderit.org/feminist-talk/set-me-knock-me-down-legal-obligations-dating-apps-address-sexual-violence>.

⁴² Article 2 of the CEDAW obligates states to work to eliminate discrimination against women by private parties. This includes Internet intermediaries and Internet users. See UN General Assembly, *Convention on the Elimination of All Forms of Discrimination Against Women*, 18 December 1979, United Nations, Treaty Series, vol. 1249, p. 13, available at: <https://www.refworld.org/docid/3ae6b3970.html>.

⁴³ UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171, available at: <https://www.refworld.org/docid/3ae6b3aa0.html>.

⁴⁴ UN Human Rights Committee (HRC), General comment no. 34, Article 19, Freedoms of opinion and expression, 12 September 2011, CCPR/C/GC/34, available at: <https://www.refworld.org/docid/4ed34b562.html>. General Comment 10, which General Comment 34 replaced, also did not reference gender. See UN Human Rights Committee (HRC), *CCPR General Comment No. 10: Article 19 (Freedom of Opinion)*, 29 June 1983, available at: <https://www.refworld.org/docid/453883f80.html>.

⁴⁵ UN General Assembly, *Convention on the Elimination of All Forms of Discrimination Against Women*, art. 7, 18

expression are absent from the treaty. It is therefore necessary to look to CEDAW's article 1 prohibition on discrimination against women,⁴⁶ as well as the article 3 obligation of states parties to ensure the full development and advancement of women,⁴⁷ to inform the interpretation of the ICCPR and other sources of law on these rights. This report presents a crucial opportunity to use a gendered lens to identify situations in which existing laws fail to protect these rights or in which facially neutral laws functionally discriminate against women.

4. What legislative, administrative, policy, regulatory or other measures exist in your State to promote and protect women's freedom of opinion and expression online and offline? To what extent do these measures take into account intersectionality?

Article 14 (1) (a) of the Sri Lankan constitution guarantees freedom of speech and expression, including publication, and Article 14 (1) (h) guarantees freedom of movement. Article 15 specifies that these rights can be restricted for a limited number of specified reasons. The Sri Lankan Constitution lays down principles of gender equality and non-discrimination. Article 12 (1) of the Constitution guarantees equality before the law and equal protection of the law.

Notwithstanding these constitutional protections, a suite of intersecting discriminatory and colonial-era laws entrench gender inequality and institutionalize homophobia in Sri Lanka which impacts on women being able to exercise freedom of expression. For example, the Tesawalamai Law provides that Tamil women need their husband's consent prior to the alienation of property owned by her. The Land Development Ordinance gives preference to male heirs over females and also prevents women from acquiring ownership of land since only the "head of household" is authorised to sign official documentation such as land ownership certificates and to receive pieces of land from Government.

Further, while the Sri Lankan common law does not permit underage marriage, this same protection is not afforded to girls from the Muslim community. The Muslim Marriage and Divorce Act (MMDA) does not stipulate a minimum age of marriage and requires only special permission of the *Qazi* judge if the girl is under 12 years of age.⁴⁸ This also means that girl children from the Muslim Community are excluded from the statutory rape provision in the Penal Code.⁴⁹ Despite decades of struggle to reform this archaic Act by Muslim women, the reform process has been delayed and disrupted by various groups. Article 16 of the Constitution makes it impossible for Muslim women and children to challenge the law in court and seek remedy under 12 of the Constitution.

The criminalization of homosexuality in the Penal Code,⁵⁰ and the Vagrants Ordinance prevents protection afforded protection under Article 12 of the Constitution, resulting in a lack of access to justice and remedies and lack of full recognition of diversity of sexual orientation and gender identity and expression (SOGIE).

Governments in the past have adopted ad hoc National Action plans on the Protection and

December 1979, United Nations, Treaty Series, vol. 1249, p. 13, available at: <https://www.refworld.org/docid/3ae6b3970.html>.

⁴⁶ *Id.*, art. 1.

⁴⁷ *Id.*, art. 3.

⁴⁸ BBC News, *The wounded victims of Sri Lanka's child marriage law*, (20 June 2017), available at: <https://www.bbc.com/news/world-asia-39898589>.

⁴⁹ The Economist, *Sri Lanka debates its antiquated Muslim family laws*, (15 June 2017), available at: <https://www.economist.com/asia/2017/06/15/sri-lanka-debates-its-antiquated-muslim-family-laws>.

⁵⁰ Sri Lanka: Penal Code [Sri Lanka], Chapter 19, §365, §365(A), and §399, 1 January 1885, available at: <https://www.refworld.org/docid/4c03e2af2.html>.

Promotion of Human Rights⁵¹ and to address SGBV.⁵² The State has created institutions to support women and protect them in public and private places, such as the Women's Bureau of Sri Lanka, Women and Children's desks at police stations, the National Committee on Women, and the Ministry/State Ministry of Women and Child Development. The efficacy of these measures is discussed below.

5. In your view how effective are they in supporting women's empowerment and public participation? Please provide statistical data and judicial decisions, where available.

While some legislative, administrative, and policy measures have been put in place, the effectiveness of these responses remains unclear, as there is no publicly available data to measure the effectiveness of these legislative and policy measures. There also appears to be no indication that successive governments have made an effort to collect and record such data or have understood the need to do so. Nevertheless, in the courts, there have been many landmark judicial decisions upholding the freedom of opinion and expression.⁵³ However, there appear to be no reported cases in which women's right to opinion and expression were specifically discussed or instances where courts have considered the gendered dimensions of this right.

6. What legal administrative, policy or other measures exist in your State to protect women from sexual and gender-based violence and harassment online? How effective are they? What impact have they had on women's empowerment and public participation, including freedom of expression?

Though the Sri Lankan legal framework does not list cyber-bullying, cyber-stalking and cyber-harassment as separate offences, there are certain provisions in the existing law that can be used to take action against perpetrators. These are contained in the Penal Code,⁵⁴ Obscene Publication Ordinance,⁵⁵ Computer Crimes Act⁵⁶ and the Payment Devices and Frauds Act.⁵⁷ Unfortunately, these laws are not adequately implemented and impunity for offline and online SGBV is widespread.

State institutions responsible for handling technology-based violence against women include the National Child Protection Authority (NCPA), which also provides access to a 24-hour helpline when a child is at risk of violence; Cybercrimes Unit of the Criminal Investigation Department of Sri Lanka Police and the Sri Lanka Computer Emergency Readiness Team Co-ordination Centre (SL CERT CC). In 2018, a report co-authored by the Center for Policy Alternatives, Hashtag Generation and Ghosha Women concluded that the systems in place to deal with complaints of cyber harassment in Sri Lanka are not robust enough to address violence online. In particular, they found a lack of clarity as to how and where to report incidents of

⁵¹ *National Action plan on Protection and Promotion of Human Rights* (2011-2016), available at: https://www.ohchr.org/Documents/Issues/NHRA/NPASriLanka2011_2016.pdf.

⁵² *National Action Plan to address Sexual and Gender-based violence in Sri Lanka* (2016-2020), available at: <http://gbvforum.lk/r-library/document/SGBV%20National%20Action%20Plan.pdf>.

⁵³ See, e.g., *Sunanda Deshapriya v. Municipal Council of N' Eliya* [1995] 1 SLR 362; *Amaratunga v. Sirimal* [1993] 1 SLR 264; *Dissanayake v. University of Sri Jayawardenapura* (1986) 2 SLR 254; *Sunila Abeysekara v. Ariya Rubasinghe, Competent Authority and Others* (2000); and *U. N. S. P. Kurukulasuriya v Sri Lanka Rupavahini Corporation SC FR No 556/2008*.

⁵⁴ Sri Lanka: Penal Code [Sri Lanka], Chapter 19, §286(A), §345, §372, and §483, 1 January 1885, available at: <https://www.refworld.org/docid/4c03e2af2.html>.

⁵⁵ Obscene Publication Ordinance, Act No. 4 of 1927 [amended 1983 & 2005], §2, available at: <https://www.police.lk/images/ordinances/23.obscene-publications-act/1927-04-e.pdf>.

⁵⁶ Computer Crime Act, Act. No. 24 of 2007, §6 and §7 available at: <https://www.srilankalaw.lk/?id=239&lang=en>.

⁵⁷ Payment Devices and Frauds Act, Act. No. 30 of 2006, §3(r), available at: <https://www.lawnet.gov.lk/payment-devices-frauds-2/>.

technology-related violence and on which state agency would follow each case.⁵⁸

In December 2020, Sri Lankan NGO Women in Need published ‘*Policing Cyber Violence: Standard Operating Procedure for the Sri Lanka Police*’.⁵⁹ The report provides consistent procedure for all law enforcement officials including the police, Criminal Investigation Department (CID), Police IT division, the National Child Protection Authority (NCPA) and other technical experts, to follow when responding to complaints of cyber violence and to overcome the existing challenges in effectively addressing cyber violence. This report also highlighted a lack of police action in regard to violence against women online, in addition to a lack of state regulation of sexist online content to be a major legal gap in Sri Lanka’s legal system. Law enforcement agencies often lack the training required to deal with technology-related, sensitive cases or cases that involve at-risk communities. Subsequent prejudicial treatment dissuades many women from seeking legal redress due to risks of re-traumatisation, victim blaming, ill-treatment or further scrutiny.⁶⁰

7. What do you believe States should do to a) uphold women’s human right to freedom of opinion and expression b) protect women from violence, harassment and intimidation online and offline and c) promote women’s public participation?

a) Uphold women’s human right to freedom of opinion and expression

- ❖ **Develop and improve upon laws and policies that protect women’s rights to freedom of opinion and expression.** Laws that risk stifling freedom of opinion and expression, including the Prevention of Terrorism Act and the Penal Code, should be carefully redrafted and or repealed to uphold freedom of opinion and expression.
- ❖ Conduct disaggregated data collection on the extent and impact of abuses against the right to freedom of expression, and specifically in relation to the gendered consequences of these violations. This data should inform the development of law and policies.

b) Protect women from violence, harassment and intimidation online and offline

- ❖ **Capacity building and improved understanding of the technicalities and dangers of cyber violence.** Law enforcement authorities such as the Police and Judicial Medical Officers must be capacity built to follow a victim-centred, sensitive and non-judgemental approach in relation to gendered violence. As part of this, Women in Need’s publication, ‘*Policing Cyber Violence: Standard Operating Procedure for the Sri Lanka Police*’ should be implemented countrywide.
- ❖ **Government officials, companies and other public figures should show solidarity for women’s engagement and rights in Sri Lanka.** Acts of online and offline gendered violence should be condemned and accountability called for.
- ❖ **Enhance efforts to investigate and prosecute SGBV against women and children, including by capacity-building police.** Complaints of sexual violence and intimate partner violence must be taken seriously by investigative authorities and investigated without delay, and gender-sensitively. Efforts to clear backlogs of child abuse and sexual violence cases by the Attorney-General’s Department must be continued and upscaled.

⁵⁸ Groundviews, Hashtag Generation, & Ghosha, *Opinions, B*tch: Technology Based Violence Against Women in Sri Lanka*, Groundviews (27 June, 2019), available at: <https://groundviews.org/2019/06/27/opinions-btch-technology-based-violence-against-women-in-sri-lanka/>.

⁵⁹ *Women in Need, Policing Cyber Violence: Standard Operating Procedure for the Sri Lankan Police* (Dec 2020).

⁶⁰ *Id.*

c) Promote women’s public participation

- ❖ **Extension of quotas to provincial and parliamentary level.** Extend the mandatory reserve seat quota of 25% for women and legislative mandates instructing parties to nominate women on both First-Past-the-Post (FPTP) and Proportional Representation electoral lists to the Provincial and Parliamentary levels.⁶¹
- ❖ **Improved and unbiased media practices.** The mainstream media must desist from undermining women’s entry into politics by concentrating on their perceived failures or weaknesses, such as focusing often on their dress or behaviour in public spaces over and above their political agendas or successes.⁶²
- ❖ **The promotion of party politics that foster greater transparency, consistency and communication around nomination to party lists and distribution of party funds.** Current research acknowledges patriarchal structures of Sri Lankan political parties’, where women are not able to make party lists, get cut off during nominations, and do not have the same access to campaign financing as men.⁶³

8. What do you think internet intermediaries should do to protect women’s right to freedom of opinion and expression and make the online space safe for women?

Internet intermediaries must increase language capacity for content moderation in local languages of Sinhala and Tamil and be transparent about the number of moderators assigned to deal with user generated reports around Sri Lankan content including their gender, language capacity and in which time zone they are located. It is also vital that the capacity of content moderators is increased to respond to reports of technology-related violence and to avoid conflating them with legitimate and consensual exercise of freedom of expression online including the sexual expression of women and LGBTIQ+ people. Internet intermediaries should also make clear commitments to resolve user generated reports around Sri Lankan content within a specified time period. Social media platforms should also publicly release their tests applied to remove content inciting hate and violence and misinformation.⁶⁴

9. What specific measures have platform providers and intermediaries taken to i) protect women’s freedom of opinion and expression; ii) protect women from online gender-based violence, harassment, intimidation and disinformation; iii) promote women’s equal access to the digital space; iv) address grievances and provide remedies to women users; v) ensure accountability of the intermediaries? To what extent do you find these measures to be fair, transparent, adequate and effective in protecting women’s human rights and promoting women’s empowerment?

Anti-Muslim Facebook posts fomented riots that left three people dead in Kandy in March 2018. Following the riots, Facebook subsequently commissioned its first country-level Human Rights Impact Assessments (HRIAs) in Sri Lanka, Myanmar, and Cambodia.⁶⁵ The Sri Lanka HRIA found that Facebook’s platform has been used for cyberviolence, including hate speech, harassment, and non-consensual sharing of intimate images (“revenge porn”) designed to silence, intimidate, and humiliate targeted individuals, primarily religious and ethnic minorities

⁶¹ Ramona Vijayarasa, Nadine Vanniasinkam & Viyanga Gunasekera, *Non-elite pathways to women's political leadership: preliminary findings from Sri Lanka – part 2*, Development Leadership Program. (13 May 2021), available at: <https://www.dlprog.org/opinions/non-elite-pathways-to-women-s-political-leadership-preliminary-findings-from-sri-lanka-part-2>.

⁶² *Id.*

⁶³ *Id.*

⁶⁴ Groundviews, Hashtag Generation, & Ghosha, *Opinions, B*tch: Technology Based Violence Against Women in Sri Lanka*, Groundviews (27 June 2019), available at: <https://groundviews.org/2019/06/27/opinions-btch-technology-based-violence-against-women-in-sri-lanka/>.

⁶⁵ Facebook, *An Update on Facebook's Human Rights Work in Asia and Around the World*. (31 March 2021). <https://about.fb.com/news/2020/05/human-rights-work-in-asia/>.

(Muslims and Tamils), women, the LGBTQI community, and human rights defenders. Impacts have varied across these groups, and “intersectional” individuals with multiple targeted characteristics face greater risk. LAW’s civil society consultations have shown that the gendered dimensions of online hate speech have gone largely unaddressed and unmonitored, as the few organisations working on hate speech in Sri Lanka have focused on the ethnically driven nationalist elements of this content and not gender.⁶⁶

Sri Lankan Civil Society interaction with Facebook

In March 2018, after the nationwide block on Facebook, Instagram and WhatsApp during violent riots targeting the Muslim community, a team from Facebook travelled to Sri Lanka and met with the Government.⁶⁷ In a release issued by the Presidential Secretariat on 15 March,⁶⁸ the President said Facebook was committed to removing hate speech on the platform, in accordance with its Community Standards.

Soon after, 13 Sri Lankan civil society organisations wrote an open letter⁶⁹ to Facebook CEO Mark Zuckerberg, expressing “deep frustration” when reporting content on gender-based violence, violence against the LGBTIQ+ community and hate speech, particularly in local languages such as Sinhalese and Tamil. Facebook responded to the open letter, promising to increase content reviewers and work with Government and civil society to curb hate speech and better understand the local context.⁷⁰

Facebook engaged with the civil society organisations and shared published their Community Standards moderation document.⁷¹ They also said they were training their staff to identify inflammatory content in local languages, especially in Sinhalese.⁷² In 2018, Facebook also introduced a new policy on misinformation, committing to remove misinformation from the platform in countries like Myanmar and Sri Lanka, in collaboration with civil society groups.⁷³ To this day, however, civil society continue to call for improvement in language capacity of the content moderation team as the most sustainable solution to combating the proliferation of content propagating hate speech, and gender-based violence on the platform.⁷⁴

10. What role has legacy media played in aggravating or addressing the challenges women face in exercising their freedom of expression? What do you think the legacy media can do to empower women and make the public space safe for them, especially for women journalists?

Many journalists in Sri Lanka report being arrested, detained, assaulted, threatened, intimidated, harassed or worse. Media institutions have been subjected to arson, with one Tamil newspaper in the north of the country and one Colombo-based English weekend paper targeted

⁶⁶ Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Report on content regulation, U.N. doc. A/HRC/38/35 (6 April 2018), available at:

<https://www.ohchr.org/EN/Issues/FreedomOpinion/Pages/ContentRegulation.aspx>.

⁶⁷ Daily Mirror, *Social media back by Friday, FB team here on Thursday* (2018), available at:

<http://www.dailymirror.lk/article/Social-media-back-by-Friday-FB-team-here-on-Thursday-Harin-147191.html>

⁶⁸ PMD News, *Restriction to access social media removed on the instructions of the President* (2018), available at:

<http://www.pmdnews.lk/restriction-to-access-social-media-removed-on-the-instructions-of-president/>

⁶⁹ Groundviews, *Open letter to Facebook: Implement your own Community Standards* (2018), available at:

<http://groundviews.org/2018/04/10/open-letter-to-facebook-implement-your-own-community-standards/>

⁷⁰ Groundviews, *Facebook responds to open letter from Sri Lankan civil society* (2018); available at:

<http://groundviews.org/2018/04/12/facebook-responds-to-open-letter-from-sri-lankan-civil-society/>

⁷¹ Groundviews, (2018) <https://twitter.com/groundviews/status/996684320919171072>

⁷² Daily Mirror, *FB staff to learn Sinhala insults after Sri Lanka riots* (2018), available at:

<http://www.dailymirror.lk/article/FB-staff-to-learn-Sinhala-insults-after-Sri-Lanka-riots-150982.html>

⁷³ New York Times, *Facebook to remove misinformation that leads to violence* (2018), available at:

<https://www.nytimes.com/2018/07/18/technology/facebook-to-remove-misinformation-that-leads-to-violence.html>

⁷⁴ Groundviews, Hashtag Generation, & Ghosha, *Opinions, B*tch: Technology Based Violence Against Women in Sri Lanka*, Groundviews (27 June, 2019), available at: <https://groundviews.org/2019/06/27/opinions-btch-technology-based-violence-against-women-in-sri-lanka/>.

repeatedly during and after the war.⁷⁵

This treatment results in media self-censorship as well as organizations or media outlets being reluctant to publish hot button issues or stories. Associated organisations also limit the work they do on the public sphere, to avoid putting stigmatized communities they are working with in further risk.

Many queer-identifying persons are unable to access informative material and the support they need, as there are limitations when advocating for queer rights online. The same can be said about ethno-religious minorities as well. The vague nature of certain laws such as the PTA are such that any lived reality, opinion or observation shared can be construed as being anti-state and can result in attacks from conservatives, persons with political agendas and racists as well as policing under laws such as the PTA.⁷⁶

Current media practices often undermine women's entry into politics. The media is seen as an institution that is quick to advertise female politicians' failures but not successes, favouring male candidates and stereotyping female candidates.⁷⁷

11. Please provide examples of good practices by States, internet intermediaries or other stakeholders to enhance women's right to freedom of opinion and expression and empowerment and public participation of women.

A best practice example for all concerned parties includes "The Feminist Principles Of The Internet". These are a series of statements that offer a gender and sexual rights lens on critical internet-related rights. They were drafted at the first Imagine a Feminist Internet meeting that took place in Malaysia in April 2014 which brought together 50 activists and advocates working in sexual rights, women's rights, violence against women, and internet rights. For more information see <https://feministinternet.org/en/about>

⁷⁵ Ruki Fernando, *Freedom of Expression: Where Do We Stand?*, Groundviews (3 May, 2021), available at: <https://groundviews.org/2021/05/03/freedom-of-expression-where-do-we-stand/>.

⁷⁶ U.S. Department of State Bureau of Democracy, Human Rights, and Labor, 2020 Country Reports on Human Rights Practices: Sri Lanka (30 March 2021), available at: <https://www.state.gov/reports/2020-country-reports-on-human-rights-practices/sri-lanka/>.

⁷⁷ Ramona Vijeyarasa, Nadine Vanniasinkam & Viyanga Gunasekera, *Non-elite pathways to women's political leadership: preliminary findings from Sri Lanka – part 2*, Development Leadership Program, (13 May 2021), available at: <https://www.dlprog.org/opinions/non-elite-pathways-to-women-s-political-leadership-preliminary-findings-from-sri-lanka-part-2>.