

LST REVIEW

Volume 11 Issue 157 November 2000



The Quest for Gender Equality

**Does Sri Lanka need a law on
Domestic Violence?**

**CEDAW's Optional Protocol
goes into force**

**Equality of Rights between Men
and Women**

The Women's Manifesto

LAW & SOCIETY TRUST

Contents

Editor's note	01
Does Sri Lanka need a law on Domestic Violence? - Mario Gomez and Shyamala Gomez	03
CEDAW's Optional Protocol goes into force	24
Equality of Rights Between Men and Women - Human Rights Committee	32
The Women's Manifesto	42

Law & Society Trust,
3, Kynsey Terrace, Colombo 8
Sri Lanka
Tel: 691228, 684845 Telefax: 686843
e-mail: lst@slt.lk
Website: <http://www.lawst.slt.lk>

ISSN - 1391 - 5770

Editor's note....

The Quest for Gender Equality

Does Sri Lanka need a law on Domestic Violence?

This month's issue of the LST Review is devoted to questions of gender equality and women's rights. In a note that is intended to generate debate on the issue, the authors look at the relevance of the law in responding to domestic violence. Currently Sri Lanka does not have a specific law targeting domestic violence, arguably the most complex form of gender related violence. The authors argue that the law does have a role to play in responding to domestic violence and in changing legal and other attitudes. It is one of the many strategies that can be used in trying to prevent and respond to domestic violence. They also try and identify some features the law should have, include the ability to provide swift legal protection in cases of imminent or actual domestic violence.

CEDAW's Optional Protocol Goes into force

The LST Review also publishes this month the text of the Optional Protocol to CEDAW. The Optional Protocol will go into force on 22nd December 2000. Italy became the 10th country to ratify the Optional Protocol in September and this ratification is sufficient to bring the Optional Protocol into force.

The Optional Protocol allows individual women or groups of women, to submit complaints to the CEDAW Committee alleging that a state that has ratified or acceded to CEDAW and the Protocol has violated the rights guaranteed in CEDAW. It is possible for others to petition on behalf of the victims, usually with their consent, and in limited circumstances without the victims' consent. Complainants must first exhaust local remedies unless such remedies are unlikely to bring relief or such remedies are likely to be 'unreasonably prolonged'.

The Optional protocol also allows the CEDAW Committee to initiate an inquiry where the committee has received reliable information indicating grave or systematic violations in a state that is party to the CEDAW and the Optional Protocol. This inquiry process

may also include a visit to the state concerned. Although the Optional Protocol does not permit any reservations, it is possible for a state that ratifies the Protocol to exempt itself from this inquiry procedure.

Equality of Rights Between Men and Women

The Treaty Bodies that monitor the different human rights treaties constantly issue General Comments which attempt to clarify the broad rights contained in the treaty. In its General Comment No. 28 the Human Rights Committee, which monitors the International Covenant on Civil and Political Rights (ICCPR) clarifies some of the issues and concepts in relation to gender equality. Apart from providing a detailed elaboration of equality rights between the two sexes, this General Comment also highlights linkages amongst the different treaty regimes and the role that the different treaty bodies can play in developing these linkages.

Women's Manifesto

Twelve Sri Lankan women's groups came together to release a Women's Manifesto for the October 2000 election. While women have made many gains over the 20th century, as the Manifesto notes, women are still subject to many types of economic exploitation, political exclusion, legal discrimination and social oppression. The Manifesto also notes that violence against women, patriarchal practices and traditional attitudes to women have acted as an obstacle to true equality.

The Manifesto addresses the following nine areas: Politics, Law Reform, Violence, Economy, Media, Health, Education, Culture & Society, Ethnic conflict. It makes concrete recommendations for policy and legal reform in these areas to facilitate women's access to opportunities and justice.

A New Law on Domestic Violence?

A Note for Discussion

Mario Gomez & Shyamala Gomez

CONTENTS

1. *Introduction*
2. *Domestic Violence*
3. *Some features of Domestic Violence*
4. *Why is it difficult to respond to Domestic Violence?*
5. *Does the law have a role in preventing, or otherwise responding to domestic violence?*
6. *What are the roles the law can possibly play?*
7. *The Current State of the Sri Lankan Law*
 - 7.1 *Criminal*
 - 7.2 *Constitutional Law: Fundamental Rights*
 - 7.3 *Civil Law*
8. *Does Sri Lanka Need Separate Legislation on Domestic Violence?*
9. *Should the law cover household workers?*
10. *Some elements of the Proposed Law*
11. *The Right to be Free from all Forms of Violence, whether from private or public sources*
12. *The law should adopt a broad definition of violence*
13. *What sort of relationships should the law cover?*
14. *What sorts of remedies should the law offer?*
 - 14.1 *Interim Protection Orders*
 - 14.2 *Protection Orders*
15. *What does an Interim Protection Order or Protection Order entail?*
16. *Other Forms of Relief*
17. *Standard of Proof*
18. *Duties on Police Officers*
19. *Pursuing Other Remedies*
20. *Sri Lanka's International Obligations in this area*
21. *Sri Lanka's National Obligations*

1. Introduction

*'Domestic and family violence is a pervasive and frequently lethal problem that challenges society at every level. Violence in families is often hidden from view and devastates victims physically, emotionally, spiritually and financially. It threatens the stability of the family and negatively impacts on all family members, especially the children who learn from it that violence is an acceptable way to cope with stress or problems or to gain control over another person. It violates our communities' safety, health, welfare, and economies by draining billions annually in social costs such as medical expenses, psychological problems, lost productivity and intergenerational violence.'*¹

This note is intended to generate some discussion on the role that the law can possibly play in relation to domestic violence. It was initially written for the Women & Media Collective at a time when the organisation was looking at ways of responding to domestic violence. Some of the questions that need to be addressed are:

Does the law have a role in responding to and preventing domestic violence?

If the law does have a role to play, what should be the nature of this role?

What sort of laws, remedies, legal institutions and legal processes should there be to respond effectively to domestic violence?

If the law does have a role, who should implement the law and who should be able to access the law?

2. Domestic Violence

Domestic violence has been defined to encompass:

All acts of gender-based physical, psychological and sexual abuse by a family member against women in the family, ranging from simple assaults to aggravated

¹ South African Law Commission Research Paper on 'Domestic Violence' (April 1999) at p 1 citing the Model Code on Domestic and Family Violence Nevada (1994) drafted by the National Council of Juvenile and Family Court Judges.

*physical battery, kidnapping, threats, intimidation, coercion, stalking, humiliating verbal abuse, forcible or unlawful entry, arson, destruction of property, sexual violence, marital rape, dowry or bride-price related violence, female genital mutilation, violence related through prostitution, violence against household workers and attempts to commit such acts.*²

Potential victims in a domestic context include wives, girl friends, female relatives, neighbours, homosexual partners and domestic workers. In the case of a domestic worker, the abuse is magnified by the power and class relationship and her economic dependence on her employer. Women may also be responsible for domestic violence.

3. Some features of Domestic Violence

- It is widespread and occurs in a variety of social and cultural contexts and in all classes.
- Because it takes place in a family or domestic context it is hidden and private.
- It has the potential to be repetitive.
- The victims are reluctant to speak out till repeated acts of violence have occurred.
- It is reinforced by notions of patriarchy that operate in our society: men have a right to engage in acts of violence against their wives, girl friends, or domestics, and the victims of such violence should tolerate and accept it.
- Most domestic violence is perpetrated by men and the majority of the victims are women. However, women also do engage in violence.
- In many cases it occurs between persons who have previously had a fulfilling or productive relationship.

² Report of the Special Rapporteur on Violence against Women, 'A framework for model legislation on domestic violence', E/CN.4/1996/53/Add.2 (2 February 1996), para 11.

- Some victims may be unwilling to leave an abusive relationship because of children, the social stigma, or for other reasons.
- Some victims may be unable to leave an abusive relationship because they are financially dependent on the abuser.
- Some victims are reluctant to leave a relationship because they still have feelings for the abuser and do not want to contemplate a permanent break up of the relationship.

4. Why is it difficult to respond to Domestic Violence?

Of all forms of violence against women, domestic violence is perhaps the most difficult to respond to. It is difficult to respond to for three main reasons:

- It occurs in the private world of the family and as a result is shielded from public scrutiny.
- In many cases domestic violence occurs between people who may have previously had productive, fulfilling and intimate relationships.
- In some cases the victim may not wish to terminate the relationship with the perpetrator. The victim may believe that the abusive relationship will terminate and a fulfilling relationship could be re established. Secondly, the victim may be financially dependent on the perpetrator. Thirdly, there may be children from the relationship and the victim may not wish to terminate a relationship because of the children. Fourthly, the victim may not be confident of her ability to go on with her life on her own.

5. Does the law have a role in preventing, or otherwise responding to domestic violence?

Yes, the law does have a role to play. It is one of many strategies that can be used to respond to domestic violence. However, the law has limitations and these limitations must be recognized and acknowledged.

The law does not operate in a vacuum. Its effectiveness depends on the attitudes and commitment of judges, prosecutors, lawyers, police officers, social workers and doctors. The effectiveness of the law also depends to a large extent on the energy and dynamism shown by civil society. Women's groups, human rights groups, and other groups, need to constantly monitor and supervise the implementation of the law. These groups need to constantly look at ways of making the law more effective.

6. What are the roles the law can possibly play?

The law has broadly six roles to play in this area:

1. To provide protection from threatened violence or further violence to both the victim and children. In some cases the protection may need to be immediate, especially where there is an imminent danger of harm. The law must be able to act immediately and swiftly in this case.
2. To provide a 'breathing space' for victims to reflect on the relationship, whether it be an intimate relationship or an employer – domestic relationship.
3. To help the victim go on with her life by providing her access to medical care, financial support and access to the family home, where these are necessary.
4. To help define domestic violence and to give it the public profile that it requires.
5. To help change patterns of social behaviour. This the law does by setting standards of conduct and establishing that domestic violence is morally wrong. Legal standards outlawing domestic violence can be used in educational activities and in mobilizing public support against domestic violence.

The law can also help change patterns of social behaviour through litigation. A judgement of a court sets standards of social behaviour. A good judgement can be a very powerful educational tool and can be used to raise public awareness on domestic violence and mobilize public support against it.

6. To highlight the pervasive nature of domestic violence and to show the effect that domestic violence has on victims, children and society in general.

7. The Current State of the Sri Lankan Law

There is currently no specific law dealing with domestic violence. Three areas of the law are relevant: the criminal law, constitutional law and civil law.

7.1 Criminal Law

It is possible to resort to several provisions in the Penal Code in cases of domestic violence. Under the current criminal law, a woman who has suffered abuse in the home can make use of the following provisions in the Penal Code:

- Assault (Section 342)
- Criminal force (Section 340)
- Murder (Section 294)
- Attempted murder (Section 300)
- Culpable homicide not amounting to murder (Section 297)
- Grievous hurt (Section 313)
- Simple hurt (Section 312)
- Wrongful confinement (Section 331)
- Wrongful restraint (Section 330)
- Insult (Section 484)
- Death caused by an act done with intent to cause miscarriage (Section 305)
- Causing miscarriage (Section 303)
- Cruelty to children (relevant in the case of child domestics) (Section 308A)³
- Sexual harassment (Section 345)
- Marital rape (conditional upon a judicial separation) (Section 363(a))
- Rape (Section 363)
- Incest (Section 364A)
- Grave sexual abuse (Section 365B)
- Criminal intimidation (Section 483)

³ The National Child Protection Authority was set up under the National Child Protection Authority Act No. 50 of 1998. Its mandate centres on the issue of child abuse and the prevention, protection and treatment of victims of abuse. The NCPA also has the power to monitor initiatives to combat child abuse.

The criminal law is usually invoked by making a complaint to the police. Prosecutions are then initiated against the offender either in the Magistrate's Court or the High Court depending on the offence.

One of the disadvantages of the criminal law is the large degree of reliance that is placed on the police and the Attorney General's Department. Insensitivity on the part of both the police and the prosecutors has been a major obstacle in providing justice to women victims of violence.

7.2 Constitutional Law: Fundamental Rights

There is a belief that the fundamental rights provisions in the constitution apply only against the state. However, this is not correct.

The remedy in the constitution talks of 'executive and administrative action' and thus would be available only against the state, or against acts connected in some way with the state.⁴ However, nothing in the fundamental rights themselves indicate that they are to be applied only against the state. In fact the language of some of the rights indicate clearly that they would apply against private persons.⁵ Unfortunately there have been very few fundamental rights cases filed against non state persons.

There are at least two fundamental rights which are of relevance to domestic violence. Article 11 prohibits torture or cruel, inhuman or degrading treatment or punishment. Acts of domestic violence could amount to torture in some cases and in others cases would constitute 'cruel, inhuman or degrading treatment'. Feminist writer Rhonda Copelon, in a very powerful article, argues that the processes, purposes and consequences of both torture and domestic violence are similar.⁶

⁴ Articles 17 and 126 of the Constitution of Sri Lanka.

⁵ Article 13 (3) prohibits discrimination with regard to access to shops, public restaurants, hotels, places of public entertainment and places of public worship. In most of these cases these 'places' would be privately owned.

⁶ Rhonda Copelon, 'Intimate Terror: Understanding Domestic Violence as Torture'. In Rebecca Cook (ed.) **Human Rights of Women: National and International Perspectives**, (Philadelphia: University of Pennsylvania Press, 1994) p 116 – 152.

Article 12(1) provides for equality before the law and equal protection of the law. Article 12(2) prohibits discrimination on the grounds of race, religion, language, caste, **sex**, political opinion, or place of birth.

According to General Recommendation 19 of the CEDAW Committee, gender related violence is a form of discrimination, which inhibits a woman's ability to enjoy rights and freedoms on the basis of equality with men.⁷

Gender based violence is a form of discrimination that seriously inhibits women's ability to enjoy rights and freedoms on a basis of equality with men.

Gender based violence which impairs or nullifies the enjoyment by women of human rights and fundamental freedoms under general international law or under human rights conventions is discrimination within the meaning of Article 1 of the Convention (on the Elimination of All Forms of Discrimination against Women).⁸

On the basis of this recommendation the prohibition against sex based discrimination contained in Article 12 of the Sri Lankan constitution would extend to domestic violence. If domestic violence amounts to discrimination as the CEDAW Committee says it does, then a victim of domestic violence should have a remedy under Article 12. And if the fundamental rights chapter applies against private actors, then a victim of domestic violence should be able to file a case against the perpetrator of the violence, be it a husband, partner or employer. This argument has never been made in the courts of Sri Lanka. However, it does not mean that it cannot be used in the future.

7.3 The Civil Law

The civil law may also be relevant. One possible remedy is to apply for an injunction against the abuser. An action for injuria - loss of dignity - may also be initiated the District Court. There is little evidence of the use of these remedies in the Sri Lankan law.

⁷ Committee on the Elimination of Discrimination Against Women, 16th Session, General Recommendation No. 19, CEDAW/C/1992/L.1/15 (1992).

⁸ General Recommendation 19, paragraph 1 and 7, CEDAW/C/1992/L.1/15 (1992).

In a case decided about 30 years ago a husband brought a civil action against a man who was alleged to have raped his wife. The court recognized the availability of an action on the grounds of injuria, but dismissed the case because of a lack of evidence.⁹

8. Does Sri Lanka Need Separate Legislation on Domestic Violence?

Yes. One of the disadvantages of the current Sri Lankan law is that there is no specific legislation that addresses domestic violence per se. The uniqueness and complexities of domestic violence requires a separate law which can respond adequately to this complexity. A separate law will:

1. Focus attention on the issue and help in mobilizing support across a wide spectrum of actors and institutions. It will assist in educational activities around domestic violence and support efforts at developing a public opinion against domestic violence.
2. Help in designing remedies that specifically focus on responding to the violence. Domestic violence will require both civil remedies and criminal remedies. It will also require remedies that may currently not be available in the criminal, civil or constitutional law. It is important that the law be able to respond effectively quite apart from whether the remedy being sought is a civil, criminal or constitutional remedy.
3. Enable victims, and others acting on behalf of the victim to easily access the law. While the assistance of the police will be required, a separate law will reduce the reliance that the criminal law places on the police to conduct investigations and prosecute.
4. Help in providing immediate and prompt protection to victims.
5. Provide a single forum at which a victim can obtain a number of remedies. A victim should be able to seek protection from further violence and also be able to go on with her life. A separate law will help to do this by enabling her to claim a number of different reliefs in a single court and in a single action. A victim should not be asked to go to several different courts to obtain relief.

⁹ *Nadarajah v Obeysekera* (1971) 76 New Law Reports 268.

6. Draw attention to the fact that domestic violence is socially unacceptable and morally wrong.
1. Introduce a more acceptable standard of proof. In the case of the criminal law, the prosecution needs to prove a charge 'beyond reasonable doubt'. This is the criminal standard of proof. On the other hand in a non criminal proceeding the standard of proof is usually lower. The charge must be established on a 'balance of probability'. This is the civil standard of proof. A separate law will allow 'a balance of probability' standard' to be introduced.
2. Help the judges to consider the issue of domestic violence from the perspective of the victim, rather than have to look at it in the context of a criminal charge, or in the context of a divorce or custody proceeding.

9. Should the law cover household workers?

Should the proposed law on domestic violence cover household workers in addition to family members? Domestic or household workers are an extremely vulnerable group and clearly need legal protection. However, the issue is should they be covered in the same law?

We think the proposed law should be broad and all encompassing and cover domestic or household workers and members of the extended family such as aunts and cousins as well. Getting Parliament to pass new legislation is difficult. While it may be ideal to have two separate pieces of legislation, one covering domestic violence, and the other covering violence against household workers, this may not be possible. For strategic reasons it would be better to include domestic workers in the law dealing with domestic violence.

10. Some elements of the proposed law

The term 'domestic' implies a domain of safety, a private haven from the pressures of the outside world. Yet modern studies suggest that the 'cradle of nature' can equally be a 'cradle of violence'. Violence within the domestic arena takes many forms. Young boys may be victims of sexual and physical abuse.

*Elderly family members and the infirm are equally vulnerable and, in some cases, husbands are attacked by their wives. However, the overwhelming majority of victims of violence within the household and in the context of intimate relations are women and girls. This gendered character of domestic violence reminds us that throughout the world women suffer from violence because they are women.*¹⁰

The law should be user friendly. It should not be complicated to understand. It should encourage victims to use the law and should be easy to implement. It should provide remedies that will benefit the victim.

The law should be able to provide a woman who has been subject to domestic violence both short term and long term remedies.

The law should recognize that domestic violence occurs in all societies and in all social classes and contexts.

The law should recognize that the majority of the victims of domestic violence are women. The main purpose of the law should be to prevent domestic violence and to provide appropriate remedies to those women who have been subject to domestic violence.

The law should allow a judge in an application of domestic violence to consult with other judges hearing custody or divorce proceedings in relation to the same subject matter. This is especially important where the custody or interests of the children are involved.

The law would have to strike a balance between providing effective remedies to a victim and respecting the rights of an accused to a fair trial and to fair procedures.

We envisage that the law should first recognize a woman's right to free from all forms of violence, including domestic violence and then provide broadly four forms of relief:

- Interim Protection Orders.
- Protection Orders.

¹⁰ 'State Responses to Domestic Violence: Current Status and Needed Improvements', Women, Law and development International, (1996) p 1-2.

- Other forms of relief such as the payment of compensation, access to the family home and the payment of punitive damages.
- A warrant of arrest where the Protection Order is breached.

11. The Right to be Free from all Forms of Violence, whether from private or public sources

The law should recognize a woman's right to be free from all forms of violence, whether from a public or private source. The law should in addition **specifically** recognize a woman's right to be free from all forms of violence in the family and in a domestic context.

12. The law should adopt a broad definition of violence

The law should adopt a broad definition of violence encompassing physical, sexual, psychological and economic abuse. Domestic violence should be defined in the law to mean¹¹:

- a. Physical abuse.
- b. Sexual abuse.
- c. Emotional, verbal and psychological abuse, which would include patterns of degrading or humiliating conduct towards a woman, such as repeated insults, repeated threats to cause emotional pain, and the repeated exhibition of obsessive possessiveness or jealousy.
- d. Economic abuse, which would include the unreasonable deprivation of economic or financial resources which a victim requires, such as household necessities, mortgage payments and rent payments, salary in the case of household workers, and the unreasonable disposal of household effects or other property, in which the victim has an interest.
- e. Intimidation.
- f. Harassment, which would include repeatedly watching or loitering outside a building where the victim resides, works, studies or carries out a business, repeatedly making telephone calls, sending faxes, electronic mail, or packages which induce fear in the victim.

¹¹ This definition has been adapted from the South African Domestic Violence Act of 1998.

- g. Stalking.
- h. Damage to Property.
- i. Entering a victim's residence where the abuser and victim do not share a common residence.
- j. Unreasonable demands on household workers, including long and uninterrupted hours of work without rest, and demands to perform tasks that are beyond the capacity of the victim.
- k. Poor conditions of living for household workers, including the deprivation of food or medical care, the deprivation of rest, leisure and fresh air, and the prevention of household workers from communicating and meeting family, relatives or friends.
- l. Any other controlling or abusive behaviour where such conduct harms or may cause harm to the safety, health or well being of the victim.

13. What sort of relationships should the law cover?

The law should cover the following relationships:

- Husband – wife
- Same sex relationships
- Non marital relationships
- Former spouses
- Parent - children
- Extended family relationships such as aunts, uncles, cousins, grandparents and other relations living in the same household
- Household and domestic workers

The law should be broadly framed and apply to any form of violence which takes places in a family or domestic context. The family should be broadly defined to include not just the conventional nuclear family, but same sex relationships, non marital relationships, and extended families as well.

14. What sorts of remedies should the law offer?

*Legislative tinkering by lawmakers unexposed to the brutal mundaneness of abused people's lives can produce little more than a law to appease the conscience that recoils from the horror of cruelty to women and children. It is not sympathy that battered women seek. Nor is it their goal to become the symbol of the extent to which a particular government cares for the disempowered. They need safety. They need maintenance. They need a roof over their heads. They need work. They need legal advice that is responsive to the unique circumstances in which they find themselves. A commitment to ending violence in the home must deliver to women the means of survival.*¹²

We have classified the relief that the law should offer under three categories: Interim Protection Orders, Protection Orders, and Other Forms of Relief.

14.1 Interim Protection Orders

- An Interim Protection Order will provide the woman protection from threatened or further violence. It is given in an emergency context where there is a possibility that the woman will be subject to abuse.
- A woman should be able to apply to a judge (Magistrate) for an order to restrain the abuser from committing or attempting to commit any act of violence.
- A third party should also be able to apply to court on the woman's behalf. However, in the case the written consent of the victim should be obtained, to prevent the law from being abused. The victim's consent would not be needed where the victim is a minor or is mentally retarded or is unconscious.
- Where the victim or the third party establishes that the abuser has committed an act of domestic violence and that hardship may be caused to the victim if a protection order is not given, then the judge must issue an Interim Protection Order.

¹² J. Fedler, 'Lawyering Domestic Violence Through the Prevention of Family Violence Act 1993 - an Evaluation After a Year in Operation', [1995] South African Law Journal 231 at 251.

- The Interim Protection Order should be accompanied by a **warrant of arrest**. The warrant of arrest would be suspended. However, if the abuser breaches the terms of the Interim Protection Order then he could be arrested under this warrant and without having to go to court again.
- The Interim Protection Order should be obtainable *ex parte*, that is in the absence of the abuser. **The main objective of the Interim Protection Order should be to provide an easily accessible and immediate remedy against the violence.**
- As a general rule if a court gives an order without hearing the other side it is violating one of the law's most sacred rules: the rules of natural justice. According to the rules of natural justice decisions cannot be made without hearing the other side. However, the law also recognizes that there are exceptions to this rule. In certain situations where the urgency of the situation requires an immediate order then the rules of natural justice need not be observed at that point. They can be observed at a later point. The imminent danger of harm is clearly one situation in which the rules of natural justice could be over looked for the moment.
- That is why the Protection Order is interim. It will be possible at a later date for the abuser to come to court and argue that he did not engage in violence or argue to have the Protection Order set aside.
- The rules of natural justice are thus not disregarded completely. Their observance is only postponed because of the imminent threat of violence that the woman faces.
- The law should provide that the police bring the Interim Protection Order to the notice of the abuser. It must be served on the abuser and require him to appear before Court on a specified date.
- The Interim Protection Order is a temporary one and is reviewed by the Court at a subsequent hearing. The abuser is heard at this subsequent hearing and the Court may make a more permanent order at this hearing.
- The law should permit a victim to access a Magistrate even during weekends and after hours to be able to obtain an Interim Protection Order.

14.2 Protection Orders

A Protection Order is a permanent order, at a subsequent stage, directing the abuser to refrain from acts of violence. It may be accompanied by other forms of relief. The abuser is heard at this stage and it is possible for the abuser to argue that he did not engage in the violence or seek to have the terms of the Interim Protection Order modified. The Protection Order should be accompanied by a warrant of arrest. Where the abuser violates the Protection Order then the abuser should be arrested, without having to resort to court once again.

15. What does an Interim Protection Order or Protection Order entail?

In the case of both Interim Protection Orders and Protection Orders the judge should be able to prohibit the abuser from:¹³

- Committing an act of violence
- Enlisting the help of any other person to commit an act of domestic violence.
- Entering a residence shared by the victim or abuser where the interests of the victim require this.
- Entering the victim's residence or a specified part of the victim's residence.
- Entering the victim's place of employment.
- Preventing the victim from entering her previous residence.
- Telephoning or in any other way attempting to establish contact with the victim.
- Preventing the victim from using the family car.
- Selling jointly owned family assets or assets which although are in the abuser's name, are assets in which the victim has an interest.

¹³ These are taken from the South African Domestic Violence Act of 1998.

- Working a household worker for long hours or in any other way subjecting her to physical, sexual, emotional or economic abuse.
- Committing acts of violence against any other person, whether it be a relative, friend or social worker, who may be assisting the victim.

16. Other Forms of Relief

In addition to prohibiting acts of domestic violence, the law should permit the judge to order other types of relief that will permit the woman to go on with her life with the minimum possible disruption. The law should also permit the judge to make orders regulating the abuser's access to children. The other forms of relief should include:

- The payment of emergency monetary relief, taking into account the victim's and abuser's financial condition. This should also take into account any medical or dental expenses incurred by the victim, and relocation or other expenses incurred by the victim.
- The payment of punitive damages where appropriate. This will take into account the gravity and severity of the abuse and will be in addition to other forms of monetary relief the court may order.
- The payment of rent or any mortgage payment on a house, keeping in mind the financial resources of the victim and the abuser.
- Orders controlling the access that the abuser has with regard to children, where the interests of the child so require.
- An order to the police to seize any weapons that the abuser may have in his possession.
- The payment of salary or other dues that may be owed to a household worker.
- An order requiring the abuser alone, or the abuser and the victim, to attend mandatory counselling sessions, psychotherapy or other forms of rehabilitative therapy.

- An order requiring that the victim be placed in a shelter to provide her temporary housing where she will be counselled and informed of the alternatives available to her.

17. Standard of Proof

Where a victim or a third party establishes a prima facie case that an act of domestic violence took place and that the victim would suffer hardship if an Interim Protection Order is not given, the Magistrate **must** issue an Interim Protection Order.

At the second stage of the inquiry, where the abuser is heard, the burden shall be on the abuser to establish on a 'balance of probability' that he did not commit the acts of domestic violence, or establish on a balance of probability that the Protection Order be varied for financial or other reasons.

18. Duties on Police Officers

The police should act swiftly where a victim makes a complaint regarding domestic violence. The police should also act swiftly where a neighbour or some other person brings to the notice of the police that an act of domestic violence has taken place or is about to take place. The police should act in a way so as to prevent further violence and help the victim in finding shelter and medical assistance where such assistance is required.

Where the only way to prevent further acts of domestic violence taking place is to the arrest the abuser, then the police must arrest the person immediately.

The police should be able to provide information to a victim on her rights and the remedies that are available. A statement of victim rights should be available in all police stations in all three languages and the police should be obliged to read and explain this statement of rights to every victim.

The police should be obliged to contact a counselling organisation, a social service organisation, a women's shelter or other group whenever a victim makes a complaint of domestic violence. This is to help the victim access medical, emotional and psychological support that she may need, but that the law may not be able to provide.

The police should make every attempt to serve an Interim Protection Order on an abuser.

Where a person violates the terms of an Interim Protection Order or a Protection Order, then the police should arrest such a person.

19. Pursuing Other Remedies

Obtaining relief under the domestic violence law shall not prevent a victim from making a complaint to the police against the abuser. The police should then investigate the complaint and proceed to prosecute the abuser, under the criminal law, where a prima facie case exists.

The existing criminal law should also be reformed to recognize the offence of domestic violence. The offence should be defined in the same terms as the proposed law and should recognize that women are subject to violence because they are women. Sentencing could include punitive damages or community service.

Obtaining relief under the domestic violence law shall not prevent the victim from pursuing any other legal remedies, including a civil action or a fundamental rights action.

20. Sri Lanka's International Obligations in this area.

1. Sri Lanka has ratified the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). The Convention requires ratifying states to pass legislation to eliminate discrimination and achieve equality. Violence against women is a form of gender based discrimination and passing a law on domestic violence would be one step towards eradicating discrimination against women.
2. Sri Lanka is a member state of the UN. The Declaration on the Elimination of Violence Against Women (DEVAW), although not binding law, obliges member states to pursue policies to eliminate violence against women and to pass laws to prevent and punish gender based violence.
3. Sri Lanka ratified the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in 1994. Article 2 of the Convention obliges a member state to take legislative, administrative, judicial or other measures to prevent

torture within its jurisdiction. Writers argue that domestic violence is a form of torture and should be recognized by international law and sanctioned as such.¹⁴ If domestic violence can be a form of torture or inhuman treatment, then the Sri Lankan state has an obligation to take steps to prevent torture and inhuman treatment in the home. A law on domestic violence would be one such measure.

21. Sri Lanka's National Obligations

1. The state has an obligation to protect women from violence. This includes a duty to enact laws that are effective and responsive. The laws should not subject victims to secondary victimisation, by adopting unsympathetic, disbelieving and inappropriate procedures.
2. The Constitution prohibits discrimination on the basis of sex. Domestic violence affects women disproportionately and prevents women from enjoying many other human rights to which they are entitled. The state is obliged to foster and promote equality between men and women by enacting appropriate laws to prevent and respond to domestic violence.
3. Article 12(4) of the Constitution explicitly permits the passing of laws or the adoption of policies for the advancement of women.
4. The Directive Principles of State Policy in Constitution, which although not legally enforceable, are meant to guide legislation and executive action. These Directive Principles require the state to promote equality of opportunity and to ensure that no citizen suffers any disability on the ground of sex. These Principles also require the state to ensure the full realization of the fundamental rights and freedoms of all persons.
5. The National Plan of Action for Women in Sri Lanka envisages the passing of a law to deal with domestic violence.¹⁵ The Plan also envisages the establishment of regional crisis centres for women and children victims of violence that will provide support services to victims.

¹⁴ See the article by Rhonda Copelon cited above.

¹⁵ p.18.

6. In 1993 the government adopted the Women's Charter. The state has an obligation under the Charter to take measures to prevent violence against women. According to the Charter legislative reforms are one such measure.

The Women's Charter though is not a legally binding document and cannot be enforced in a court. In relation to gender based violence the Charter observes:

The State shall take measures to prevent the phenomenon of violence against women, children and young persons in society, in the workplace, in the family as well as in custody, in particular such manifestation of it as rape, incest, sexual harassment and physical and mental abuse, torture and cruel, inhuman or degrading treatment.

Such measures shall include:

(i) the promotion of legislative reforms not only in terms of the substantive law but also with regard to preventive and punitive measures which would clearly recognize the rights of the women victims of violence.

(ii) the promotion of structural reforms within the law enforcement machinery and sensitisation of enforcement authorities so as to strengthen their capacity to deal with crimes of violence directed against women;;

(iii) provision of support to non governmental organisations, community based organisations and programmes which provide support and counselling services to women victims of violence, including those affected by armed conflict and civil strife.¹⁶

¹⁶ Article 16 of the Women's Charter (Sri Lanka).

**Optional Protocol
to the Convention on the Elimination of
All Forms of Discrimination against Women
(CEDAW)**

The States Parties to the present Protocol,

Noting that the Charter of the United Nations reaffirms faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women,

Also noting that the Universal Declaration of Human Rights proclaims that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, including distinction based on sex,

Recalling that the International Covenants on Human Rights and other international human rights instruments prohibit discrimination on the basis of sex,

Also recalling the Convention on the Elimination of All Forms of Discrimination against Women ("the Convention"), in which the States Parties thereto condemn discrimination against women in all its forms and agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women,

Reaffirming their determination to ensure the full and equal enjoyment by women of all human rights and fundamental freedoms and to take effective action to prevent violations of these rights and freedoms,

Have agreed as follows:

Article 1

A State Party to the present Protocol ("State Party") recognizes the competence of the Committee on the Elimination of Discrimination against Women ("the Committee") to receive and consider communications submitted in accordance with article 2.

Article 2

Communications may be submitted by or on behalf of individuals or groups of individuals, under the jurisdiction of a State Party, claiming to be victims of a violation of any of the rights set forth in the Convention by that State Party. Where a communication is submitted on behalf of individuals or groups of individuals, this shall be with their consent unless the author can justify acting on their behalf without such consent.

Article 3

Communications shall be in writing and shall not be anonymous. No communication shall be received by the Committee if it concerns a State Party to the Convention that is not a party to the present Protocol.

Article 4

1. The Committee shall not consider a communication unless it has ascertained that all available domestic remedies have been exhausted unless the application of such remedies is unreasonably prolonged or unlikely to bring effective relief.

2. The Committee shall declare a communication inadmissible where:

(a) The same matter has already been examined by the Committee or has been or is being examined under another procedure of international investigation or settlement;

(b) It is incompatible with the provisions of the Convention;

(c) It is manifestly ill-founded or not sufficiently substantiated;

(d) It is an abuse of the right to submit a communication;

(e) The facts that are the subject of the communication occurred prior to the entry into force of the present Protocol for the State Party concerned unless those facts continued after that date.

Article 5

1. At any time after the receipt of a communication and before a determination on the merits has been reached, the Committee may transmit to the State Party concerned for its urgent consideration a request that the State Party take such interim measures as may be necessary to avoid possible irreparable damage to the victim or victims of the alleged violation.
2. Where the Committee exercises its discretion under paragraph 1 of the present article, this does not imply a determination on admissibility or on the merits of the communication.

Article 6

1. Unless the Committee considers a communication inadmissible without reference to the State Party concerned, and provided that the individual or individuals consent to the disclosure of their identity to that State Party, the Committee shall bring any communication submitted to it under the present Protocol confidentially to the attention of the State Party concerned.
2. Within six months, the receiving State Party shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been provided by that State Party.

Article 7

1. The Committee shall consider communications received under the present Protocol in the light of all information made available to it by or on behalf of individuals or groups of individuals and by the State Party concerned, provided that this information is transmitted to the parties concerned.
2. The Committee shall hold closed meetings when examining communications under the present Protocol.

3. After examining a communication, the Committee shall transmit its views on the communication, together with its recommendations, if any, to the parties concerned.

4. The State Party shall give due consideration to the views of the Committee, together with its recommendations, if any, and shall submit to the Committee, within six months, a written response, including information on any action taken in the light of the views and recommendations of the Committee.

5. The Committee may invite the State Party to submit further information about any measures the State Party has taken in response to its views or recommendations, if any, including as deemed appropriate by the Committee, in the State Party's subsequent reports under article 18 of the Convention.

Article 8

1. If the Committee receives reliable information indicating grave or systematic violations by a State Party of rights set forth in the Convention, the Committee shall invite that State Party to cooperate in the examination of the information and to this end to submit observations with regard to the information concerned.

2. Taking into account any observations that may have been submitted by the State Party concerned as well as any other reliable information available to it, the Committee may designate one or more of its members to conduct an inquiry and to report urgently to the Committee. Where warranted and with the consent of the State Party, the inquiry may include a visit to its territory.

3. After examining the findings of such an inquiry, the Committee shall transmit these findings to the State Party concerned together with any comments and recommendations.

4. The State Party concerned shall, within six months of receiving the findings, comments and recommendations transmitted by the Committee, submit its observations to the Committee.

5. Such an inquiry shall be conducted confidentially and the cooperation of the State Party shall be sought at all stages of the proceedings.

Article 9

1. The Committee may invite the State Party concerned to include in its report under article 18 of the Convention details of any measures taken in response to an inquiry conducted under article 8 of the present Protocol.
2. The Committee may, if necessary, after the end of the period of six months referred to in article 8.4, invite the State Party concerned to inform it of the measures taken in response to such an inquiry.

Article 10

1. Each State Party may, at the time of signature or ratification of the present Protocol or accession thereto, declare that it does not recognize the competence of the Committee provided for in articles 8 and 9.
2. Any State Party having made a declaration in accordance with paragraph 1 of the present article may, at any time, withdraw this declaration by notification to the Secretary-General.

Article 11

A State Party shall take all appropriate steps to ensure that individuals under its jurisdiction are not subjected to ill treatment or intimidation as a consequence of communicating with the Committee pursuant to the present Protocol.

Article 12

The Committee shall include in its annual report under article 21 of the Convention a summary of its activities under the present Protocol.

Article 13

Each State Party undertakes to make widely known and to give publicity to the Convention and the present Protocol and to facilitate access to information about the views and recommendations of the Committee, in particular, on matters involving that State Party.

Article 14

The Committee shall develop its own rules of procedure to be followed when exercising the functions conferred on it by the present Protocol.

Article 15

1. The present Protocol shall be open for signature by any State that has signed, ratified or acceded to the Convention.
2. The present Protocol shall be subject to ratification by any State that has ratified or acceded to the Convention. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.
3. The present Protocol shall be open to accession by any State that has ratified or acceded to the Convention.
4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

Article 16

1. The present Protocol shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations of the tenth instrument of ratification or accession.
2. For each State ratifying the present Protocol or acceding to it after its entry into force, the present Protocol shall enter into force three months after the date of the deposit of its own instrument of ratification or accession.

Article 17

No reservations to the present Protocol shall be permitted.

Article 18

1. Any State Party may propose an amendment to the present Protocol and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate any proposed amendments to the States Parties with a request that they notify her or him whether they favour a conference of States Parties for the purpose of considering and voting on the proposal. In the event that at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.

2. Amendments shall come into force when they have been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the States Parties to the present Protocol in accordance with their respective constitutional processes.

3. When amendments come into force, they shall be binding on those States Parties that have accepted them, other States Parties still being bound by the provisions of the present Protocol and any earlier amendments that they have accepted.

Article 19

1. Any State Party may denounce the present Protocol at any time by written notification addressed to the Secretary-General of the United Nations. Denunciation shall take effect six months after the date of receipt of the notification by the Secretary-General.

2. Denunciation shall be without prejudice to the continued application of the provisions of the present Protocol to any communication submitted under article 2 or any inquiry initiated under article 8 before the effective date of denunciation.

Article 20

The Secretary-General of the United Nations shall inform all States of:

- (a) Signatures, ratifications and accessions under the present Protocol;
- (b) The date of entry into force of the present Protocol and of any amendment under article 18;
- (c) Any denunciation under article 19.

Article 21

1. The present Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Protocol to all States referred to in article 25 of the Convention.

Equality of Rights Between Men And Women

General Comment No 28 Human Rights Committee (Article 3)

29/03/2000. CCPR/C/21/Rev.1/Add.10,

UNEDITED VERSION

GENERAL COMMENTS ADOPTED BY THE HUMAN RIGHTS COMMITTEE
UNDER ARTICLE 40, PARAGRAPH 4, OF THE INTERNATIONAL COVENANT
ON CIVIL AND POLITICAL RIGHTS

EQUALITY OF RIGHTS BETWEEN MEN AND WOMEN (Article 3)

1. The Committee has decided to update its General Comment on Article 3 of this Covenant and to replace General Comment 4 (thirteenth session 1981), in the light of the experience it has gathered in its activities over the last 20 years. This revision seeks to take account of the important impact of this article on the enjoyment by women of the human rights protected under the Covenant.
2. Article 3 implies that all human beings should enjoy the rights provided for in the Covenant, on an equal basis and in their totality. The full effect of this provision is impaired whenever any person is denied the full and equal enjoyment of any right. Consequently, States should ensure to men and women equally the enjoyment of all rights provided for in the Covenant.
3. The obligation to ensure to all individuals the rights recognized in the Covenant, established in Articles 2 and 3 of the Covenant, requires that State parties take all necessary steps to enable every person to enjoy those rights. These steps include the removal of obstacles to the equal enjoyment each of such rights, the education of the population and of state officials in human rights and the adjustment of domestic legislation so as to give effect to the undertakings set forth in the Covenant. The

State party must not only adopt measures of protection but also positive measures in all areas so as to achieve the effective and equal empowerment of women. States parties must provide information regarding the actual role of women in society so that the Committee may ascertain what measures, in addition to legislative provisions, have been or should be taken to give effect to these obligations, what progress has been made, what difficulties are encountered and what steps are being taken to overcome them.

4. State parties are responsible for ensuring the equal enjoyment of rights without any discrimination. Articles 2 and 3 mandate States parties to take all steps necessary, including the prohibition of discrimination on the ground of sex, to put an end to discriminatory actions both in the public and the private sector which impair the equal enjoyment of rights.
5. Inequality in the enjoyment of rights by women throughout the world is deeply embedded in tradition, history and culture, including religious attitudes. The subordinate role of women in some countries is illustrated by the high incidence of pre-natal sex selection and abortion of female fetuses. States parties should ensure that traditional, historical, religious or cultural attitudes are not used to justify violations of women's right to equality before the law and to equal enjoyment of all Covenant rights. States parties should furnish appropriate information on those aspects of tradition, history, cultural practices and religious attitudes which jeopardise, or may jeopardise, compliance with Article 3, and indicate what measures they have taken or intend to take to overcome such factors.
6. In order to fulfil the obligation set forth in article 3 States parties should take account of the factors which impede the equal enjoyment by women and men of each right specified in the Covenant. To enable the Committee to obtain a complete picture of the situation of women in each State party as regards the implementation of the rights in the Covenant, this general comment identifies some of the factors affecting the equal enjoyment by women of the rights under the Covenant, and spells out the type of information that is required with regard to these various rights.
7. The equal enjoyment of human rights by women must be protected during a state of emergency (Article 4). States parties which take measures derogating from their obligations under the Covenant in time of public emergency, as provided in article 4,

should provide information to the Committee with respect to the impact on the situation of women of such measures and should demonstrate that they are non-discriminatory.

8. Women are particularly vulnerable in times of internal or international armed conflicts. States parties should inform the Committee of all measures taken during these situations to protect women from rape, abduction and other forms of gender based violence.
9. In becoming parties to the Covenant, States undertake, in accordance with Article 3, to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the Covenant, and in accordance with Article 5, nothing in the Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights provided for in Article 3, or at limitations not covered by the Covenant. Moreover, there shall be no restriction upon or derogation from the equal enjoyment by women of all fundamental human rights recognized or existing pursuant to law, conventions, regulations or customs, on the pretext that the Covenant does not recognize such rights or that it recognizes them to a lesser extent.
10. When reporting on the right to life protected by Article 6, States parties should provide data on birth rates and on pregnancy and childbirth-related deaths of women. Gender-disaggregated data should be provided on infant mortality rates. States parties should give information on any measures taken by the State to help women prevent unwanted pregnancies, and to ensure that they do not have to undertake life-threatening clandestine abortions. States parties should also report on measures to protect women from practices, that violate their right to life, such as female infanticide, the burning of widows and dowry killings. The Committee also wishes to have information on the particular impact on women of poverty and deprivation that may pose a threat to their lives.
11. To assess compliance with Article 7 of the Covenant, as well as with Article 24, which mandates special protection for children, the Committee needs to be provided information on national laws and practice with regard to domestic and other types of violence against women, including rape. It also needs to know whether the State party gives access to safe abortion to women who have become pregnant as a result of

rape. The States parties should also provide the Committee information on measures to prevent forced abortion or forced sterilization. In States parties where the practice of genital mutilation exists information on its extent and on measures to eliminate it should be provided. The information provided by States parties on all these issues should include measures of protection, including legal remedies, for women whose rights under Article 7 have been violated.

12. Having regard to their obligations under Article 8, States parties should inform the Committee of measures taken to eliminate trafficking of women and children, within the country or across borders, and forced prostitution. They must also provide information on measures taken to protect women and children, including foreign women and children, from slavery, disguised inter alia as domestic or other kinds of personal service. States parties where women and children are recruited, and from which they are taken, and States parties where they are received should provide information on measures, national or international, which have been taken in order to prevent the violation of women's and children's rights.
13. States parties should provide information on any specific regulation of clothing to be worn by women in public. The Committee stresses that such regulations may involve a violation of a number of rights guaranteed by the Covenant, such as: Article 26, on non-discrimination; Article 7, if corporal punishment is imposed in order to enforce such a regulation; Article 9, when failure to comply with the regulation is punished by arrest; Article 12, if liberty of movement is subject to such a constraint; Article 17, which guarantees all persons the right to privacy without arbitrary or unlawful interference; Articles 18 and 19, when women are subjected to clothing requirements that are not in keeping with their religion or their right of self-expression; and, lastly, Article 27, when the clothing requirements conflict with the culture to which the woman can lay a claim.
14. With regards to Article 9 States parties should provide information on any laws or practices which may deprive women of their liberty on an arbitrary or unequal basis, such as by confinement within the house. (See General Comment No 8 paragraph 1.)
15. As regards Articles 7 and 10, States parties must provide all information relevant to ensuring that the right of persons deprived of their liberty are protected on equal terms for men and women. In particular, States parties should report on whether men

and women are separated in prisons and whether women are guarded only by female guards. States parties should also report about compliance with the rule that accused juvenile females shall be separated from adults and on any difference in treatment between male and female persons deprived of liberty, such as, for example, access to rehabilitation and education programmes and to conjugal and family visits. Pregnant women who are deprived of their liberty should receive humane treatment and respect for their inherent dignity at all times surrounding the birth and while caring for their newly-born children; States parties should report on facilities to ensure this and on medical and health care for such mothers and their babies.

16. As regards Article 12, States parties should provide information on any legal provision or any practice which restricts women's right to freedom of movement as, for example, the exercise of marital powers over the wife or parental powers over adult daughters, legal or de facto requirements which prevent women from travelling such as the requirement of consent of a third party to the issuance of a passport or other type of travel documents to an adult woman. States parties should also report on measures taken to eliminate such laws and practices and to protect women against them, including reference to available domestic remedies (See General Comment No 27 paragraphs 6 and 18)
17. States parties should ensure that alien women are accorded on an equal basis the right to submit reasons against their expulsion, and to have their case reviewed as provided in Article 13. In this regard, they should be entitled to submit reasons based on gender specific violations of the Covenant such as those mentioned in paragraphs [10 and 11] above.
18. State parties should provide information to enable the Committee to ascertain whether access to justice and the right to a fair trial, provided for in Article 14, are enjoyed by women on equal terms to men. In particular States parties should inform the Committee whether there are legal provisions preventing women from direct and autonomous access to the courts (Case 202/1986, *Ato del Avellanal v. Peru* (views of 28 October 1988); whether women may give evidence as witnesses on the same terms as men; and whether measures are taken to ensure women equal access to legal aid, in particular in family matters. States parties should report on whether certain categories of women are denied the enjoyment of the presumption of innocence under

Article 14, paragraph 2, and on the measures which have been taken to put an end to this situation.

19. The right of everyone under Article 16 to be recognized everywhere as a person before the law is particularly pertinent for women, who often see it curtailed by reason of sex or marital status. This right implies that the capacity of women to own property, to enter into a contract or to exercise other civil rights may not be restricted on the basis of marital status or any other discriminatory ground. It also implies that women may not be treated as objects to be given together with the property of the deceased husband to his family. States must provide information on laws or practices that prevent women from being treated or from functioning as full legal persons and the measures taken to eradicate laws or practices that allow such treatment.
20. States parties must provide information to enable the Committee to assess the effect of any laws and practices that may interfere with women's right to enjoy privacy and other rights protected by Article 17 on the basis of equality with men. An example of such interference arises where the sexual life of a woman is taken into consideration to decide the extent of her legal rights and protections, including protection against rape. Another area where States may fail to respect women's privacy relates to their reproductive functions, for example, where there is a requirement for the husband's authorization to make a decision in regard to sterilization, where general requirements are imposed for the sterilization of women, such as having a certain number of children or being of a certain age, or where States impose a legal duty upon doctors and other health personnel to report cases of women who have undergone abortion. In these instances, other rights in the Covenant, such as those of Articles 6 and 7, might also be at stake. Women's privacy may also be interfered with by private actors, such as employers who request a pregnancy test before hiring a woman. States parties should report on any laws and public or private actions that interfere with the equal enjoyment by women of the rights under Article 17, and on the measures taken to eliminate such interference and to afford women protection from any such interference.
21. States parties must take measures to ensure that freedom of thought, conscience and religion, and the freedom to adopt the religion or belief of one's choice -- including the freedom to change religion or belief and to express one's religion or belief -- will be guaranteed and protected in law and in practice for both men and women, on the

same terms and without discrimination. These freedoms protected by Article 18, must not be subject to restrictions other than those authorized by the Covenant, and must not be constrained by, *inter alia*, rules requiring permission from third parties, or by interference from fathers, husbands, brothers or others. Article 18 may not be relied upon to justify discrimination against women by reference to freedom of thought, conscience and religion; States parties should therefore provide information on the status of women as regards their freedom of thought, conscience and religion, and indicate what steps they have taken or intend to take both to eliminate and prevent infringements of these freedoms in respect of women and to protect their rights against any discrimination.

22. In relation to Article 19 States parties should inform the Committee of any laws or other factors which may impede women from exercising the rights protected under this provision on an equal basis. As the publication and dissemination of obscene and pornographic material which portrays women and girls as objects of violence or degrading or inhuman treatment is likely to promote these kinds of treatment of women and girls, States parties should provide information about legal measures to restrict the publication or dissemination of such material.
23. States are required to treat men and women equally in regard to marriage in accordance with Article 23, which has been elaborated further by General Comment 19 (1990). Men and women have the right to enter into marriage only with their free and full consent, and States have an obligation to protect the enjoyment of this right on an equal basis. Many factors may prevent women from being able to make the decision to marry freely. One factor relates to the minimum age for marriage. That age should be set by the State on the basis of equal criteria for men and women. These criteria should ensure women's capacity to make an informed and uncoerced decision. A second factor in some States may be that either by statutory or customary law a guardian, who is generally male, consents to the marriage instead of the woman herself, thereby preventing women from exercising a free choice.
24. A different factor that may affect women's right to marry only when they have given free and full consent is the existence of social attitudes which tend to marginalize women victims of rape and put pressure on them to agree to marriage. A woman's free and full consent to marriage may also be undermined by laws which allow the rapist to have his criminal responsibility extinguished or mitigated if he marries the

victim. States parties should indicate whether marrying the victim extinguishes or mitigates criminal responsibility and in the case in which the victim is a minor whether the rape reduces the marriageable age of the victim, particularly in societies where rape victims have to endure marginalization from society. A different aspect of the right to marry may be affected when States impose restrictions on remarriage by women as compared to men. Also the right to choose one's spouse may be restricted by laws or practices that prevent the marriage of a woman of a particular religion with a man who professes no religion or a different religion. States should provide information on these laws and practices and on the measures taken to abolish the laws and eradicate the practices which undermine the right of women to marry only when they have given free and full consent. It should also be noted that equality of treatment with regard to the right to marry implies that polygamy is incompatible with this principle. Polygamy violates the dignity of women. It is an inadmissible discrimination against women. Consequently, it should be definitely abolished wherever it continues to exist.

25. To fulfill their obligations under Article 23, paragraph 4, States must ensure that the matrimonial regime contains equal rights and obligations for both spouses, with regard to the custody and care of children, the children's religious and moral education, the capacity to transmit to children the parent's nationality, and the ownership or administration of property, whether common property or property in the sole ownership of either spouse. States should review their legislation to ensure that married women have equal rights in regard to the ownership and administration of such property, where necessary. Also, States should ensure that no sex-based discrimination occurs in respect of the acquisition or loss of nationality by reason of marriage, of residence rights and of the right of each spouse to retain the use of his or her original family name or to participate on an equal basis in the choice of a new family name. Equality during marriage implies that husband and wife should participate equally in responsibility and authority within the family.
26. States must also ensure equality in regard to the dissolution of marriage, which excludes the possibility of repudiation. The grounds for divorce and annulment should be the same for men and women, as well as decisions with regard to property distribution, alimony and the custody of children. The need to maintain contact between children and the non-custodian parent, should be based on equal

considerations. Women should also have equal inheritance rights to those of men when the dissolution of marriage is caused by the death of one of the spouses.

27. In giving effect to recognition of the family in the context of article 23, it is important to accept the concept of the various forms of family, including unmarried couples and their children and single parents and their children and to ensure the equal treatment of women in these contexts (General Comment 19 paragraph 2 last sentence). Single parent families frequently consist of a single woman caring for one or more children, and States parties should describe what measures of support are in place to enable her to discharge her parental functions on the basis of equality with a man in a similar position.
28. The obligation of states to protect children (Article 24) should be carried out equally for boys and girls. States should report on measures taken to ensure that girls are treated equally to boys in education, in feeding and in health care, and provide the Committee with disaggregated data in this respect. States should eradicate, both through legislation and any other appropriate measures, all cultural or religious practices which jeopardize the freedom and well-being of female children.
29. The right to participate in the conduct of public affairs is not fully implemented everywhere on an equal basis. States must ensure that the law guarantees to women article 25 rights on equal terms with men and take effective and positive measures to promote and ensure women's participation in the conduct of public affairs and in public office, including appropriate affirmative action. Effective measures taken by States parties to ensure that all persons entitled to vote are able to exercise that right should not be discriminatory on the grounds of sex. The Committee requires States parties to provide statistical information on the percentage of women in publicly elected offices including the legislature as well as in high-ranking civil service positions and the judiciary.
30. Discrimination against women is often intertwined with discrimination on other grounds such as race, colour, language, religion, political or other opinion, national or social origin, property, birth or other status. States parties should address the ways in which any instances of discrimination on other grounds affect women in a particular way, and include information on the measures taken to counter these effects.

31. The right to equality before the laws and freedom from discrimination, protected by Article 26, requires States to act against discrimination by public and private agencies in all fields. Discrimination against women in areas such as social security laws - Case 172/84, *Broeks v. Netherlands* (views of 9 April 1987; case 182/84, *Zwaan de Vries v. The Netherlands*, (views of 9 April 1987); case 218/1986, *Vos v. The Netherlands* (views of 29 March 1989) - as well as in the area of citizenship or rights of non-citizens in a country - Case 035/1978, *Aumeeruddy-Cziffra et al v. Mauritius* (views adopted 9 April 1981) - violates Article 26. The commission of so called "honour crimes" which remain unpunished, constitutes a serious violation of the Covenant and in particular of Articles 6, 14 and 26. Laws which impose more severe penalties on women than on men for adultery or other offences also violate the requirement of equal treatment. The Committee has also often observed in reviewing States reports that a large proportion of women are employed in areas which are not protected by labor laws, that prevailing customs and traditions discriminate against women, particularly with regard to access to better paid employment and to equal pay for work of equal value. States should review their legislation and practices and take the lead in implementing all measures necessary in order to eliminate discrimination against women, in all fields, for example by prohibiting discrimination by private actors in areas such as employment, education, political activities and the provision of accommodation, goods and services. States parties should report on all these measures and provide information on the remedies available to victims of such discrimination.
32. The rights which persons belonging to minorities enjoy under article 27 of the Covenant in respect of their language, culture and religion do not authorize any State, group or person to violate the right to equal enjoyment by women of any Covenant rights, including the right to equal protection of the law. States should report on any legislation or administrative practices related to membership in a minority community that might constitute an infringement of the equal rights of women under the Covenant - Case 24/1977 *Lovelace v. Canada*, (views adopted July 1981) - and on measures taken or envisaged to ensure the equal right of men and women to enjoy all civil and political rights in the Covenant. Likewise, States should report on measures taken to discharge their responsibilities in relation to cultural or religious practices within minority communities that affect the rights of women. In their reports, States parties should pay attention to the contribution made by women to the cultural life of their communities.

WOMEN'S MANIFESTO

In the last decades of the 20th century, important changes have occurred in the lives of Sri Lankan women, and progress was made in reforming laws, improving women's economic and social status, and increasing gender awareness among many sectors of the population. Women are nearly 90% literate and more than ever before visible in the public domain. Sri Lanka had the world's first elected woman head of state, and more recently the country had its first woman Vice-Chancellor, Supreme Court Judge and Secretary to a Ministry. Women also play an important part in the state bureaucracies and private sector, in the medical and legal professions, in the arts, and in many other areas. The proportion of female workers in semi-skilled and unskilled jobs has also increased.

However, as well as bearing the burden of poverty, women still face many types of economic exploitation, political exclusion, legal discrimination, and social oppression. Moreover, violence against women, patriarchal practices and traditional attitudes towards women still prevail. Women also are confronted during elections with violence and intimidation, preventing free and full participation.

At election time, however, there is an increasing awareness of the voting power of women, who form half the electorate and are recognized as key factors in winning elections. Although women remain mainly electors. A very few enter political office at the national or local level and consciousness can be raised during election campaigns in order to make the candidates and the general public aware of the needs of women and their demands for a better life. More women are needed in parliament and local bodies, especially at decision-making levels, to put forward the many issues affecting women, and to take gender-sensitive positions on matters of national and international interest.

For this purpose several women's organizations, have prepared the following Women's Manifesto:

Politics

Women's political participation is mainly sought at election time, when they are active organizers and canvassers. But few women have been given nomination. In the recently

dissolved parliament there were only 10 women (less than 5%), very few in present local government bodies (1%), and only 1 woman in the National List of 29 nominated Members of Parliament. In the nominations for the October 2000 elections, the National List has only 3 women for the PA and none for the UNP. We, therefore, recommend:

1. (a) A minimum 30% quota of women at local government level, i.e. in Pradeshiya Sabhas, Municipal and Urban Councils, and Provincial Councils.
(b) A minimum 30% quota of women in Parliament, and 50% of those appointed to the National List should be women.
2. More women Ministers, Junior Ministers, and Cabinet Ministers, as well as Secretaries to Ministries, and heads of institutions and the judiciary.
3. A minimum of 30% in the nomination of women candidates at all levels by political parties.
4. Adequate training and other support for women candidates.
5. Research and other support services for women in Parliament and local bodies to enable them to function effectively.
6. Caucus of women in the law-making bodies cutting across party politics in order to focus on women's issues.
7. A national campaign to promote more women in politics, and in decision-making positions.
8. Voting rights for migrant workers.

Law Reform

In 1995 significant changes were made to the criminal law. Sexual harassment was made a crime; penalties for rape were increased; the age of statutory rape was increased to 16; and the minimum age of marriage was raised from 12 to 16 (except for Muslims).

We recommend:

1. Removal or amendment of all discriminatory laws that are contrary to fundamental rights. Constitutional guarantees that women should not be discriminated against in the name of preserving identity.
2. A specific law on domestic violence, combining criminal and civil remedies and offering expedient relief and services such as counselling and shelters for victims.
3. Strengthening of the law on sexual harassment, including civil remedies, with compensation. All employers, including the private sector, should set up complaint investigation procedures and awareness programmes in relation to sexual harassment.
4. Raising the age of marriage for ALL to 16; campaigning for egalitarian personal laws.
5. Liberalization of laws to allow abortion in cases of rape, incest, and risk to the women's mental and/or physical health.
6. Decriminalization of homosexuality and lesbianism among consenting adults, in keeping with modern laws.
7. Amendment of the current fault-based divorce laws to incorporate the concept of breakdown of marriage.
8. Non-discrimination against foreign male spouses of Sri Lankan women, to live and work in Sri Lanka without restrictions. A Sri Lankan woman should be able to pass on her nationality to her children with a foreign father.
9. Non-discrimination in the State Land Settlement laws, which currently favour men especially when the State grants land. Recognition of both wife and husband as heads of household.
10. Changes in antiquated vagrancy laws oppressive to women, and introduction of legislation on child prostitution, forced prostitution and trafficking in keeping with international norms and principles.
11. Legal literacy programmes to increase women's awareness of their legal rights.

Violence

It is well known that many women and girls in Sri Lanka have to face forms of violence ranging from harassment, assault, rape and incest, to disappearance and killings. Many are subject to all types of physical and verbal abuse at home, in the workplace, and on public transport. Suicide rates of Sri Lankan young women are also among the highest in the world. Women also bear the consequences of social problems like alcoholism and drug addiction. Violence seems to have increased with the general brutalization of society caused by war, political thuggery, and criminal activity. We recommend:

1. More resources and publicity for campaigns to reduce all forms of violence against women.
2. Legal and other deterrents such as informing the employer, refusal of recruitment into police or armed forces as well as counselling and rehabilitation, for those convicted of assaults on women and girls.
3. Increased and free legal aid facilities for women affected by violence.
4. State-sponsored shelters and other facilities island-wide for battered women.
5. Partnership between the state agencies and women's groups - providing shelters as well as legal and psychological counselling.
6. Police training to include a section on domestic violence, rape investigation, sexual harassment, and other gender-based violence; provision of women's desks with trained personnel and adequate infrastructure.
7. Increase in the sensitizing courses for judges and prosecutors on issues of violence against women.
8. Methods to ensure that drivers and conductors of buses are equipped to deal with those who harass women.
9. Clear recognition in the Constitution of the right of a woman to be free from all forms of violence. A woman should be able to petition a court for a breach of fundamental rights when she has been subject to violence, private or public.

Economy

Women form an important part of the labour force, and their struggles have ended discrimination in pay, compared with men, in many sectors. But, especially in rural, unregulated or non-unionized sectors, women receive very low wages and are considered less skilled. Cheap female labour in plantations, factories and foreign employment accounts for the bulk of the country's foreign exchange earnings. While particular attention has to be paid to working women's wages, hours of work, conditions of work and living their right to organize, their right to health facilities and creches and other benefits must also be addressed by politicians and employers. Women form the majority of the unemployed. The exploitation and harsh treatment of migrant women workers, mainly in the Middle East, has been exposed, but more needs to be done. Domestic servants and women in the informal sector have no organizations or laws to protect them. Women's wide range of unpaid work in the home has also been ignored. We recommend:

1. A nationally enforced Minimum Wage.
2. Equal Pay, especially for women working in agriculture.
3. Strengthening of the rights of women workers to unionize and bargain collectively, especially in sectors where organizing is discouraged.
4. The provision for women of 14 weeks of paid maternity leave, in accordance with the recent ILO Convention on Maternity Leave (June 2000), with the same benefits in both the public and private sector.
5. Accepting of the principle of parental leave, including paternal leave.
6. Provision in workplaces especially plantations, factories and offices of adequate creche and child-minding facilities.
7. Improved conditions in Export Processing Zones and other such factories: of work and pay, recognition of trade unions, and the right bargain collectively to voluntary overtime, proper transport and lodgings, and more buses at night.

8. Migrant Women Workers: bilateral agreements between the State and recipient countries, for enforcement of standardized contracts with minimum standards or recruitment, working conditions, and repatriation; more Labour and Welfare Offices as well as free legal assistance and counselling for migrant workers in recipient countries.
9. Improved conditions and protections for Domestic Workers: minimum and equal wages; monthly and annual holidays; health-care provisions; employees provident funds (EPF).
10. Extension of labour legislation, and ratification of ILO Conventions, to protect the rights of women working in home-based industries and the self-employed.
11. Increase of compulsory retirement age for women from 55 to 65.
12. Extension of Widows and Orphans Pension fund to other female dependents.
13. Special provisions and skills training for single and for elderly women who are needy, unemployed, and without family support.
14. Recognition of female headed households and the formulation of affirmative policies to deal with their specific concerns.

Media

Patriarchal structures and attitudes demeaning women persist in Sri Lanka. This is clearly seen in the media. Yet one of the most potent weapons to promote positive images of women could be newspapers, journals, radio, and TV. But unfortunately, sexism in advertisements, cartoons, articles and editorials still prevails. Many TV series depict violence against women and display sexist attitudes, as well as portray women only as wives and mothers, or as sex objects. Women are underrepresented in media production, especially at decision-making levels. We recommend:

1. More training and employment of women in the media, especially in production and editing.

2. The use of the Code of Conduct (prepared by WERC) for media personnel, to promote positive attitudes to women as well as to combat sexism and stereo-typing of women.
3. Gender-sensitizing programmes for media personnel.
4. A continuous media-watch in 3 languages to monitor and expose sexism in newspapers, advertisements, and teledramas.
5. Campaigns to persuade newspaper owners, editors, advertising agencies and the Press Council to pay more attention to combating sexism in the media.

Health

The pressure and cutbacks on health services severely affect women and girls in Sri Lanka. The burden of ill-health weighs heavily on rural and low-income women, and especially working women, who face the double burden of tasks at work and in the home.

We urge:

1. Reduction of maternal and infant mortality as well as morbidity rates, anaemia and malnutrition, especially among women and girls on plantations, in poor rural and urban areas, and camps for the displaced.
2. Expansion of Well-Women Clinics to all parts of the country, and increased regular check-up screening facilities for forms of cancer and other diseases affecting women.
3. Extension of the responsibility for women's health to employers to provide proper first aid, canteen and toilet facilities for women workers, as well as to strictly follow occupational health and safety regulations.
4. Campaign for reproductive rights for all women, and ensuring of more accessible and informed choice in the selection of family-planning methods.
5. Strengthening of HIV/AIDS prevention among women.

6. Concessions in health facilities, transport, purchase of clothes and food to poor single-parent households and the elderly.
7. Counselling programmes for women in stress/crisis situations. More research and action on mental health problems, including the high rates of suicides among youth.
8. To look at violence against women as a health issue and integrate remedial and preventive measures into health policy.

Education

The level of women's and girls' education and literacy is a positive factor in Sri Lanka, but there are still areas where literacy is low, especially among women on plantations and in low-income rural and urban areas. Negative attitudes to women are also often promoted in schools and in textbooks. We urge:

1. Improvement of primary and secondary education levels, and removal of gender disparities in provision of facilities, especially among girls from plantations, as well as the rural and urban poor.
2. Enforcement of compulsory education for girls up to 16 years throughout the country.
3. Elimination of sexism and racism, and incorporation of gender-sensitive material in textbooks and curricula.
4. Reduction of gender imbalance in enrolment in vocational, technical, scientific, new technology and management training programmes.
5. Establishment of adult educational, functional literacy and training programmes targeted at women who have lost their jobs, as well as older and unemployed single women.
6. Sensitization of teachers, school children and university students on issues of gender equity.

7. Incorporation of gender issues in school curricula, and expansion of Gender Studies programmes in universities.

Culture & Society

Women are often affected by oppressive social practices associated with culture and ethnicity. These include many remnants of feudal social structures and attitudes of the past, such as the caste system based on hierarchy and inequality, and the practice of dowries which makes daughters a liability. The prevalence of patriarchy in the home, in society, and in the law, has led to various types of discrimination against women, and to male domination and son preference. There also still exist numerous taboos, superstitions, and negative attitudes towards women.

We urge:

1. Addressing social practices harmful to women and girls (e.g. virginity tests, attitudes to widows, female genital mutilation), and promotion of change.
2. Amending customary laws to eliminate their negative impact on women.
3. Equal inheritance for sons and daughters, and the discouraging of dowries.
4. National campaign to combat sexist social practices through education and the media.

Conflict

Women are the victims of war, and women strongly desire a negotiated peace. Action is needed in the interest of women who are victims of the conflict on both sides of the battle lines. We particularly stress the need for:

1. Access for displaced women and girls to employment, education, and protection from all forms of harassment.

2. Welfare schemes, as well as employment and skills training for women affected by conflict, including war widows.
3. The right of all displaced women and girls to safe and secure resettlement.
4. Protection at police stations and checkpoints for women and girls.
5. Trauma counselling for women and girls from war-torn areas.
6. Involvement of more women in the process of conflict resolution.

Supportive Measures

1. Sufficient resources and budget allocations for all recommendations and reforms, and increased expenditure on education and health.
2. National Commission on Women: to be set up as an independent body, with the power to investigate discrimination complaints, conduct education programmes, engage in litigation, as well as initiate and pursue research.
3. Ministry of Women's Affairs: The appointment of a Minister who is familiar with women's issues and the need for gender equity. Ministry officials should be further trained in all gender issues.
4. Gender Impact Assessment Committee in Department of National Planning to appraise how policies and programmes affect women of all communities. Gender awareness and equity need to be integrated into all levels of government policy planning and implementation, with gender focal points (persons trained in gender issues) in all Ministries.
5. Gender-disaggregated Data: Gaps in economic and social statistics need to be filled, as the contribution of women to the economy and households is undervalued.
6. Promotion of public consciousness on women's issues, and implementation of the 1995 Beijing Platform for Action.

The Women's Manifesto is issued in Sinhala, Tamil and English by:

- * Women's Political Forum
- * Sri Lanka Women's NGO Forum
- * Centre for Women's Research (CENWOR)
- * Muslim Women's Research and Action Forum
- * Women and Media Collective
- * Women's Education and Research Centre (WERC)
- * Voice of Women
- * Kantha Shakti
- * International Centre for Ethnic Studies - Women's Project
- * Women in Need (WIN)
- * Social Scientists Association - Gender Unit
- * Women's Coalition for Peace

For further information, contact:

425/15 Thimbirigasyaya Road

Colombo 5

Tel. 501339.

Subscriptions

The annual subscription rates of the LST Review have been adjusted as follows:

Local : Rs.700 (inclusive of postage)

Overseas :

South Asia/Middle East	US \$ 30
S.E.Asia/Far East/Australia	US \$ 35
Europe/Africa	US \$ 40
America/Canada/Pacific countries	US \$ 45

Individual copies at Rs.50/= may be obtained from the Trust at No. 3, Kynsey Terrace, Colombo 8, and BASL Bookshop at No.153, Mihinda Mawatha, Colombo 12.

For further details, please contact

Law & Society Trust
No 3, Kynsey Terrace
Colombo 8
Tel. 691228, 684845

Now Available...

SRI LANKA: STATE OF HUMAN RIGHTS 2000

The report will cover the chapters on the

- ◆ Integrity of the person
- ◆ Emergency Rule
- ◆ Judicial Protection of Human Rights
- ◆ Freedom of Expression, and the Media
- ◆ Environmental Rights and Human Rights
- ◆ Internally Displaced Persons
- ◆ Workers' Rights
- ◆ The Controversy over the Equal Opportunity Bill
- ◆ Freedom of Assembly and Association
- ◆ Rights of the Aged
- ◆ The Rights of Persons with Disabilities
- ◆ Crimes, Human Rights and State Responsibility
- ◆ The Human Rights Commission
- ◆ Official Languages Commission
- ◆ State Interference with Public Institutions: A Case Study of the Bribery Commission

Price : Rs.400/=

Enquiries: Law & Society Trust
No. 3, Kynsey Terrace, Colombo 8
Tel. 684845, 691228