

Optimizing Screening and Support Services for Gender-Based Violence and Trafficking in Person Victims

SRI LANKA



About the project: The Asia Foundation, with support from the Office to Monitor and Combat Trafficking in Persons (J/TIP), United States (US) Department of State conducted a multicounty qualitative research study to improve the efficiency and effectiveness of screening and service provision to victims of trafficking in persons (TIP) and gender-based violence (GBV) in diverse contexts. The study's primary objective is to identify promising practices and challenges in integrating or separating services for GBV and TIP victims in the three target countries of **India, Nepal, and Sri Lanka**. GBV and TIP victims often suffer similar and intersecting forms of abuse, however, at the screening process these multiple vulnerabilities are often not identified and hence care is delayed. This study is premised upon a deeper study of these intersections; its resultant impact on identification of victims; leading to a concluding exploration of effective service delivery to the victims, and whether these stand in need of integration.

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Sri Lanka

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We want to extend our gratitude to all government officials, law enforcement personnel, shelter home representatives, civil society partners for their time and insights that form the basis of the research findings. The research team is especially grateful to victims of TIP and GBV who came forward to share their experiences of accessing protection services and provided keen insights on multiple forms of violence that women experience.

The Foundation partnered with local organizations in the three countries for this research: FXB India Suraksha in India, Social Science Baha in Nepal, and Centre for Poverty Analysis in Sri Lanka.

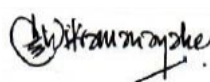
In Sri Lanka the research team was led by Ms. Chandima Arambepola who devoted their time, energy, and expertise towards spotlighting the need for improving the efficiency and effectiveness of screening and service delivery for victims of TIP and GBV. The research team at CEPA included Ms. Sujanthi Sri Sureshkumar, Researcher Ms. Pamodi Warawita and Ms. Tharunee Samarajiva.

The Foundation would like to thank Dr Geeta Sekhon, Principal Investigator of the multi-country study, for spearheading the research and providing technical guidance to the research team. This research would not have been possible without Dr Sekhon’s technical oversight and subject matter expertise. The Asia Foundation country office team comprising Ms. Diya Nag, Ms. Shruti Patil, and Ms. Apoorva Singh (India), Dr Ramani Jayasundere, Ms. Chaithri Ranatunge, and Ms. Suhashana Wijayarathna (Sri Lanka), and Ms. Suswopna Rimal and Ms. Tsering Kenji (Nepal), provided operational and technical support to the implementing partners and collaborated in implementing the research across three countries.

The research findings will provide guidance to policy makers and service providers to understand the intersectionality of abuses that TIP and GBV victim experience. We hope that it will inform the discourse on creating an integrated services delivery system for victims of TIP and GBV and help maximise the utilization of resources while providing optimal victim-centric care.



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Preface

The Asia Foundation is pleased to present the publication *Optimizing Screening and Support Services for Gender Based Violence and Trafficking in Person Victims*.

This report is a result of a research project implemented by The Asia Foundation's offices in Sri Lanka, India and Nepal with the primary objective of identifying promising practices and challenges in integrating or separating services for victims of Trafficking in Persons (TIP) and Gender Based Violence (GBV). The project produced three national level reports, Policy Briefs and Action Plans as well as a regional report to provide an evidence base to advocate for separation or integration of services for TIP and GBV victims. The national level reports were compiled by the Centre for Poverty Analysis (CEPA) for Sri Lanka, FXB India Suraksha for India, and Social Science Baha for Nepal, while the regional study was compiled by Dr. Geeta Sekhon. The Foundation hopes that the local research groups in the target countries will take on evidence-based policy advocacy to engage a broader audience—including key policymakers to integrate the research recommendations into their current efforts. In drawing evidence from three countries facing significant challenges on Trafficking in Persons, the research results are relevant across South Asia and beyond. This is particularly so, given that resource constraints that complicate service provision efforts in these countries typify those faced throughout the region and necessitate a view to greater service integration and efficiency. Therefore, the findings of the study are disseminated nationally and regionally to increase regional synergy and cross-country learning.

For Sri Lanka, the study found that given its checkered track record of providing services to victims of Trafficking in Persons (TIP) it raises valid questions of the existent gaps and how best to strengthen the systems in place. A key question underlying the research was the possibility of integrating or separating services for TIP and GBV victims and thereby, ensure that TIP victims have better access to services. The largely qualitative data gathered in Sri Lanka, points to the challenges TIP victims encounter in trying to access services. The question of integration or separation offers a nuanced understanding of how TIP and GBV victims are perceived and the resultant differential access to services. Perceptions about who constitutes a victim and the feminization of victimhood are writ large in attempting to access services. Given the limited resources, a common argument put forth is to integrate services provided to TIP victims with those provided to victims of Gender Based Violence (GBV).

The Foundation hopes that the recommendations offered by the study would support victims access services in a more cohesive and meaningful manner.

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Abbreviations

AGD – Attorney General’s Department

CBO – Community Based Organizations

CEPA – Centre for Poverty Analysis

CEDAW – Convention on the Elimination of All Forms of Discrimination against Women

CID – Criminal Investigations Department

CSO – Civil Society Organizations

DS – Divisional Secretariat

DEVAW – Declaration on the Elimination of Violence Against Women

DIE – Department of Immigration and Emigration

EPZ – Export Processing Zones

FBR – Family Background Report

FGD – Focus Group Discussions

FHB – Family Health Bureau

GBV– Gender Based Violence

GoSL – Government of Sri Lanka

ILO – International Labour Organization

IOM – International Organization for Migration

KII – Key Informant Interview

LGBTQI+ – Lesbian Gay Bisexual Transgender Queer and Intersex

MDO – Migration Development Officers

MFE – Ministry of Foreign Employment

MOH – Ministry of Health

NAHTTF – National Anti-Human Trafficking Task Force

NCW – National Women’s Committee

NGO – Non-Governmental Organization

NLMP – National Labour Migration Policy

NPoA – National Plan of Action

PDVA – Prevention of Domestic Violence Act

PO – Protection Order

SAARC – South Asian Association for Regional Cooperation

SGBV – Sexual and Gender based Violence

SLBFE – Sri Lanka Bureau of Foreign Employment

SMWCD – State Ministry of Women and Child Development, Pre-Schools & Primary Education, School Infrastructure & Education Services

SOP – Standard Operating Procedures

STI – Sexually Transmitted Infections

TIP – Trafficking in Persons

UNFPA – United Nations Population Fund

UNODC – United Nations Office on Drugs and Crimes

USDOS – United States Department of State

VAW – Violence Against Women

WDO – Women’s Development Officer

WIN – Women in Need

Executive Summary

Background

Globally, it is estimated that one in three women will experience physical and/or sexual violence by a partner or sexual violence by a non-partner. In South Asia, a significant proportion (35%) of such violence is carried out against women by an intimate partner¹. Since it is generally acknowledged that women are disproportionately impacted by gender-based violence (GBV) and trafficking in persons (TIP), the feminization of victimhood may impact who is deemed deserving of access to services. Given that services provided to victims are already limited, ensuring accessibility for victims of all forms of violence is important. To better understand the dynamics at the core of these issues and of access to services specifically for TIP and GBV victims, the Centre for Poverty Analysis (CEPA) conducted a study with the objective of optimizing screening and service provision for victims of TIP and GBV.

The study was conducted as part of an 18-month research initiative commissioned by The Asia Foundation (the Foundation), with the primary objective of identifying promising practices and challenges in integrating or separating services for victims of TIP and GBV, giving due consideration to the specific situation with access to services in Sri Lanka. It is expected that the findings will be applicable and relevant across South Asia given the significant challenges and resource constraints that typify service provision in the region. This Executive Summary highlights the methods adopted in data collection, as well as the key findings, and recommendations on how best to improve access to services for victims of GBV and TIP.

Data Collection

The research adopted a qualitative approach to data collection. In-depth and structured interviews were conducted with identified stakeholders, including government and non-governmental service-providers (54); law enforcement officials (20) and victims (4). Two focus group discussions were held – one with service providers and the other with immigration officers. In addition, 10 Key Person Interviews (KPIs) were conducted with identified stakeholders to ground the study in Sri Lanka's particular socio-economic context.

The districts of Colombo, Batticaloa, Jaffna, Matara and Nuwara Eliya were selected to maintain an ethno-linguistic balance, capture data from high migration districts, and tap into the GBV shelters in some of them.

The imposition of a nation-wide curfew as a result of COVID-19 coincided with the data collection phase of this study, resulting in the postponement of field visits. Ultimately, a significant number of the interviews were conducted remotely; mostly over the phone, but interviews of victims were conducted in-person once inter-district travel was permitted. All

1 World Health Organization (2018). Violence against women prevalence estimates, 2018. Global, regional and national prevalence estimates for intimate partner violence against women and global and regional prevalence estimates for non-partner sexual violence against women. Geneva: World Health Organization; 2021. Retrieved from <https://www.who.int/publications/i/item/9789240022256> Accessed: July 25, 2021

interviews were conducted with verbal, and where available, written consent. All data sources have been anonymized and the confidentiality of all respondents have been assured. The data was analyzed using the NVivo software, which uses a common scheme of codes developed for all three countries.

Understanding of TIP and GBV

GBV and TIP are understood as distinct forms of violence. Many service providers' understanding of possible victimization stems from conformity to the patriarchal ideology around gender relations and the socially attributed roles of men and women.

GBV is mostly viewed through the prism of domestic violence and hence, in most cases, violence is understood as physical violence perpetrated against women. In Sri Lanka, this may suggest that men as well as Lesbian Gay Bi-sexual Transgender Queer and Intersex (LGBTQI+) individuals too can find themselves overlooked as victims needing support. Marginalized groups like sex workers also remain outside the domain of assistance because they are not necessarily recognized as a group of people who are vulnerable to experiencing violence.

The understanding of TIP is quite weak among service providers, with a few marked exceptions. The exceptions are law enforcement officials, including Officers of the Criminal Investigations Department (CID) and Department of Immigration and Emigration (DIE), as well as the Judges and State Counsels. However, even among those who clearly understood trafficking, little to no attention is paid to trafficking that occurs *within* Sri Lanka's borders, especially for forced labor and sexual exploitation. Hence, internal migrant workers such as those working in the export processing zones (EPZs) and as domestic workers are not adequately identified as at-risk populations. The inability to differentiate between human smuggling and human trafficking is also common. These in turn hamper service provision as proper screening and identification of victims may not take place.

Several other factors also negatively impact the process of identifying and helping victims, including the general lack of understanding of what TIP is; the incomplete or lack of information on how individuals can become trafficked, and how this process manifests both within and outside Sri Lankan borders. Similarly, societal pressure and the fear of stigmatization deter women and men from coming forward as potential victims. Family members and religious authorities can impose pressure on victims to withdraw their complaints, which are generally made against an intimate partner, including the husband. The culture of suffering silently also permeates the migration process. Shame of having been sexually exploited can have a devastating effect of marginalizing such victims in their own communities. Thus, social ostracism and the acceptance of such violence as a part of life keep potential victims from seeking justice. More worryingly, the existing gaps in the institutional structures can act as a strong deterrent. The lack of understanding and/or awareness of the complexities of GBV or trafficking and the inadequate number of female cadres in the police stations, and officers' incompetency in communicating in the language most used in the region are major drawbacks. Furthermore, the lack of faith in the justice system can also keep victims from reporting the crimes. For sex workers and LGBTQI+ individuals, the risks of coming forward far outweigh the benefits, given the punitive lens adopted by law enforcement against them.

Protection Afforded through the Legal Framework

Among policy circles and government and non-governmental development stakeholders, there is general agreement that Sri Lanka has the ability to develop policies, action plans and even laws that seek to address any gaps in the existing legal and policy framework to protect victims of GBV and TIP. The problem lies in enforcement and/or implementation. Despite some shortfalls, in theory Sri Lanka's law pertaining to GBV and TIP provides adequate protection to victims of these crimes. For example, with regard to TIP, the amendment to the Penal Code has brought Sri Lankan law in line with the provision of the Palermo Protocol. However, in practice, the rate of convictions remains low – reflecting the overall low conviction rate for criminal cases in Sri Lanka.

In relation to TIP, immigration officials are bound by the duties spelled out in the Immigration and Emigration Act and hence, there is a tendency to track offenders of the Act rather than offenders and/or potential victims of TIP. At the local level, police officers may lack a clear understanding of TIP and under-staffed and over-stretched police departments may also not have adequate time to investigate trafficking even when there is a suspected case. In addition, sometimes the transnational nature of TIP can prove to be challenging in the collection of evidence due to financial and human resource constraints placed on the CID. Even when investigations are successful, the victim may not be willing to cooperate with the investigators and may withhold crucial pieces of information, due to the social stigma of coming forward and victims' fear of court proceedings. That makes the filing of indictments challenging. The implications are far-reaching especially if, as the chief witness, the victims change their statements once an indictment has been filed. There could be delays and costs incurred in Courts, and an inability to migrate overseas without the express permission of the Attorney General's Department.

Access to services for TIP and GBV victims

The Sri Lankan government has adopted considerable measures in the provision of services for victims of violence, especially GBV, most often through the Family Health Bureau and the Ministry of Women's Affairs. Through several action plans and standard operating procedures, there are multiple pathways for victims to access services, including using hotlines and helplines, going to drop-in centers managed by the government as well as Civil Society Organizations (CSOs), and being referred at multiple locations, allowing victims to enter at any given time into the existing service framework and access services.

The ability to access services, however, also hinges on the capacity of the government institutions as well as the CSOs to respond effectively to the needs of the victims. In light of declining funding for services provided to GBV victims, many Non-Governmental Organizations (NGOs) tend to offer advice and counselling to potential victims and make referrals to the public health and law enforcement structures. Among the services most commonly on offer by NGOs are professional counselling services and economic support. This is considered critical as economic dependence on an intimate partner is commonly identified as the main reason that prevents victims of GBV from leaving an abusive relationship.

Even though not common, access to legal aid as well as support for documentation is available. None of the CSOs specializes in offering legal assistance, but they usually direct the victims to the relevant authorities and support them by filling in the necessary application forms.

Markedly, a more cohesive service provision framework is visible wherever a recognized shelter is operating. However, there is a shortage of accessible shelters for both TIP and GBV in Sri Lanka, with only a few which are overseen by the Women's Bureau. In response to the demand, several unregulated shelters function on an ad-hoc basis. The lack of adequate shelters is a major shortcoming but even where such shelters are available, strict protocols regarding times of admission, the need to visit a police station to indicate the victim is voluntarily agreeing to seek shelter, and the security protocols that prevent children of victims from accessing education facilities can discourage victims from using shelter services.

However, once shelter services are accessed, case management becomes efficient, as counselling, legal aid and economic support are all addressed based on a needs assessment carried out by the counsellor. Hence, during her period of stay, a victim is provided with a wide spectrum of services that have been deemed as necessary, rendering positive outcomes for the victim. Shelters also try to help victims reintegrate into their community, but the process of re-settling into society can prove to be daunting.

In terms of services for TIP victims, this degree of cohesiveness is absent as a majority of the service-providers do not offer any specific services to them. Under-reporting, coupled with the shortcomings of identifying victims correctly by law enforcement, can further marginalize presumed as well as actual victims of TIP from accessing this support network. In this context, marginalized groups like female sex workers and individuals identifying themselves as LGBTQI+ can face insurmountable hurdles in accessing services.

The lack of understanding of TIP, identification of TIP victims by the law enforcement sector and the lack of NGOs that focus attention primarily on supporting TIP victims combine to make access to services for such presumed victims much more challenging.

The closure of a dedicated TIP shelter at an unfortunate point in time has also worsened the inability to house presumed victims at a dedicated shelter and overburdened existing GBV shelters. The complicated process of accessing a shelter, also makes accessibility even more challenging for TIP victims. Confusion regarding at which point and who should refer the presumed victims to shelter services further exacerbates these problems.

There are also no provisions for compensating TIP victims, unless pursued through the Courts. Hence, unless government or non-governmental service-providers are able to help the presumed victim access an existing government program that provides livelihood assistance, access to any form of medium to long-term support for TIP victims is not possible.

When access to services is placed against the backdrop of national policy frameworks and plans of action, several shortcomings are apparent. These include a mismatch between the written documents and the actions/efforts that take place at the community level, the lack of funds to provide sustained assistance to victims, the viability of skills taught by shelters for victims to become economically independent, and the changing priorities of the government.

In general, gender plays a critical role in accessing services, as victimhood is viewed through the narrow lens of women in domestic violence situations, excluding men, LGBTQI+ persons and also female sex workers. At the same time, while public health services is the primary route to accessing these groups, the lack of sensitization and awareness about how someone becomes a victim of GBV/TIP continues to be a problem.

Integration of services as a way forward?

Services tend to be provided not systematically, as spelled out in the policy documents, but in an ad-hoc manner and where funds and resources allow for such services to be aligned. In this context, the question of integrating services can be considered a moot point as those targeting TIP and GBV victims are provided through the same service points.

Even though maintaining separate services is desirable, integration is viewed by many as the pragmatic way forward, given challenges to accessing funding and human resources. The major concern is regarding shelter access. While many argue for the importance of securing safe shelter over maintaining separate shelter facilities, the disagreement for integration stems from concerns regarding the security threat TIP victims may experience, given the transnational nature of the crime committed against them. The argument for separation holds merit on the grounds that those providing services must be specially trained to deal with and provide the necessary services to the TIP victims.

Hence, rather than advocating for a separation of services completely, the evidence points to the possibility of a hybrid model where existing services can continue to be utilized by both TIP and GBV victims. However, the question of shelter warrants a closer examination. The limited number of shelters available, the resources required and the protocols that may deny access to specific sub-groups of TIP victims on the basis of their gender identity or the nature of their livelihood, must be first examined in detail to identify how best to respond.

As the findings indicate, more evidence-gathering is warranted especially to better understand how marginalized groups – the LGBTQI+, sex workers as well as internal migrant workers – experience GBV and TIP, as well as access services. Given the punitive or gendered-colored lens that society and service providers hold, understanding how best to respond to these gaps can only be done by focusing attention on these vulnerable groups.

Recommendations

In light of these findings, these are some recommendations on how existing service providers as well as the government can improve their operations to address the gaps in services:

- *Focus on preventative measures:* Raising community level awareness is paramount especially in light of the socio-economic challenges at-risk populations experience as a result of the COVID-19 pandemic. It's urgent to include the few organizations that work with men and women engaged in the commercial sex trade, domestic workers' unions and associations, as well as the associations that represent the LGBTQI+ community and a selection of NGOs that support workers of the EPZs.

- *Strengthen understanding among officers at the DS level:* Existing training targeting these officials must be strengthened and where possible, consultations held with the respective line-ministries to explore how understanding of TIP and GBV can be included in the training modules for the officers.
- *Strengthen capacity of police officers at the local stations:* As one of the first points of contact, police officers must be trained on how to screen and identify TIP victims.
- *Sensitize public health officials:* Counsellors and medical officers operating within the Mithuru Piyasa centers can assist to screen and identify TIP as a form of violence. This is imperative as marginalized groups such as sex workers and LGBTQI+ individuals have relatively easier access to public health services than TIP services.
- *Train consular staff of embassies:* As labor attaches are drawn from the embassies, training relevant embassy officials can help efforts to support migrant workers, especially in instances where they may experience forced labor or sexual exploitation.
- *Strengthen the National Anti-Human Trafficking Task Force:* The task force must play a more proactive role to help make referrals as well as keep presumed TIP victims within the service framework. It must consider if a victim can be anchored to a state entity which can assume primary responsibility for him or her. Similarly, the Task Force must consider how best to engage with at least some identified NGOs to bridge the gaps in services for TIP victims.
- *Design a cohesive framework for access to services:* As detailed in the Standard Operating Procedures, identified entities – government and NGO - must be included within this framework and the necessary personnel trained and sensitized to offer legal, medical, documentation and counselling services. The fact that many of these services are ultimately linked to public services is helpful since a system is already in operation to provide them.
- *Incentivize existing service providers:* NGOs must be incentivized to provide more services, by giving them training as well as financial resources.
- *Conduct needs assessment on separate shelters for TIP victims:* Focus on what form shelter services must take, whether protection can be provided within a non-institutional setting, where the shelters should be located based on need, how much it would cost to set up this separate system, and under whose authority it should operate.

CHAPTER 1

Introduction

As with different forms of violence, Gender Based Violence and Trafficking in Persons can severely impact a person's ability to lead a fulfilling life. The absence of or inadequate care and support can adversely impact the victim's ability to confront the trauma they have experienced. The possible negative impacts have been acknowledged globally, most recently with the Sustainable Development Agenda 2030. The importance of accessing support and services that respond to the particular needs of victims of Gender Based Violence (GBV) as well as Trafficking in Persons (TIP) has been further re-enforced as a result of the global COVID-19 pandemic. Considering the importance of a comprehensive support and service framework, this report which focuses on the existent gaps and recommendations on how to move forward comes at an appropriate time for Sri Lanka. It is also of importance especially in exploring whether there is potential of the already limited services for the victims of GBV and TIP, to be integrated or not, to enhance access for TIP victims in particular.

1.1 About the Project

This research was conducted as part of an 18-month research project anchored by The Asia Foundation (the Foundation) and covering the countries of India, Nepal and Sri Lanka. Its goal is to improve the efficiency and effectiveness of screening and service provision to victims of trafficking in persons and gender-based violence in these three countries. The primary objective of the study is to identify promising practices and challenges in integrating or separating services for victims of TIP and GBV. Developed on the analysis of the data, this report aims to highlight key findings and recommendations on how best to enhance access to services for TIP and GBV victims. At the regional level, it is expected that the findings will help towards the improvement of the efficiency and effectiveness of screening and service provision to victims of TIP and GBV in diverse contexts.

Different degrees of knowledge on GBV and TIP may exist across India, Nepal and Sri Lanka, but by examining the ground-level practicalities of screening and service provision gaps, common as well as unique lessons can be learned. These lessons could then be explored for applicability in other country contexts; they may help guide possible ways of ensuring that both identification of and service provision to victims are strengthened. This has become more critical in the age of COVID-19 related lockdowns and restricted mobility, when emergency responses to such vulnerable groups can easily become derailed.

1.2 Current Context in Sri Lanka

The socio-economic progress that Sri Lanka has achieved in comparison to some of its South Asian counterparts, has led to the idea that such advancements have also benefited in addressing gender parity. While true to some extent, concerns continue to be raised on shortcomings in

responding to GBV and to a lesser extent, TIP. In comparison to India and Nepal attention to TIP in particular, may appear minimal. But what is noteworthy in the case of Sri Lanka is the nuances at the core of how GBV and TIP as distinct or common forms of violence are understood and how such understanding can then determine the service provision framework.

At the national level, both GBV and TIP have received the attention of the Government of Sri Lanka (GoSL). This is evident in the number of policy documents developed over the years in response as well as the recognition of these violations as crimes in the Penal Code. But rarely are GBV and TIP viewed as interlinked. Instead, they are seen as two separate “issues” to be addressed by different government and non-governmental stakeholders.

For instance, while there may be some overlap in terms of responsibilities, addressing GBV falls within the purview of the State Ministry of Women and Child Development Pre-Schools & Primary Education, School Infrastructure & Education Services (SMWCD) which is responsible for the overall monitoring of national-level plans to address GBV prevalence. In contrast, human trafficking is largely viewed as an issue that exists within the external labor migration process and hence, requiring the attention of Ministries and regulatory entities that are primarily responsible for outbound migrant workers. Reflecting the coordination required across different stakeholders, the Ministry of Justice² leads the country’s National Anti-Human Trafficking Task Force (NAHTTF).

In such a context, TIP within Sri Lanka’s own borders receives scant attention. This situation is further compounded by the fact that those engaged in sex work, are generally viewed through a punitive lens which prevents proper identification of such persons as possible victims of trafficking. Similarly, migrant workers who may be vulnerable to forced labor in export processing zones (EPZs) or in the informal sectors of the economy, receive little attention. But the nature of identifying the presence of TIP only in specific contexts, is not limited to TIP alone. GBV also tends to be viewed through specific lenses that may prevent at-risk populations from being identified and assisted.

In this research too, greater focus is placed on outward migration for work not only because of the way in which TIP is understood but also because the existing service structures are more aligned towards this stream of vulnerable/at-risk population. But this is done with the recognition of the shortcomings – which are discussed in detail in the next few chapters – and their implications to victim identification and service provision.

1.3 Approach to Research and Data Collection

Given the type and the depth of information required, the Centre for Poverty Analysis (CEPA) adopted a qualitative approach to the study which was complemented by secondary data collected through multiple sources including government reports and databases. Primary data was collected via interviews with pre-identified stakeholders, both at the national level and from identified administrative districts. Apart from interviews, two focus group discussions were also conducted.

2 Since the conclusion of the research, the NAHTTF has been brought under the Ministry of Defence.

1.3.1 Respondents – key stakeholders

The categories of stakeholders interviewed include service providers, law enforcement officials and victims of GBV.

Service providers include both governmental and non-governmental organizations (NGOs) that work directly with actual or potential GBV and/or TIP victims. In the Sri Lankan context, this means there is an equal emphasis placed on government officers working at the Divisional Secretariat (DS) level. As the DS office is the government's primary administrative focal point, a number of Development Officers assigned to this office represent national level Ministries. These include Migration Development Officers (Ministry of Foreign Employment), Women's Development Officers (SMWCD) and Counsellors (SMWCD and the Social Services Department). Given that these officers can act as the first point of contact for individuals who have experienced or are at risk of GBV and/or TIP, a lot of attention is being paid to improving the capacity of these officers. Disregarding this group of service providers at the local level would mean leaving out a significant group of stakeholders with a central role to perform. In addition to these local level officers, other important service providers primarily in the health and legal spheres were also interviewed, where applicable.

In addition, shelter home staff were interviewed. In Sri Lanka, the shelter management is either centralized with the Women's Bureau of the SMWCD or sub-contracted to identified NGOs specialized in providing support for GBV victims. So far, there is space for TIP victims in a shelter located in the Western province. This is administered and managed by the SMWCD. The shelters located in Colombo, Jaffna, Batticaloa, Matara and Kandy are operated by NGOs. In addition to these, several other shelters are operated by the SMWCD, one in Gampaha and the other in Ratnapura. The respondents were drawn from a sample of registered shelters and thus, included both NGO as well as government-operated shelter staff. In total 08 shelter staff from 06 shelters located within the study districts were interviewed. All six shelters fall within a regulatory framework of the government.

Police officers attached to the Women and Children's desks of regional Police stations as well as the counter-trafficking unit within the Criminal Investigations Department (CID), Immigration officers of the Department of Immigration and Emigration (DIE), State Counsels attached to the Attorney General's Department (AGD) as well as Judges were interviewed as part of the law enforcement category of respondents.

In order to protect the privacy and confidentiality of the victims, access to current shelter residents were not allowed in Sri Lanka. Instead, four women who had received shelter support in the past year were interviewed. The interviews were conducted in Mullaitivu district. Although a research gap, the reluctance on the part of the shelters to give access to its residents should also be viewed as a positive step by these organizations to, on the one hand, ensure that they remain safe and on the other hand, their privacy and the locations of the shelters is protected.

In addition to these three identified groups of stakeholders, CEPA also conducted 10 interviews with national-level key stakeholders – both in the government and non-governmental sectors as well as private citizens and representatives of different civil society organizations representing interests of marginalized groups. Not part of the main sample, this group of individuals were selected as they have a bearing on policymaking or steering policies at the national level through

interventions and advocacy. These key persons help in building a more comprehensive picture of the current policy and legal frameworks with regard to screening and service provision for GBV and TIP. Respondents included representatives of marginalized groups such as the Lesbian Gay Bisexual Transgender Queer and Intersex (LGBTQI+) community as well as sex workers. The importance of reaching out to these “ignored” groups is underscored in the findings especially in relation to the existing gaps in service provision.

1.3.2 Geographical locations

The selection of proposed locations was partly informed by data available to CEPA on the presence of shelters for GBV and TIP, and partly to capture different geographical locations and thereby, possible variations in access and the underlying inequalities that may determine access to services. The choice of the districts also reflects the language and ethnic diversity in Sri Lanka and includes two districts that were directly impacted by the civil war that concluded over a decade ago. This degree of diversity helps capture a more comprehensive picture of the ground realities and the possible socio-economic issues that may come into play in providing services to victims. The administrative districts chosen are: Colombo (Western Province); Jaffna (Northern Province); Batticaloa (Eastern Province); Matara (Southern Province) and Nuwara Eliya (Central). Data collection was extended to Mullaitivu district in the Northern Province to access victims of GBV (see Figure 1).



Figure 1. Locations of the study, by district

In addition to these considerations, all except one location (Nuwara Eliya) has a dedicated shelter for women. The proposed sites also include districts that have relatively high rates of outward migration (Colombo, Gampaha, Nuwara Eliya).

Some of the districts also have a strong presence of local NGOs working on safe labor migration issues (e.g., Batticaloa, Nuwara Eliya, Colombo).

Table 1. Breakdown of interviews conducted by type of respondent, sex and location

Type of interview	Type of respondents	Location	Female	Male	Number of interviews
In-depth interviews	Service providers (GBV/TIP)	Jaffna, Batticaloa, Colombo, Matara and Badulla/Nuwara Eliya)	45	09	54
In-depth interviews	Law enforcement – Police	Jaffna, Batticaloa, Colombo, Matara and Badulla/Nuwara Eliya)	07	04	11

Type of interview	Type of respondents	Location	Female	Male	Number of interviews
In-depth interviews	Law enforcement – Immigration	Colombo	-	02	02
In-depth interviews	State Counsel	Colombo	02	02	04
Semi-structured interviews	Judges (retired)	Colombo	01	02	03
In-depth interviews	Victims	Mullaitivu	04	-	04
Total			59	19	78

In addition to these, two Focus Group Discussions (FGD) were conducted – one with service providers in the Batticaloa district and the other with Immigration Officials in Colombo.

The number of interviews conducted with service providers exceeded the agreed upon sample of 20 interviews. This was partly because of the number of stakeholders that span the government and non-governmental sector who provide some form of services to victims but also because CEPA anticipated a lower number of interviews to be conducted among victims and hence, there was a need to capture the perspectives of service providers more comprehensively. Moreover, it has helped capture the nuances at the district level and allows for comparisons, across the districts.

1.4 Process of Data collection

To ensure a high quality of data collection, several steps were taken by CEPA, with the guidance of the Principal Investigator (PI) and the Foundation's Sri Lanka office.

1.4.1 Development of and pilot testing of question guides

The development of the question guides for each category of stakeholders was led by the PI. CEPA provided inputs to the process which was further refined during an in-country training conducted by the PI with the CEPA research team in January 2020. This also led to the question guides being considerably shortened to be more adaptable to time restrictions.

Following the finalization of the question guides, these were translated to Sinhalese and Tamil and cross-checked by the CEPA research team for corrections and any editing that was required. Subsequently, the pilot tests were conducted in February 2020 with representatives of four categories of stakeholders: law enforcement, legal counsel, shelter home and an NGO working on GBV related issues. A conscious decision was taken not to pilot test the questionnaire with victims, to minimize the impact of having to recall experiences of accessing services. To ensure that all three languages were used in the pilot tests, Sinhalese was used in the interviews with the Police officer and the Shelter representative, English with the State Counsel and Tamil with the NGO representative. The pilot tests were important because it allowed for the question guides to be further refined taking into consideration the duration required to complete a single

interview especially with law enforcement and legal representatives. This learning process led to a final refinement of the questionnaires whereby they were shortened further.

Prior to the training by the PI, the ‘Guidelines for the Ethical Conduct of Research and Data Collection’ and a ‘Handout on Self Care for Researchers/ Interviewers’ were prepared and shared by the PI and these were also used during the training for data collection.

1.4.2 Training of research team

In mid-March 2020, an in-house training for the research team was led by the lead researcher at CEPA. This was an opportunity for the researchers and the research assistants to meet and discuss the different elements of the research as well as ensure that the concepts of GBV and TIP were clearly understood. In addition, the breakdown of interviews to be conducted as well as the ethical considerations which are part and parcel of CEPA’s general training were shared. A dry-run of the interviews was also conducted in order to “hear” and “see” how respondents may react to the questions being asked.

1.4.3 Changing the mode of data collection

The imposition of a nationwide curfew as a result of COVID-19 in mid-March coincided with the scheduled field visits. As a result, the data collection phase was delayed significantly and resulted in shifting to a remote mode of conducting interviews.

In order to conduct interviews remotely, a layered approach to reach out to the respondents was adopted. Hence, a majority of interviews with NGO service providers were concluded during this curfew period, with a few remaining interviews conducted on-location when restrictions were eased. The next layer of stakeholders – shelter providers – proved to be more challenging since the request for interviews coincided with some restrictions being lifted, increasing the demand on the time of the shelter providers. Given the sensitivities involved in accessing victims and speaking to them remotely, a collective decision was made not to conduct these interviews remotely. During two separate visits, the victim interviews were concluded once inter-district travel was permitted.

Interviews with law enforcement required a lot of time and follow-up and were only conducted once all mobility restrictions were lifted in mid-May 2020. However, the approval processes that needed to be followed resulted in significant delays, in some cases, taking over two months to secure the necessary approval. Unfortunately, the granting of approvals coincided with the detection of multiple clusters of COVID-19 cases in early October 2020, including within the CID. Hence, the planned small group discussion with its officers could not be conducted.

In terms of collecting the data, face-to-face interviews are the best option as they are geared towards generating rich data, even from respondents not previously known to the research team. The level of trust placed on human interaction was emphasized when conducting interviews remotely. Of the several options pursued, the most efficient and effective mode was found to be phone calls. While smart phones are commonly used in Sri Lanka, the challenges respondents face in terms of connectivity became quite clear and was a lesson that CEPA has learned through a quick succession of attempts to connect with the regions via virtual platforms. Hence, in almost all instances, a phone call was the most preferred option for an overwhelming majority of

respondents. The very few interviews that were conducted virtually have been with Colombo-based bi-lateral organizations.

Conducting FGDs remotely was considered too challenging because of digital access and connectivity issues. However, as mobility in the Western Province was again affected and access to public institutions restricted, the FGD with Immigration officers was conducted through a virtual platform. Despite minor connectivity issues and audio-visual limitations, the FGD was successfully concluded. The initial lifting of restrictions also did not result in CEPA reverting to the normal field schedules as planned. Only a limited number of researchers were allowed to visit the field locations and FGDs were limited to 05 persons in line with health guidelines issued by the Ministry of Health.

1.4.4 Ethical considerations

CEPA research staff adheres to strict internal guidelines to ensure that the collected data does not compromise the respondents' privacy nor add undue pressure on them to provide information. Since there is no ethical clearance process that think tanks such as CEPA have clear access to, these internal guidelines are important to ensure that CEPA researchers adhere to some basic principles in collecting data.

These guidelines help ensure that the anonymity of the respondents and their privacy is not violated. This also prohibits the capturing of photographs as the use of identifiable images of any individual is not allowed in research outputs/materials. These ethical considerations had to undergo some change as a result of the COVID-19 induced curfew. As a general principle, CEPA does not encourage audio-recording interviews and as much as possible, this has been followed in this instance as well. But instances where a Researcher did not have the necessary support for recording data in the written form, verbal consent was sought from the respondent prior to the interview being audio-recorded. All audio clips are deleted once the interview notes have been translated to English and cross-checked (i.e., cleaned) by the research team.

As a general principle, all interviews have been anonymized and any identifiable markers from the interview notes have been removed. The basic information regarding locations and affiliations to organizations/institutions have been kept.

All completed notes, once cleaned, have been stored in a secure virtual domain. Access to the domain is password protected and restricted to the lead researcher at CEPA as well as the co-lead of the research project. This helps ensure that only the finalized, cleaned data is included in the domain.

It is important to note that the sample was not determined by a specific method. Even though basic criteria were used to narrow the sample frame, the selection of the respondents, especially with the law enforcement was determined by accessibility and the recommendations of senior government officials. Hence, interpreting the disaggregated data by gender was challenging. For instance, the Sri Lanka Police Department is an overwhelmingly male-dominant government sector whereas those interviewed were mostly women. Similarly, the imbalance of gender representation among the government and non-governmental service providers, may point to the presence of female officers at field or mid-level positions rather than at the management level of these organizations. The feminization of victimhood is evidently illustrated in the sample

since only women were found to have access to dedicated shelters and were considered mostly as recipients of services. As discussed later in the report, the imbalance in gender representation in some sectors can have a negative impact on service delivery.

1.5 Clarity on conceptual categories

Given the attention of TIP for sexual exploitation, it is natural that greater attention is paid to the commercial sex trade. The attention on sexual exploitation and the risks women face, in being trafficked to the trade however, is taking place parallel to a movement in countries like Sri Lanka to challenge the invisibility of this criminalized activity. Sex workers are organizing to highlight the importance of treating and acknowledging them as essentially a group of workers that require basic rights of workers and thus, access to services as well as the protection of the State. Hence, in Sri Lanka, a common practice is to refer to those in the commercial sex trade using the gender-neutral term of “sex workers”. It also reflects the multiple genders that are present in the sex trade. This push for recognition however, has to contend with the growing anti-human trafficking discourse³ as well as differing feminist perspectives⁴, which fear this movement would further render invisible the ways in which women especially, are trafficked into this industry; making the sector seem a voluntary choice that ignores the ways in which women in particular are vulnerable to sexual exploitation. Reconciling these opposing perspectives in a report that focuses on both GBV and TIP is a challenge. But in recognition of the movement in Sri Lanka to focus attention on the men and women in the sex trade as well as respondents’ use of the term “sex worker” during the data collection phase, this report uses the term “sex worker”. The gender neutrality also allows for the transgender community as well as men in the trade to be considered. The use of the term however, must not be construed to indicate the potential for the sex trade to include trafficked victims nor as an attempt to under-estimate or distract from the potential presence of trafficked victims within the sex trade.

This in no way, however, should be construed to underestimate the ways in which those in the commercial sex trade – regardless of gender identity - experience different forms of violence including the risk of being trafficked. Pointing to the challenges of fitting sex workers into a victim/empowered binary, the respondents also agreed that those in the trade are engaged either by choice or had been “sold” into the trade. In doing so, the report acknowledges that sex workers and the commercial sex trade are both complex and a part of a dynamic process, that at times, defies fixed categorizations⁵.

1.6 Overall limitations

The two-month long curfew imposed between 15 March and May 2020 coincided with the stipulated time assigned for data collection within the project. As mentioned previously, this led to a rather dramatic change in how data was being collected. There is no doubt that the richness of the data has been compromised to some degree and that more face-to-face interactions would have led to more in-depth discussions with the respondents. This also meant that the research team spent a

3 Valadier C. (2018). Migration and sex work through a gender perspective. *Contexto Internacional*. 40(3). Pp.501-523.

4 Sutherland K. (2004). Work, Sex, and Sex-Work: Competing Feminist Discourses on the International Sex Trade. *Osgood Hall Law Journal*. 42(1). Pp. 140-166

5 Vanwesenbeeck I. (2019). The Making of “The Trafficking Problem”. *Archives of Sexual Behavior* 48, Pp. 1961–1967. Accessed: December 20, 2020

considerable amount of time doing the basic “leg work” in following up with potential respondents and carving out some time for an appointment. These do have a bearing on the richness of the data collected.

The inability to observe the respondents makes it also difficult to capture the less-evident non-verbal cues that qualitative research relies so heavily on. Additionally, the absence of a logical buildup to the data collection was absent. Instead, researchers moved across different geographical regions virtually within a day thus, sometimes missing the contextual differences that interviewers tend to absorb. These may not have a major negative impact on the analysis but given that the final phase of data collection had to be conducted remotely, these initial lessons proved to be quite useful.

Despite these limitations, the gathered data offers sufficient insights to allow detailed analysis. The analysis is further complemented by the review of existing policies as well as available literature.

1.7 Order of Chapters

The resultant findings are discussed in the next sections of the Report. In Chapter Two, understanding of TIP and GBV and implications for identification are discussed. This is followed by Chapter Three which examines the legal provisions and enforcement of the law in relation to TIP and GBV. Chapter Four examines the gaps in services provided to TIP and GBV victims, who may fall outside of this service framework and whether the integration or separation of services would be helpful in strengthening the service framework. The Report concludes by reflecting on the main findings, their implications, and a set of recommendations on moving forward.

CHAPTER 2

Understanding of Trafficking in Persons, Gender Based Violence and its Intersections

This chapter examines the current context in Sri Lanka with regard to Gender Based Violence (GBV) and Trafficking in Persons (TIP), the existing understanding of what constitutes the two forms of violence and their intersections. These are then mapped against the respondents' own understanding of the concepts and how such understanding can determine who has access to the services that are targeted at victims of GBV and TIP.

2.1 Situation Analysis of TIP and GBV

Attempting to calculate the different forms of violence both men and women experience is mired in challenges of collecting verifiable data. This is partly complicated by how concepts such as GBV and TIP are defined and the interrelated aspect of how a victim of such violence is defined and identified.

Despite the data collection challenges, global estimates and existing literature and data sources at the national, regional and global levels provide some insight to the prevalence and severity of violence. According to the United Nations Population Fund (UNFPA)⁶, globally, it is estimated that one in three women will experience physical and/or sexual violence by a partner or sexual violence by a non-partner. As the UN Women points out, this does not include sexual harassment prevalence, which can be as high as 70 percent in some national contexts (UN Women, 2020)⁷. Similarly, the International Labour Organization (ILO) estimates that around 25 million people experience forced labor globally⁸ generating annual profits of about 150 billion US Dollars⁹. According to the United Nations Office on Drugs and Crimes (UNODC)¹⁰, of the detected TIP victims, 49 percent are adult females and 21 percent adult males, pointing to the gendered disparities in TIP.

While such estimates help cast light on the severity of the different forms of violence that men and women experience in their everyday lives, what is troubling is that the reported numbers

6 United Nations Population Fund (2019). Costing the Three Transformative Results. New York. Retrieved from https://www.unfpa.org/sites/default/files/pub-pdf/Transformative_results_journal_23-online.pdf Accessed: January 6, 2020

7 United Nations Women (2020). Facts and figures: Ending violence against women. Retrieved from <https://www.unwomen.org/en/what-we-do/ending-violence-against-women/facts-and-figures> Accessed: January 6, 2020

8 International Labour Organization (2017). Global Estimates of Modern Slavery. Retrieved from https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms_575479.pdf . Accessed: January 6, 2020

9 International Labour Organization (2013). Profits and poverty. The Economics of Forced Labour. Retrieved from https://www.ilo.org/wcmsp5/groups/public/---cd_norm/---declaration/documents/publication/wcms_243391.pdf . Accessed: January 6, 2020

10 United Nations Office for Drugs and Crimes (2018). Global Report on Trafficking in Persons. Retrieved from https://www.unodc.org/documents/data-and-analysis/glotip/2018/GLOTIP_2018_BOOK_web_small.pdf Accessed: January 6, 2020

may not provide a comprehensive picture of the ground realities. Under-reporting is common; some analysis estimate that the prevalence of violence may be underestimated by 11-128 fold, depending on the country and region¹¹. This is mainly because women and men are reluctant to report violence, partly because of the stigma and shame of coming forward but also because of the lack of awareness, especially with regard to TIP. On the other hand, the concepts themselves and how they are defined make it difficult to ascertain reliable numbers. For example, violence against women (VAW) is sometimes used inter-changeably with GBV thus, failing to capture the violence experienced by men as well as the transgender community.

2.2 Prevalence of GBV in Sri Lanka

In Sri Lanka, trying to quantify the magnitude of the issue of GBV and TIP is made complicated by the absence of a central database that is publicly accessible. Of the few available sources, the Grave Crime Abstract of the Sri Lanka Police is widely used as a verifiable data source for both TIP and GBV. But numbers tend to be categorized in different ways, making it difficult to ascertain the actual number of victims identified. Gender disaggregation of the data is also not always made public, making it difficult to ascertain the prevalence of grave crimes committed against women and men. Data reported through the Police Department's Performance Report however, offers some inkling to the scope of reporting, but as indicated below, reflects different forms of categorization.

Table 2. Grave crimes against women (2016-2018)¹²

Crime	2016		2017		2018*	
	Reported	% Solved	Reported	% Solved	Reported	% Solved
Homicide	109	43%	77	55%	111	36%
Abetting suicide	0		0		0	
Attempted murder	23	22%	10	40%	11	18%
Female rape	350	53%	294	65%	278	49%
Incest						
Grievous hurt/ causing injuries by knives, etc.	320	53%	297	64%	241	40%
Unnatural offences**	48	52%	33	55%	5	0%
Grave sexual abuse					28	43%
Abduction	103	50%	75	67%	7	0%
Kidnapping					68	44%
Supplying women for carnal intercourse	15	47%	4	75%	2	0%
Trading women for carnal intercourse					0	0%
Highly uncivilized acts among people	0	0%	0	0%	0	0%

11 Palermo Tia, Bleck Jennifer and Peterman, Amber. (2013). Tip of the Iceberg: Reporting and Gender-Based Violence in Developing Countries. *American Journal of Epidemiology*. 179(5). 602-612. Accessed: January 6, 2020

12 Sri Lanka Police (2018). Performance Report. Retrieved from <https://www.parliament.lk/uploads/documents/paperspresented/performance-report-srilanka-police-2018.pdf>. Accessed: January 8, 2020

Crime	2016		2017		2018*	
	Reported	% Solved	Reported	% Solved	Reported	% Solved
Other***	0	0%	0	0%	24	46%
Total	968	51%	790	63%	775	42%

* The Performance Report of the Sri Lanka Police for 2019 does not include this breakdown of data

** Wherever the data is combined for two offences, this reflects specific sub-Sections in the Penal Code.

*** The Report does not explain what is included in the “other” category

But the nature of data collection – by types of crimes – and the under-reporting of crimes may mean that police statistics capture “only a fraction of incidents of violence”¹³. However, prevalence of GBV in its different forms has been captured in other reports as well. Many of these tend to focus on domestic violence and hence, on women and their vulnerabilities to abuse within the household.

According to the Sri Lanka Demographic and Health Survey of 2016, ever-married women¹⁴ living in urban locations and post-war districts of Sri Lanka, with lower educational attainments and belonging to the poorer segments (in terms of wealth) tend to report the highest percentages of domestic violence. 17 percent of ever-married Sri Lankan women within the age category of 15¹⁵-49 had experienced domestic violence from their intimate partner with the prevalence of domestic violence increasing with age. A further two percent within this category experienced some form of domestic violence on a daily basis¹⁶. By some accounts however, the prevalence is much higher.

The most recently published national survey data on violence against women indicates that 21.4 percent have experienced physical violence, 9.7 percent sexual violence and that almost a quarter (24.8 percent) of women have suffered physical and/or sexual violence at the hands of a partner or non-partner¹⁷.

A scoping review of the past 35 years estimated that 25-35 percent of all women had experienced violence by their partners in their lifetime. Intimate partner violence was found to be prevalent between a wide range of 20 to 72 percent, among women in Sri Lanka¹⁸. Such prevalence may even be higher in the Eastern and Northern regions of Sri Lanka, where different forms of violence had permeated the everyday lives of people as a result of the protracted near thirty-year civil war. In general, intimate partner violence was found to be higher than other forms

13 Leader of the Opposition’s Commission on the Prevention of Violence against Women and the Girl Child. (2014). Report of the Leader of the Opposition’s Commission on the Prevention of Violence against Women and the Girl Child. Pp.9. Retrieved from <http://gbvforum.lk/r-library/document/Report%20of%20the%20Leader.pdf>. Accessed: January 10, 2020

14 Defined as persons who have been married at least once in their life.

15 The minimum age at marriage for men and women is set at 18 years but under the Muslim Law, for which constitutional provision is provided, a minimum age is not specified. Revising the existing Muslim Marriage and Divorce Act is an ongoing political and socio-religious debate in Sri Lanka.

16 Department of Census and Statistics (2016). Demographic and Health Survey. Chapter 13: Domestic Violence from Intimate Partner. Retrieved from <http://www.statistics.gov.lk/Health/StaticInformation/DemographicAndHealthSurveyReport-2016-Chapter13>. Accessed: January 6, 2020

17 Department of Census and Statistics. (2020). Women’s Wellbeing Survey (2019). Findings from Sri Lanka’s first Dedicated national survey on Violence Against Women and Girls. Retrieved from http://www.statistics.gov.lk/Resource/refference/WWS_2019_Final_Report. Accessed: January 10, 2020

18 Guruge, Jayasuriya-Illesinghe, Gunawardena and Perera, (2015). Intimate partner violence in Sri Lanka: A Scoping Review. *Ceylon Medical Journal* 64(4). 133-138. Accessed: January 10, 2020

of violence in these regions. The use of different methodologies for data collection had also indicated that 41 percent of children had witnessed partner violence meted against the mother by their father¹⁹. However, strong cultural norms and the sensationalizing of reporting by the media of such incidences may prevent women from coming forward to report²⁰.

A study on intimate partner violence offers further nuances by presenting data from the male perspective. The findings indicated that of those surveyed, 36 percent of ever-partnered²¹ males were found to have been sexually or physically violent against their female partner whereas 17 percent were found to have been sexually violent against any woman²². The study also reveals the use of emotional violence – an area that has not received much attention in research – with over 40 percent of the men revealing emotional abuse of their partner. Less than 5 percent of men expressed having experienced sexual violence by a male partner whereas just over 12 percent of men reported having perpetrated sexual violence against another male²³.

Beyond the sphere of the household/family, studies have also indicated the prevalence of harassment in public spheres. A large proportion of Sri Lankan women (90%) who use public transport have experienced sexual harassment; deliberate touching of any part of the body (73.5%), unwanted crowding of personal space (50%), improper seating etiquette (52%) and rubbing genitalia against another's body (52%) are among the most common forms of violence. Despite experiencing such harassment, less than 5 percent sought help from the Police²⁴.

The reluctance to report is common, as another similar study found that only 8 percent of women who experienced non-partner sexual violence and 13 percent of women who experienced intimate partner violence reported such instances to the Police²⁵. A recently concluded study indicates that nearly half (49.3%) of women who had endured sexual violence by a partner sought no formal help and only 37.3% visited the Police. Alarming, over 60 percent of these women cited the inability to endure the violence any longer as the reason to seek help²⁶.

Globally as well as in Sri Lanka, there have been concerns that the prevalence of GBV, especially in the form of domestic violence, would increase during the COVID-19 lockdowns. In Sri Lanka, media reports pointed to an increase in hospital admissions in relation to domestic violence²⁷;

19 Ibid

20 Priyadarshani I. (2017). A Study on Women's Representation and Sexual and Gender based Violence in Northern Sri Lanka. Retrieved from https://www.academia.edu/39649465/A_study_on_Womens_Representation_and_Sexual_and_Gender_based_Violence_in_Northern_Sri_Lanka. Accessed: January 10, 2020

21 Ever-partnered denotes individuals who currently have or have had a relationship at some point in their life, whether it is in marriage or out of marriage, such as cohabiting, separated, divorced, widowed or dating.

22 De Mel N, Peiris P. and Gomez, S. (2013). Broadening Gender: Why Masculinities Matter. Attitudes, Practices and Gender-Based Violence in Four Districts in Sri Lanka. Retrieved from http://www.partners4prevention.org/sites/default/files/resources/broadening_gender-why_masculinities_matter-final.pdf. Accessed: January 12, 2020

23 Ibid, p. 55

24 United Nations Population Fund (2019). Does She Travel Safe? Report on Sexual Harassment in Public Transportation in Sri Lanka. Retrieved from <https://srilanka.unfpa.org/en/publications/does-she-travel-safe>. Accessed: January 12, 2020

25 De Mel, Peiris, and Gomez (2013).

26 Department of Census and Statistics. (2020). Women's Wellbeing Survey (2019). Findings from Sri Lanka's first Dedicated national survey on Violence Against Women and Girls. Retrieved from http://www.statistics.gov.lk/Resource/refference/WWS_2019_Final_Report. Accessed: March 16, 2020

27 Kumarasinghe K. (March 22, 2020). Curfew causes spike in domestic violence. Retrieved from http://www.dailymirror.lk/breaking_news/Curfew-causes-spike-in-domestic-violence/108-185472. Accessed: September 18, 2020

UNFPA has also indicated a spike in the number of calls to domestic violence helplines²⁸ during the March-June 2020 curfew period. According to a rapid survey conducted among groups including those who self-identify as transgender women and female sex workers and men who have sex with men, 26% percent had experienced violence of which over 80 percent was verbal and about 5 percent sexual violence. A majority sought no assistance.²⁹ But the lack of publicly accessible Police and hospital admissions data as well as calls to the helpline of the National Women’s Committee (NCW) prevents in forming a clearer picture of the severity of the violence.

2.3 Prevalence of TIP in Sri Lanka

While multiple sources of data are available for GBV, for TIP which is treated as a separate form of violence in government data sources, only a few data sources are available. Discrepancies in the reported numbers are also noticeable in the TIP data. The Sri Lanka Police Department reports procuration³⁰ and TIP together (Table 3), whereas the US State Department’s Trafficking in Persons report on Sri Lanka, provides a breakdown of these numbers (Table 4). While the number of reported cases is relatively low compared to neighboring countries, coupling procuration and trafficking together as well as the lack of disaggregated data by gender makes it impossible to form a clear idea of TIP prevalence.

Table 3. Procuration and Trafficking in Persons³¹

Year	Cases Recorded	Plaints Filed	Ending in Conviction	Total Disposed	Investigation Pending	Pending in Magistrate’s Court	Pending with Attorney General	Pending with District/ High Court	Total Pending
2020	28	1	0	0	26	1	1	0	28
2019	9	1	0	0	8	1	0	0	9
2018	23	6	0	0	17	6	0	0	23
2017	15	2	0	0	12	2	1	0	15
2016	26	7	1	1	16	6	3	0	25
2015	19	1	0	0	16	1	2	0	19

28 UNFPA (December 8, 2020). A Violence Free Sri Lanka. Retrieved from <https://srilanka.unfpa.org/en/news/violence-free-sri-lanka>. Accessed: January 10, 2021

29 Care Consortium (2020). Community-led Rapid Survey. COVID-19 Impact on Key Populations, People Living with HIV and Global Fund Sub-Recipient Organizations in Sri Lanka. Retrieved from https://apcaso.org/apcrg/wp-content/uploads/2020/07/English-Final_COVID-19-Impact-Survey-Report-1.pdf. Accessed: March 04, 2021

30 In the Penal Code, procuration and trafficking are treated under two different Sections – 360A and 360C.

31 Sri Lanka Police. (2015). Grave Crime Abstract for 2015. Retrieved from https://www.police.lk/images/crime_statistics/2015/grave_crime_abstract_for_the_year_2015-1.pdf. Accessed: March 04, 2021

Sri Lanka Police. (2016). Grave Crime Abstract for 2016. Retrieved from https://www.police.lk/images/crime_statistics/2016/grave_crime-.pdf. Accessed: January 02, 2020

Sri Lanka Police. (2017). Grave Crime Abstract for 2017. Retrieved from https://www.police.lk/images/crime_statistics/2017/grave_crime-2017.pdf. Accessed: January 02, 2020

Sri Lanka Police. (2018). Grave Crime Abstract for 2018. Retrieved from https://www.police.lk/images/crime_statistics/2018/disposal_of_grave_crime_policedivision.pdf. Accessed: January 02, 2020

Sri Lanka Police. (2019). Grave Crime Abstract for 2019. Retrieved from https://www.police.lk/images/crime_statistics/2019/Grave-crime-abstract-for-the-Year-2019.pdf. Accessed: September 12, 2020

Sri Lanka Police (2020). Grave Crime Abstract for 2020. Retrieved from https://www.police.lk/images/crime_statistics/2020/01.Grave-crime-abstract-for-the-Year-2020.pdf. Accessed July 28, 2021

Table 4. Prosecutions and Convictions Reported in the US State Department's Annual TIP Reports ³²

Year	Investigations	Prosecutions	Ending in Conviction
2020	14	27 (16 under procurement; 02 under 360C; 09 under sexual exploitation of children statutes)	03 (under procurement statute)
2019	10	46 (35 under procurement)	07 1 (under 360C) 6 (under procurement statute)
2018	14	10 (7 under the procurement statute; 3 under 360C)	1 (under 360C)
2017	15	28 (4 under 360C); 24 under procurement statute)	3 (under procurement statute)
2016	7	35 (10 under 360C; 25 under procurement statute)	7 (under procurement statute)
2015	6	12 (5 under 360C; 7 under the procurement statute)	1 (under procurement)

The year 2018 marked a turning point in Sri Lanka for having secured a conviction under Section 360C of the Penal Code for the first time in five years. However, as explained in a later chapter, the sentences were suspended for all three traffickers, thus watering down its potential impact.

The poor rate of convictions has been a major flashpoint for Sri Lanka in the US State Department's Annual Trafficking in Persons (TIP) report. Citing Sri Lanka as both a source and transit country, the successive reports have been highly critical of the efforts by the GoSL to adequately respond to the prevalence of TIP in the country. The global review also helps highlight how Sri Lankans have been convicted of trafficking in countries such as Bahrain and how Sri Lankans are also trafficked to countries including Afghanistan and Bosnia-Herzegovina

32 United States Department of State. (2016). Pg. 346-348. Trafficking in Persons Report 2016. Retrieved from <https://2009-2017.state.gov/j/tip/rls/tiprpt/2016//index.htm> Accessed: January 02, 2020
 United States Department of State (USDOS). (2017). Trafficking in Persons Report 2017. Retrieved from <https://www.state.gov/reports/2017-trafficking-in-persons-report/> Accessed: January 02, 2020
 United States Department of State (USDOS) (2018). Trafficking in Persons Report 2018. Retrieved from <https://www.state.gov/reports/2018-trafficking-in-persons-report/> Accessed: January 02, 2020
 United States Department of State (USDOS) (2019). Trafficking in Persons Report 2019. Retrieved from <https://www.state.gov/reports/2018-trafficking-in-persons-report/> Accessed: September 04, 2020
 United States Department of State (USDOS) (2020). Trafficking in Persons Report 2020. Retrieved from <https://www.state.gov/wp-content/uploads/2020/06/2020-TIP-Report-Complete-062420-FINAL.pdf>
 United States Department of State (USDOS) (2021). Trafficking in Persons Report 2021. Retrieved from https://www.state.gov/wp-content/uploads/2021/07/TIP_Report_Final_20210701.pdf

and experienced forced labor in Sierra-Leone³³. This type of information helps throw light on under-studied regions and countries to which Sri Lankan migrant labor can potentially be trafficked and the importance of tracking Sri Lankans who are convicted of trafficking elsewhere.

Official complicity in TIP as well as mobility restrictions placed on female migrant workers seeking to work overseas have been cited as detrimental. The example cited below underscores the importance therefore, of ensuring that TIP is understood adequately by officials appointed by the GoSL to assist migrant workers:

“According to a December 2019 international organization report, multiple male and female Sri Lankan trafficking victims who fled abusive employers overseas and sought refuge at Sri Lankan embassies reported certain Sri Lankan consular officers sent female trafficking victims back to their exploitative employers and “sold” other women back to their exploitative employment agency or new employers for financial gain³⁴.”

These setbacks have resulted in Sri Lanka being downgraded again to the Tier Two watchlist in 2019 and 2020.

As noted in the multiple TIP reports there is a general tendency in Sri Lanka, as a source-country exporting labor, to view trafficking in terms of the external labor migration process. Since women outpaced their male counterparts for years, there is a further trend to view women as the most vulnerable to trafficking. This is despite reported GoSL data to the contrary - in 2018, 56 out of the 66 potential TIP victims identified were men³⁵. Despite mobility of women within Sri Lanka for work, especially to the EPZs mostly located in the urban centers, TIP in this context is also not well-understood, by the respondents nor in existing literature. Instead, such young women are viewed as more vulnerable to GBV³⁶. The question of whether trafficking within Sri Lanka for the sex trade is considered within this framework is also questionable.

Similar to fears of the rise in GBV prevalence during the lockdown period, concerns have been raised about the potential for TIP³⁷. However, as yet, no data has been made available in this regard. With the number of migrant workers leaving Sri Lanka dramatically reduced, the focus has also been on in-service migrant workers. The vulnerabilities they may face due to loss of jobs, wage theft, the inability to return home as a result of Sri Lanka’s airports being closed have all been highlighted in the media. In this light, the recall of Labor Officers attached to the Sri Lankan embassies in the Gulf Cooperation Countries has been highlighted as worrying, as their primary responsibility is to respond to the needs of in-service migrant workers.³⁸

33 USDOS (2019).

34 United States Department of State (2020). Trafficking in Persons Report 2020. Pp. 461. Retrieved from <https://www.state.gov/wp-content/uploads/2020/06/2020-TIP-Report-Complete-062420-FINAL.pdf>. Accessed: December 10, 2020

35 USDOS (2019). Pp. 434.

36 Hewamanne S. (2008). “City of Whores”. Nationalism, Development and Global Garment Workers in Sri Lanka. *Social Text* 95. 26(2). 35-59. Accessed: December 10, 2020

Attanapola C. T. (2004). Changing gender roles and health impacts among female workers in export-processing industries in Sri Lanka. *Social Science and Medicine* 58. Pg.2301-2312. Accessed: December 10, 2020

37 International Organization for Migration (IOM) (2020). COVID-19 and its Implications on Human Trafficking in Sri Lanka.

38 Colombo Times (December 16, 2020). Absence of Labour officers in foreign missions causes chaos among migrant workers. Retrieved from <http://colombotimes.net/absence-of-labour-officers-in-foreign-missions-causes-chaos-among-migrant-workers/> Accessed: February 08, 2021

Overall therefore, the question of how much the existing data reflects the actual context of GBV and TIP prevalence is difficult to ascertain. The varying degrees of percentiles presented raises the question of how data collection from victims who have not lodged complaints with the Police but have visited a hospital to seek medical care is captured. These discrepancies and the gaps have been recognized as challenges in Sri Lanka. The question of collating data also raises the question of how TIP and GBV are understood in the Sri Lankan context.

2.4 Vulnerability factors perpetuating GBV and TIP

Several factors are commonly identified as perpetuating GBV and TIP. The most common is the low socio-economic status of particular women in society which pushes them to make choices that lead to vulnerabilities. Women from poorer regions of the country and generally understood to be from rural areas are considered most vulnerable to violence. However, with regard to GBV, non-governmental service providers emphasized that violence permeates these socio-economic boundaries as young women in particular can become highly vulnerable to abuse in intimate relationships. But as has been noted in the secondary data analysis, one's marital status and gender identity are two key factors identified. In terms of gender, women are consistently framed as the weaker sex and therefore, most at risk of experiencing violence, either at home, in public spaces or in the workplace. Similarly, married women have been found to be at a higher risk of experiencing intimate partner violence but the absence of unmarried women could be due to under-reporting of such instances as well.

Where TIP is concerned, all these socially ascribed identities meld together to create a perfect storm for women. The lack of stable livelihoods in the rural areas are seen to push women to seek migration as an option where the burden of sustaining the household economy is then squarely placed on the woman. In contrast, men are seen as more worldly and able to negotiate the public terrain including in migration and avoid the risks of being exploited. This again indicates the persistence of gendered roles and patriarchal notions of power imbalances.

2.5 Understanding of Gender Based Violence

The Policy Framework and National Plan of Action to Address SGBV (2016-2020) provides an overview of how Sexual and Gender Based Violence (SGBV) is defined in Sri Lanka. Viewed as a human rights concern, SGBV is recognized as directly linked to “unequal power relations between women and men” and as “an expression of power over women in many instances” where “discriminatory social and cultural norms and practices are providing a base for the unequal power relations among women and men”³⁹.

The definition of violence is broad and the impact on the socio-economic, physical, sexual and psychological as well as emotional wellbeing of both men and women is recognized. There is also the recognition that SGBV is not limited to the private sphere (i.e., household) but can also be experienced and perpetrated in public domains and that regardless of sexual identity, class, ethnicity and religion, men and women can become victims. Hence, at the outset, the scope of SGBV is

39 Ministry of Women and Child's Affairs. (2016). Policy Framework and National Plan of Action to Address SGBV. Retrieved from <https://www.lk.undp.org/content/srilanka/en/home/library/poverty/Policy-Framework-and-National-Plan-of-Action-to-address-SGBV-in-SriLanka.html>. Accessed: January 04, 2020

quite broad and echoes in large part, how the Prevention of Domestic Violence Act (No. 34 of 2005) of Sri Lanka defines violence with its adoption of gender neutrality. The Policy Framework is also responding to the GoSL's international commitments, especially via the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and its commitments to adhere to minimum standards of providing an enabling environment for women to work and live.

While acknowledging to some extent that SGBV is gender neutral, there is a subtle yet powerful connotation that women are disproportionately affected by SGBV. This is important to note given its implications in determining access to services and who is at-risk of losing such access. In Sri Lanka, this may suggest that men as well as LGBTQI+ individuals can find themselves cast outside of the regulated framework to access support.

This was confirmed in the interviews with stakeholders. Law enforcement officials as well as service providers' understanding of GBV does not echo the broader definition embedded in the Plan of Action. What is commonly understood as gender-based violence is the perpetration of violence against women. The understanding is further narrowed based on the form of violence, the perceived perpetrator and the location (intra-familial) where such violence takes place.

In most cases, violence is understood as *physical violence* perpetrated against women. This is further understood as occurring mostly within the domestic sphere, as a form of violence perpetrated on the wife by the husband. This was evident in the number of cases cited during interviews by service providers as well as law enforcement officials in relation to GBV.

While some grassroots level organizations recognized the existence of such violence even among intimate partners, the narrowing of scope to the domestic sphere is important to note. As evident in the data, the introduction of the Prevention of Domestic Violence Act No. 24 of 2005 (PDVA) and the subsequent efforts undertaken to create awareness as well as strengthen the capacity of Police officers to handle such cases have resulted in better awareness on domestic violence⁴⁰. But it also raises the question of the prevalence of other forms of violence that takes place within the domestic sphere for which the PDVA has made provisions. This includes violence perpetrated against the victim by relations including parents, son or daughter, grandparents, step-parents, grand-children, a sibling or nephew/niece or cousin⁴¹.

The narrower scope of GBV that is understood by the respondents can be partly attributed to the perceived prevalence of violence. From their experience, complaints about domestic violence are comparatively higher than those emanating from more serious crimes such as, rape and incest and the lesser-known elements of workplace sexual harassment and sexual bribery. These are further complicated by the lacunae in the law. For instance, the latter is not specifically mentioned in the Bribery Act No. 11 of 1954 but can be loosely interpreted to fall under the category of gratification⁴². The former which is addressed under Section 345 of the Penal Code

40 Leader of the Opposition's Commission on the Prevention of Violence against Women and the Girl Child. (2014). Report of the Leader of the Opposition's Commission on the Prevention of Violence against Women and the Girl Child. Retrieved from <http://gbvforum.lk/r-library/document/Report%20of%20the%20Leader.pdf>. Accessed: January 04, 2020

41 Wijayatilake D. (2012). Commentary on the Provisions of the Prevention of the Domestic Violence Act No. 34, Sri Lanka. Ministry of Child Development and Women's Affairs. Colombo. Accessed: October 13, 2020

42 De Soysa M (October 14, 2020). Sexual bribery: The open secret. Retrieved from <https://groundviews.org/2020/10/14/sexual-bribery-the-open-secret/#:~:text=While%20it%20is%20illegal%20under,a%20violation%20of%20fundamental%20rights>. Accessed: February 07, 2021

(Amendment) Act No. 22 of 1995⁴³ however, remains a challenging aspect to confront and address⁴⁴.

On the other hand, this understanding can also be attributed to challenges in translating the socially embedded idea of gender to a lay population. This was emphasized by service providers who specialize in creating awareness on GBV as a preventative measure. Increasingly efforts are focusing on engaging with the men as well in recognition that prevention should address the causes that may lead to violence, rather than focusing only on the victims. Even though this frames the women as victims, men were also found to approach NGO service providers about the forms of violence they have experienced, thus indicating gendered roles and norms along with lack of knowledge on violence, prevent such victims from coming forward.

A few outliers contested this majority view. The contestation stems from what constitutes violence, and GBV being viewed as too narrow to encompass the multitude ways in which violence permeates society and how it is perpetrated and experienced by different groups of people.

“When you look at GBV victims, most of the time, they are women. With our ideas about masculinity and femininity, men who face violence also may not come out. So, wherever there is power dynamic and low self-esteem, we feel that’s when the violence happens. Mostly it’s women, but not to say that men don’t get harassed, but it’s clearly a power dynamic” (Service Provider, Female, Colombo district, May 25, 2020).

“I will speak about people who have been affected by gender violence. Most of these people would be vulnerable in some form or the other, either financially, mentally or physically. Sometimes gender will not be the only sole cause of the violence that is inflicted upon them. There would be some other factors also. Their families, children, conflict - the war that happened here. Violence does not happen randomly, there is a certain structure which aids this to happen, and it has been created here. This is a common thing” (Service provider, Female, Jaffna district, May 16, 2020).

Though not commonly held, these broader perspectives indicate that the traditional notions of GBV have been found to be wanting.

2.5.1 Who and what types of violence are marginalized?

In the commonly held conceptualization and understanding of violence, two important factors have fundamentally been left out: specific forms of violence and specific groups of victims. With regard to the former, the danger lies in not understanding the wider scope of what violence constitutes and the gendered underpinnings of such experiences. While there is some understanding that workplace harassment, especially in the EPZs exists, this is not a widely held notion.

43 Employers’ Federation of Ceylon and International Labour Organization (2013). Code of conduct and Guidelines to Prevent and Address Sexual Harassment in Workplaces. https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-colombo/documents/publication/wcms_525537.pdf. Pp. 12. Accessed February 07, 2021

44 Adikaram A S. (2016). “Unwanted” and “bad” but not ‘sexual’: Non-labelling of sexual harassment by Sri Lankan working women. *Personnel review* 45(4). Pp. 806-826. Accessed: February 07, 2021

Similarly, the idea of less-visible forms of violence especially in relation to psychological violence are not well understood. Notably, though cybercrimes were not initially considered to be within the domain of GBV, its emergence was cited widely, both in the urban cities like Colombo as well as the rural and estate sectors. In the case of Nuwara Eliya district, the return of migrant workers from Sri Lanka's urban areas during the COVID-19 lockdown was seen as a driver that led to young men using social media and smart phones at their disposal to harass young women in the community⁴⁵.

What is equally troubling is who is excluded from this framing of GBV. As previously noted, despite the gender-neutral language used in policy documents, men are generally viewed as perpetrators, rather than as a possible victim of GBV. When probed during interviews, violence perpetrated against young boys was noted as well as domestic violence where psychological forms of violence were being used by women against men. But the universally held notion that women are disproportionately and negatively impacted by GBV and the perpetrators are generally the men, is difficult to challenge because the evidence overwhelmingly supports this position. The existing data as well as experiences from the communities from which GBV incidence was reported, were repeatedly cited as the reasons for this view on GBV.

While there is general agreement that GBV in particular permeates social class boundaries, most service provision appears to target the lower socio-economic classes. Moreover, emerging concerns regarding cybercrimes which are largely perceived in the public domain as being urban-centric, were also challenged by service providers, indicating that these different forms of violence can persist in multiple socio-economic contexts.

Equally troubling is the difficulty in probing and approaching the question of the LGBTQI+ community. With a few exceptions, the male/female binary is used commonly in describing GBV. This is not surprising given the legal framework that specifically criminalize the LGBTQI+ community⁴⁶ - a factor highlighted by a law enforcement respondent as well⁴⁷.

These preconceived notions and how they play out within the private sphere have adverse effects on LGBTQI+ individuals. Coming out or being found out as being "different" is considered risky and "putting up" with domestic violence is a common experience for young people who identify as LGBTQI+. The advice given by LGBTQI+ activists to not leave the house despite the physical and psychological violence they may experience, is rationalized in a way that throws light on the social ostracism they encounter from the larger society.

"Our one big advice is whatever the problem, don't leave the house, if you are living with your parents. Everything comes falling down if you leave the house. That's how you fall into sex work and drugs. It is better that they get the abuse from their parents than from the outside environment. I transitioned when I was 23. I have to think from my parents' side too – they lived for 23 years with a son and now I'm suddenly, not a son. ...Parents have to accept all that, understand, even the simple thing like starting to call me, "duma." [daughter]. So, we also have to think about that and understand that their

45 This was brought up by multiple service providers from the District during the data collection phase.

46 Under Section 365 of the Penal Code, same sex sexual conduct is criminalized and is cited as being widely used to discriminate against such individuals.

47 Interview with a female law enforcement officer, September 09, 2020.

understanding also happens slowly sometimes” (Service provider, transgender, Colombo district, July 10, 2020).

Such young persons may endure the violence silently, despite the PDVA providing protection from such violence. Similarly, people in the sex trade, regardless of their gendered identity, also remain outside the generally held notion of GBV. Barring a few organizations, a majority do not proactively work with nor extend services to them.

What is noteworthy in these varying understandings of GBV is the impact social values and norms have on the stakeholders themselves. Despite working with affected or at-risk groups, their understanding of who is deserving of being included as a possible victim emanates from conformity to the patriarchal ideology around gender relations and the socially attributed roles of men and women. Women need protection as the weaker sex and men require counselling in order to prevent violence whereas women in the commercial sex trade and the LGBTIQI+ individuals are framed as the social outcasts. This narrow framing suggests that access to services can be curtailed or denied to these marginalized groups as their ‘victimhood’ is delegitimized in the overall understanding of what constitutes GBV.

2.6 Understanding of Human Trafficking

Similar to the conceptual understanding (or the lack of it) of GBV, drawing out general ideas of what constitutes human trafficking is challenging. Whereas the understanding of S/GBV may leave vulnerable groups of individuals outside of the framework of definition, with TIP there is a general misconception or poor understanding of what it actually constitutes⁴⁸.

The confusion of human trafficking with people smuggling is quite common with the Sinhalese and Tamil terms sometimes used interchangeably. In Sri Lanka, the interest in people smuggling is unsurprising. In general, smuggling is clearly seen as law-breaking by “clients” who use such smugglers, whereas in trafficking, the individuals are treated as “victims”. The latter therefore, is viewed through a human rights angle⁴⁹. But these distinctions can often become blurred. For,

“[m]any smuggled humans end up as exploited and forced into bonded labor as a way of financing their illegal migration. The migrant commits to a debt contract; they can be classified now as a trafficked victim”⁵⁰.

Similarly, such migration trajectories can also be viewed through a favorable lens in different contexts. For example, the migration to Italy from the North Western coast of Sri Lanka by boats in the 1980s and 1990s, has become normalized in public discourse. With little to no state intervention, migration by boat to Europe was less problematized in policy circles as

48 Ground Views (2012). Growing Concern over Human Smuggling and Trafficking in Sri Lanka. Interview with ILO. Retrieved from <https://groundviews.org/2012/07/18/growing-concern-over-human-smudging-and-trafficking-in-sri-lanka-interview-with-ilo/> Accessed: February 07, 2020.

49 Kalu V E. (2009). Issues in human trafficking and migrant smuggling in the context of illegal migration. *International Legal Studies Program Law Journal*, 1(1). 27-33. Accessed: May 11 202.

50 Seker BS, and Dalaklis D. (2016). Contemporary Maritime Security Challenges: Human Trafficking and Migrant Smuggling at Sea. Pp.135-142. Retrieved from https://www.researchgate.net/profile/Dalaklis_Dimitrios/publication/305040429_contemporary_maritime_security_challenges_human_trafficking_and_migrant_smuggling_at_sea/links/577fa55908ae69ab88240323/contemporary-maritime-security-challenges-human-trafficking-and-migrant-smuggling-at-sea.pdf. Accessed: May 11 2020.

such migrants were also viewed as “economic migrants”. Existing studies confirm this public perception as they too tend to focus on the transformational capacity of such immigrants to affect socio-cultural changes back in Sri Lanka⁵¹.

In contrast, the renewed interest in people smuggling in the post-war context has received much stronger attention on the part of both the GoSL as well as the Australian High Commission⁵². The emergence of the smuggling route to Australia in the post-war period, has drawn attention to this group of people who rely on risky routes and spend their life savings to find a means to migrate. The public perception of “boat people” has been quite negative and is fueled by the media’s portrayal of such decisions as ‘law-breaking’. In this instance, those attempting to migrate irregularly are viewed through a negative lens. The persistence of this discourse in the public sphere may distract and deviate attention away from the incidence of the less visible process of human trafficking.

Less attention and understanding of TIP could also be because human trafficking is receiving more attention only in the recent past; increased focus on many fronts – government and non-government – have been noted in relation to addressing TIP as a serious issue only in the early 2000s⁵³. This attention corresponds with the renewed focus on human trafficking since the signing of the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, 2000.

Given the regular and historical flow of migrant workers to the Gulf Cooperation Countries, it is unsurprising that trafficking is generally linked to the external labor migration process⁵⁴. Little to no attention is paid to trafficking that occurs within Sri Lanka’s borders, especially for forced labor and sexual exploitation⁵⁵. The presence of women from neighboring countries and regions who have been trafficked for prostitution in Sri Lanka is also not well documented, making it difficult to understand the parameters of the definition of trafficking. Furthermore, trafficking also tends to be understood as a woman’s problem: women are framed as being vulnerable and at more risk of being trafficked because of the nature of their work (i.e., as domestic workers) or because of their gendered identity. This is despite growing evidence to the contrary that men are as vulnerable to sexual and labor exploitation⁵⁶.

51 Henayaka-Lochbihler R. and Lambusta, M. (2004). The Sri Lankan Diaspora in Italy: An Explorative Mapping. Retrieved from http://www.cepa.lk/content_images/publications/documents/48-S-Berghof%20Foundation-SL%20diaspora%20in%20Italy.pdf Accessed: May 11 2020.

52 Australian High Commission (2011). Sri Lanka-Australia Cooperation Against People Smuggling: Confiscating the Profits of Crime. Retrieved from <https://srilanka.embassy.gov.au/clmb/110512PS.html> Accessed: May 18, 2020

53 Ranasinghe R. (2019). Human Trafficking for Sexual Exploitation. Proceeding of the 2nd International Conference on Future of Women’19, Vol. 2, 2019, Pp. 1-8. Retrieved from <http://tiikmpublishing.com/proceedings/index.php/fow/article/view/244> Accessed: October 3, 2020

54 Amirthalingam K, Jayatilaka D and Lakshman R.W.D. (2015). “The Other Side of the Migration and Development Nexus: Human Trafficking in Sri Lanka” in eds. Rahman, M.M and Yong, T.T. *International Migration and Development in South Asia*. Routledge. Accessed: January 2, 2020

55 Vithanage D.S. (2015). Understanding the Nature and Scope of Trafficking of Women in Sri Lanka for Sex Work: What Needs to be Done? Retrieved from https://repository.stcloudstate.edu/cjs_etds/1/ Accessed October 3, 2020

56 International Labour Organization (ILO) (2018). Presence of Human Trafficking and Forced Labour in Labour Migration in Sri Lanka. Retrieved from https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-colombo/documents/publication/wcms_735511.pdf Accessed: October 3, 2020

The inability to differentiate between human smuggling and human trafficking and to identify them as two separate processes is also common⁵⁷. The way in which a smuggled and trafficked individual is framed can serve to further create confusion. An individual who is smuggled can be easily framed as a perpetrator, who willingly participated in breaking the law. This act of *knowingly* participating in a process has been cited in Sri Lanka⁵⁸ by alleged traffickers to challenge the allegation of trafficking.

Whereas the general public has been sensitized to some degree on GBV, the public's understanding of what constitutes human trafficking is poor. Research has shown that migrant workers do not understand the elements that constitute trafficking⁵⁹ even when men and women migrant workers had experienced elements of trafficking.

These findings from the literature were largely confirmed during the interviews. People's understanding of migration, especially in relation to women migrating for work overseas, is quite high. The public perception of such migrant women being vulnerable to abuse is common along with the overwhelming notion that the families-left-behind, including the children and the spouse, are negatively affected by the absence of the primary caregiver. These ideas are not unusual as the public discourse on women migrating for work overseas has become increasingly negative and are somewhat confirmed by studies that support this contention.

Even when migrant workers have been deceived by intermediaries such as sub-agents and have experienced forced labor conditions, these are not necessarily linked to the elements that make up TIP. This is not surprising given that what constitutes human trafficking is not well known or well-understood by the stakeholders.

“No, I haven't met a lot of people who had experienced trafficking. What I have come across is the issues people face with the [recruitment] agency. It doesn't come under trafficking, right? We always refer cases to the Ministry; welfare activities, complaints etc. Even though these women are being deceived by the agencies, it cannot be taken under trafficking, right? That's how I think” (Government service provider, Female, Matara district, July 29, 2020).

With a few exceptions noted among shelter providers and some NGOs extending support to GBV and/or migrant workers, the three elements that constitute human trafficking could not be identified nor explained. Even in situations where an example of a possible TIP instance was used, service providers could not recognize such situations as constituting TIP, during the field research.

The notable exception to this general lack of understanding of human trafficking was particular segments of the law enforcement category. In general, the local police stations in the districts had poor knowledge of human trafficking whereas, the officials attached to the Department of Immigration and Emigration, the Criminal Investigations Department and the Attorney General's Department had a clear understanding of the three elements that constitute the crime

57 Ground Views (2012).

58 Thomas K. (2016). Human Trafficking in Sri Lanka may be a Bigger Problem Than We May Realise. Retrieved from <https://roar.media/english/life/reports/human-trafficking-sri-lanka-bigger-problem-may-realise>. Accessed: October 3, 2020

59 ILO (2018)

of human trafficking. This is to be expected since these three national-level entities are directly linked to the identification, investigation, and prosecution of TIP offences.

The lack of understanding among local police stations is not surprising. There is a general consensus that explaining human trafficking is not easy:

“Say for ordinary police officers manning the police stations. How many of them are trained? How many trained officials does each station have? What about the women’s and children’s desks, not every station has them? An orientation to trafficking is given during the initial training they receive I think, but even when the concepts are difficult to grasp for experts it is obviously going to be difficult for these officers also. The confusion between smuggling and trafficking is quite common and when these interact with labor migration, there is so much interplay and officers get confused” (Key Person Interview with representative of a UN Agency in Sri Lanka, Female, June 25, 2020).

“I train officers at the Police Academy. I use the American Bar Association’s manual on how to identify victims. But still I don’t think they understand it. I accompany some of these victims to the police stations. The victims say one thing, but the officers write down another thing. Then those details which make a case a TIP case aren’t recorded properly” (Shelter provider, Female, Colombo district, July 31, 2020).

With a number of entities, including The Asia Foundation and the International Organization for Migration (IOM) and the UNODC, stepping into broaden the understanding of human trafficking among select stakeholders, there is some momentum to increasing understanding at the ground level. But the challenge also lies in how best to reach to the communities as well as the law enforcement officials on how to screen and identify instances of human trafficking.

The fact that even among those who understand TIP, the understanding focuses mostly on the external labor migration process and on female migrant workers is further troubling. The ways in which internal migrant workers can become vulnerable to trafficking and forced labor continues to remain outside the ambit of understanding of TIP. Similarly, as pointed out previously, the majority of potential victims of TIP in 2018 were men⁶⁰. Such a trend makes it imperative that TIP is understood through a gender-blind lens. The importance of adopting such an approach is further underscored by two circumstances: the rising number of men seeking work overseas and the increased possibilities of TIP in the face of the contraction of the Sri Lankan economy as a result of the COVID-19 pandemic⁶¹.

In contrast to understandings of GBV, certain service providers raised concerns that marginalized groups such as sex workers can face further discrimination for being labelled trafficked victims when the realities are far more complex.

“We forget that women can also do sex work with consent. If you work with women who are trafficked into sex work, that is fine, as trafficking itself is a crime. But don’t conflate it with women who do it with consent to provide for their families. Not all sex workers are trafficked” (Service Provider, Female, Colombo district, May 25, 2020).

60 USDOS (2019).

61 International Organization for Migration (2020). COVID-19 and its Implications on Human Trafficking in Sri Lanka.

“There are young women who are sold into sex work by their boyfriend or their father or a relative they trusted to get a job. But not everyone in the sex trade is a trafficking victim. There are some who engage in this willingly, and so that segment is also present” (Representative of Sex Workers’ Association, Gampaha district, November 10, 2020).

These perspectives reflect the uphill battle of activists lobbying to lift the stigma of commercial sexual transactions and give it due recognition in Sri Lankan society. On the one hand, young women can become trafficked and thus victimized but applying the TIP lens to determine all women in prostitution as trafficked is viewed as displacing their individual agency. The recently concluded CEDAW recommendations have also come into criticism in this regard, by framing the commercial sex industry in a punitive manner which runs the risk of all people in prostitution being viewed as TIP victims⁶².

2.7 Intersections of GBV and Trafficking

In general, GBV and TIP are understood as distinct forms of violence. Despite the confusion in separating human trafficking from smuggling, the intersections of GBV and trafficking as a result of men or women having experienced one form of violence has been documented. Recent studies have pointed to how violence can indeed increase the risk of a woman to be trafficked for prostitution^{63,64}. Family members can also push women into prostitution and force them to remain in the trade.

Even among those who have a clear grasp of both concepts, recognition of the intersections is less forthcoming. This is mainly because of the lack of verifiable information or data of GBV leading to TIP or vice versa. There is, however, an acknowledgement that vulnerability in the form of poverty increases the possibility of migrant workers or those in the sex trade being trafficked.

Vulnerability is yet again framed within an understanding of women being more likely to be exploited as opposed to men. Whether it is women who exercise their agency by seeking work overseas or young women who seek work in the urban cities of Sri Lanka, they are viewed as more gullible to be deceived. Both TIP and GBV victims are thus treated through a paternalistic approach that downplays men’s vulnerabilities and highlights the ways in which women can be exploited.

The dissonance between definitions embedded in national policy documents and the service providers’ take on GBV and TIP shows that outreach of such policy frameworks is still restricted by normative ideas of gender and a gendered hierarchy. GBV is largely understood based on an individual’s own experiences, socialization and socio-cultural values. In this context, marginalization of certain groups, by default or intentionally, is not surprising. This also showcases how policies developed and designed at the national level with good intentions can

62 Global Network of Sex Work Projects (November 2020). CEDAW Committee General Recommendation No. 38 (2020) on Trafficking in Women in Girls in the Context of Global Migration. Retrieved from https://www.nswp.org/sites/nswp.org/files/nswp_cedaw_gr_statement_final.pdf Accessed: February 12, 2021

63 Amirthalingam, Jayatilaka and Lakshman. R.W.D. (2015)

64 Vithanage D.S (2015).

invariably strike a dissonant chord at the community level where implementation and community responses need to be most effective.

The problem with such entrenched ideas of GBV and TIP and gendered norms plays out critically in deciding who is considered as deserving of the finite resources and services. This next section explains how these understandings then trickle down to impact who is considered vulnerable under particular circumstances.

2.8 Conceptual clarity on different categories of TIP victims

According to the UNODC, victims can be roughly categorized into presumed and potential victims. Accordingly,

*“Potential victims are people who have not yet been trafficked, but due to their vulnerability or other circumstances, are at risk of being trafficked. A presumed victim is a person whose circumstances indicate that they may have been trafficked, but no final determination has yet been made, perhaps pending further inquiries”*⁶⁵.

This categorization, though appearing to be simplistic, is useful in addressing and/or preventing the prevalence of TIP. In Sri Lanka, existing literature and Reports, particularly those of the US State Department, flag the issue of the low prevalence of prosecutions – the third pillar in the TIP response pillars. The inability to correctly identify presumed victims can have far-reaching impacts, resulting in a lower number of cases being prosecuted.

Generally, migrant workers seeking work overseas are considered as a group that are at-risk of being trafficked. The risk factor is considered high because of existing levels of poverty, especially in locations such as Nuwara Eliya where the lack of education, coupled with high levels of poverty and lack of access to viable employment opportunities, are seen as creating the perfect storm for intermediaries to exploit to their advantage. In such scenarios, the women are yet again seen as more vulnerable especially those seeking work as domestic workers.

Such at-risk populations are also considered to be present more in the rural and plantation sectors in Sri Lanka rather than in the urban areas. This is again driven by generally held ideas of the prevalence of poverty in rural areas and the patterns of migration in search of work.

“They choose to migrate abroad because their husbands have abandoned them and their families... It is hard for women in the (plantation) estates to survive here within their salaries and provide for their children. The agents usually promise an amount in advance, and women who are in need, take it. Women who live with their families or husband, also take these opportunities. The husbands also wish to send their wives abroad” (Government service provider, Female, Nuwara Eliya District, July 1, 2020).

The higher probability of female migrant workers to be trafficked was also highlighted by law enforcement officials who pay closer attention to such workers at the point of departure from Sri Lanka. The only exception on a different perspective about the at-risk populations was

65 UNODC, A human rights based approach to Trafficking in Persons. E4J University Module Series: Trafficking in Persons & Smuggling of Migrants; Module 8: A Human Rights-Based Approach to Trafficking in Persons. Retrieved from <https://www.unodc.org/e4j/en/tip-and-som/module-8/key-issues/trafficked-persons-as-victims.html> Accessed: October 3, 2020

offered by law enforcement officials, especially Prosecutors. Assuming a broader interpretation of vulnerability, a few argued that circumstances, rather than existing socio-economic gaps can push even the educated and cosmopolitan groups into being trafficked. Here, the focus is on the *circumstances* that can drive a person to become vulnerable rather than socio-economic conditions or gender.

“Exploitation then stems from vulnerability. But this idea of vulnerability is also interesting. I am sure if you and I go to Uzbekistan, you cannot speak the language and then you are robbed, you lose your passport and someone comes to your aid. Are you not vulnerable in that situation that you would look at, say depend on [someone] to direct you to the embassy or some place? This is why I say vulnerability itself is situational. We may not know the language, and that makes us even more vulnerable because there is no communication. A lack of not knowing where we are, not being able to communicate in that context, is a vulnerability. We are willing to go with that person at that particular time” (Law enforcement official, Female, Colombo district, October 29, 2020).

The identification of the potential victim group is important for service providers. As those working with victims of GBV and/or with migrant worker communities, the identification of at-risk groups helps them design programs as preventative measures. There is an overwhelming response from both GBV and migration-related service providers to emphasize the importance of education and awareness-creation. They advocate to begin such programs with the youth and to raise these issues of exploitation, forced labor and trafficking within the school curriculum or among community members.

Awareness creation targeting migrant workers specifically were mentioned as important. This is mainly because the applicability of the pre-departure awareness/training provided by the Sri Lanka Bureau of Foreign Employment (SLBFE) was considered inadequate in preventing migrant workers from being deceived.

“How is it possible that the women sign an employment contract that is not always in their own language? Why can't it be explained to them in Sinhala or Tamil and be signed in front of an officer or at the SLBFE? This way, you can reduce the chances of women being exploited. These are concrete measures that can be taken. Because you really can see that they are completely deceived, duped when they are taken abroad. From the start to finish, it is not facts that are presented, but these other stories that are not the reality” (Law enforcement official, Male, Colombo district, September 15, 2020).

In contrast to presumed GBV victims, the situation of presumed TIP victims is far more challenging to trace. This is unsurprising given the poor levels of understanding of TIP among specific groups of law enforcement officials as well as service providers. Presumed TIP victims are identified much later when narratives of their experiences emerge when they approach service providers for assistance. The assistance or support may not necessarily be directly related to the individual's experience of being trafficked. Usually, these experiences are considered as a singular event that occurred at a specific point in time. Notably, despite the frequent reference to migrant workers, instances of possible trafficking incidents occurring within Sri Lanka were also noted by a few service providers during the course of data collection.

The lack of understanding of the severity of the crime and what support systems are available to respond to the needs of such presumed victims can hinder service providers' ability to direct such individuals to seek assistance. In a single instance, the service provider directed the

presumed victim to the Police but what steps were taken afterwards remained unknown. Given the lack of knowledge about TIP among local police officers, in many instances, such possible cases of TIP may go uninvestigated.

But already marginalized groups like sex workers remain outside of the domain of assistance because they are not necessarily recognized as a group at a higher risk of being trafficked. This is despite evidence that trafficking for the purposes of sexual exploitation continues to be high worldwide⁶⁶. Such instances were also reported not by the mainstream service providers but rather by a handful of entities working proactively with sex workers.

“Of course, trafficking happens. Sometimes, these young girls ... they are deceived by their own boyfriends and sold to someone else and end up in a brothel or spa in Colombo. The stigma attached to, you know, being a woman who has lost everything, makes her ashamed to come forward” (Key person interview, Representative of Association representing Sex Workers, Female, Gampaha district, November 10, 2020).

2.9 Identification and screening

A lack of or gaps in clarity regarding TIP and GBV is directly correlated with the ability of stakeholders to identify a victim. It can also impact how vulnerable communities are identified and then enabling access to services. Hence, certain groups of individuals can be left out from being identified and screened and thereby being denied access to services. The next two sub-sections focus on identification and screening for GBV and TIP victims and explain how the lack of conceptual clarity can undermine identification.

2.9.1 Identification and screening for GBV victims

The importance of correctly identifying victims of GBV and trafficking is not only to ensure that such victims receive justice in a court of law. Rather, service providers can use the identification process to extend services including shelter, legal support and reintegration, thus enabling the victims to overcome the experience of violence and exploitation. But to do so, the parameters used can vary:

“A criminal law-based approach to victim identification usually provides a narrower scope for identifying trafficked persons than the approach used by NGOs, which is based on a presumed trafficking situation and/or on a presumed victim, and even if the trustworthiness of the person’s story is doubted, service providers usually advocate for the person to be considered a victim of trafficking”⁶⁷.

However, incomplete knowledge can have a deleterious impact on identification and screening for victims of TIP. With regard to GBV, the knowledge of violence as something manifested within families have led presumed victims to come forward and thus, access multiple avenues of raising concerns and seeking assistance. Important to note is that women do not always

66 United Nations Office for Crimes and Drugs (2018). Global Report on Trafficking in Persons 2018. Retrieved from https://www.unodc.org/documents/data-and-analysis/glotip/2018/GLOTIP_2018_BOOK_web_small.pdf. Accessed: October 3, 2020

67 Organization for Security and Cooperation in Europe. (June 2011). Trafficking in Human Beings: Identification of Potential and Presumed Victims. A Community Policing Approach. p. 16. Retrieved from <http://un-act.org/wp-content/uploads/2016/01/Trafficking-in-Human-Beings-Indentification-of-Potential-and-Presumes-Victims-OSCE.pdf>. Accessed: October 3, 2020

approach a first responder by themselves. Among the victims interviewed, the women relayed their concerns to either a family member (i.e., mother or sister) or a close female friend, who then encourage the women to seek support through the Police or the Women’s Development Officer (WDO). A process of questioning and inquiries culminates in a referral to the shelter. This was corroborated by service providers and law enforcement officials: potential victims rely on family members and/or a close friend to raise the issue with the most accessible point of contact within or outside of the local community. Two such contacts are important. The Grama Niladhari⁶⁸ who would then direct the victim either to the Police or to the WDO as required and, more importantly, the Public Health Midwife. Considered one of the most trusted government officials with access to families, these female officers have gained the trust and confidence of women. Referrals are directed through the Health services as appropriate or through the Grama Niladhari and the WDO.

The socio-economic status of the victims of violence who were interviewed reflect the realities of living in a region where development has been uneven in the post-war context. The women had been married at a young age, at times was the primary caregiver for an ailing parent or had lost members of her family due to the war. In this specific context, the lack of a stable livelihood and an income source for herself make breaking away from the abuse more difficult. Despite these particular characteristics, law enforcement officials as well as service providers are increasingly identifying violence as permeating the socio-economic divisions in society.

Reliance on the NGOs to provide redress on behalf of victims stems from the need to seek some additional assistance – mostly for livelihood or similar economic support. But where access to government services including the hospitals and the Divisional Secretariat (DS) office is challenging, the NGOs perform a critical role of identifying and referring the possible victims to the correct services. Accessing the Police station to lodge a complaint is not uncommon, especially in urban areas such as Colombo city, where women are encouraged to seek the assistance of the Police station’s Women and Child Desk to lodge a complaint and if required seek a Protection Order from the Magistrate’s Court.

Noticeably however, there is no screening tool applied nor any universally applied set of indicators adopted to assess the complaints. Rather, the common practice, across state and non-state service providers, is to conduct an interview and weigh the merits of the complaint on the basis of the experience of the presumed victim. Only a very few (less than five) organizations were found to use a standardized tool to screen for victims.

“Mostly we carry out screening using an internationally accepted GBV screening tool. We promote through the IPPF⁶⁹ guidelines – we don’t stick to that exactly, but subsections are included. Even if they come with a virus⁷⁰ or other thing, we have a GBV screening tool to check if they are a victim of GBV. We have GBV counsellors that we refer them to. If the client has legal needs, we refer them to

68 A Grama Niladhari (GN) or Village Officer is a public officer in-charge of the smallest administrative unit. Several of these make up a Divisional Secretariat division. The officer carries out specific civil administration tasks at the community level. He/she is well-connected to the communities and maintains an office in the designated GN division.

69 International Planned Parenthood Federation

70 The interviews were conducted during the initial COVID-19 lockdown and in Sinhala; however, the reference to a virus must be taken in the context that the respondent works for an organization that actively provides services for individuals with sexually transmitted infections.

an organization like the [name of local NGO]” (Service provider, Male, Colombo district, June 01, 2020).

Despite the absence of indicators, the trend is to consider physical violence and not necessarily psychological violence. While the focus is largely on domestic violence, more serious instances of rape and incest were also reported.

As indicated previously, research has shown that a significant proportion of men as well as women normalize violence meted out against women by their spouses. They find violence directed at women as justified under certain conditions. This was cited as a challenge by non-governmental service providers who are mostly engaged in creating awareness of GBV at the grassroots. But in some instances, they also pointed to instances where the law enforcement officials trivialize violence against women, especially spousal abuse.

2.9.1.1 Impact of COVID-19 on identification and screening

These circumstances may have also played a role during the COVID-19 induced nationwide curfew imposed from March to late May 2020. A few national-level service providers reported the noticeable increase in complaints from women to the helplines. The Women’s Bureau had received complaints to its hotline but not all were about violence. Rather, the women also used this as a means to lodge complaints or seek ways to access the social welfare payments extended by the government during the lockdown⁷¹. In contrast, law enforcement officials found no significant increase in complaints. Some law enforcement officials, government service providers as well as a few NGO service providers attributed the low incidence of complaints to two factors: the inability of the men to access and consume alcohol and the resultant cohesiveness within the family unit. However, such explanations can mask how loss of wages and being confined to the household can make the family environment more prone to violence and the inability to access help can be undermined by the presence of the perpetrator in the household.

Furthermore, given the strict adherence of the law during the lockdown during which special permission had to be sought from the respective Police Department to leave one’s residence, it is possible that women were unable to adopt their usual means of seeking assistance. Since the DS offices were also initially closed, access to the local WDO would also have been denied. In such a context, there is a higher likelihood that women in particular were unable to seek assistance nor be correctly identified as experiencing some form of violence during this period.

2.9.2 Identification and screening for TIP victims

The limited understanding of TIP as a trans-border crime has led to migrant workers being the primary category of presumed victims. There is a common recognition that women are deceived by the sub-agents and their migration trajectories may be adversely affected because of the trust placed in them. Therefore, identification of hotspots within Sri Lanka is weak, as was evidenced in the interviews. Among Migration Development Officers (MDO), the focus on implementing the Family Background Report (FBR) regulation which restricts mobility of women seeking to migrate overseas for work, take their attention away from how the imposition of the regulation can increase the women’s vulnerability to be trafficked.

71 Interview with Senior Government official, Colombo district, July 09, 2020

In the current environment, identification of presumed victims takes place in three main ways: at the immigration counters, through raids conducted by the DIE at locations suspected of harboring individuals who are in violation of the Immigrants and Emigrants Act of No. 20 of 1948 and its subsequent amendments, and thirdly, through complaints made to the CID by the Sri Lanka Bureau of Foreign Employment and occasionally, by the Foreign Ministry.

For immigration officials, suspicion is raised when conditions of the Immigrants and Emigrants Act of No. 20 of 1948 have been violated. Overstaying one's visa or an expiring passport are used as indicators to question the passengers further. In this process, rather than the focus being on a potential victim, the approach adopted is to first understand if an offence has been committed by the traveler. However, if in subsequent interviews, information reveals the presence of trafficking elements, the DIE reports such presumed cases to the CID for further investigations.

For the SLBFE, complaints are directed through the TIP hotline or through complaints lodged by migrant workers. While preliminary investigations are conducted by the SLBFE's internal investigation unit, there is a clear understanding that presumed victims must be referred to the CID for further investigations. In both these instances, the identification of an individual as a trafficked victim lies solely with the CID. The identification of victims referred through the Foreign Ministry indicates that such instances may originate from among migrant workers not registered with the SLBFE – the irregular migrant workers who have sought consular support from the respective Embassy. But as the CID contends, of the cases that are referred to them, only about 10 percent would fulfil all elements of TIP, pointing to the difficulties in identifying victims that fulfill all elements of TIP as spelled out in Section 360C of the Penal Code.

Identification of presumed TIP victims within Sri Lanka remains rather ad-hoc. On the one hand, raids of suspected brothels fall within the purview of the vice squads of the Police Department with the understanding that any individual raising some suspicion of being a presumed victim must be referred to the CID⁷². The fact that sex workers are criminalized using the archaic Brothels Ordinance (1889) and Vagrants Ordinance (1841)⁷³, prevents them from being identified as potential victims of TIP. While there is acknowledgement among law enforcement officials that young women from rural regions are deceived by family members or an intimate partner and trafficked into the commercial sex trade, many had not received such complaints. Hence, the burden appears to lie with these men and women to come forward and identify themselves as victims – a step that many would be afraid to take given the punitive measures they would encounter.

Even though a lot of attention has been placed on trafficking of children for forced labor, the same level of attention is not directed at adult men and women. This is despite the presence of migrant labor in multiple labor supply chains covering the formal and informal sectors of the economy. This is especially true in the case of migrant workers concentrated in the EPZs in the urban hubs. Again, the focus continues to be on women's presence in these urban landscapes and the socio-cultural impacts of young women living and working away from home. While Trade Union actions have been instigated against unfair treatment of workers and dismissal, the discourse of TIP is missing.

72 Interview with law enforcement officer, Male, Colombo district.

73 A more detailed explanation is provided in Chapter 3.

In the informal sector of work, domestic work was cited by respondents in Nuwara Eliya as a sector that increases the risks and vulnerabilities of women in relation to TIP. They view the women as being sold by middlemen or “agents” to prospective employers in the urban cities. But the recognition that similar to Sri Lanka’s female domestic workers employed overseas, domestic workers in Sri Lanka may also be victims of TIP was not a commonly held idea.

Even if such victims come forward and are able to lodge a complaint, since the understanding of TIP is weak among local police division officers, the ability to investigate further and refer such victims for further investigation to the CID may not take place as intended. Moreover, since victims of TIP were not interviewed for this study, how such presumed victims were identified or were given access to services cannot be verified.

The lack of understanding of what constitutes TIP and who is considered at-risk of TIP can therefore, seriously hamper efforts to correctly screen and identify victims of trafficking. But these are not necessarily the only reasons that prevent the correct identification and screening for TIP victims.

2.10 Challenges of correct identification/ screening of victims

The general lack of understanding of what TIP is and what this process entails is one of the major stumbling blocks in identifying presumed victims. The incomplete information or the lack of information on how individuals can become trafficked and how this process manifests even within Sri Lanka’s borders is detrimental to vulnerable groups of people including migrant workers and those in the commercial sex trade.

2.10.1 Lack of awareness

This situation is further compounded by the lack of awareness among at-risk groups. As found in previous studies, Sri Lankan migrant workers fail to adequately identify forced labor conditions despite undergoing such conditions during their work stints overseas⁷⁴. Even though some ground-level awareness campaigns have been launched on safe labor migration, few have had a focus on trafficking. Hence, workers may become victims of trafficking but may not consider how or where to report such incidents.

The lack of awareness among internal migrant workers – whether they are employed in the formal or informal sector of the economy – is equally worrying. The lack of awareness of one’s basic rights was cited by some law enforcement respondents as a reason why those in vulnerable situations do not come forward. But even where some form of awareness may be present, given that migration is used as a coping mechanism against poverty, such workers may be reluctant to come forward for fear of jeopardizing their employment. This latter issue may be a serious consideration for workers in the EPZs where long working hours and the inability to collectivize are normalized.

Further exacerbating these conditions is the lack of understanding of what constitutes TIP among CSOs working closely at the community level. Only a few respondents had a proper grasp of what trafficking entails but even among them, the possible overlaps with people smuggling and trafficking as a serious crime were noted. Therefore, recognition of a serious crime being

74 ILO (2019)

committed may be missing. Under-reporting of TIP incidence must be recognized as largely stemming from this lack of awareness among all stakeholders, including the potential victims.

2.10.2 Societal pressure

One of the key reasons GBV victims do not come forward is the societal pressure to keep silent. Social stigma and the fear of shame are extremely effective in preventing victims from lodging formal complaints. This was acknowledged as a major deterrent by both service providers and law enforcement officials. Family members and religious authorities can impose pressure on victims to withdraw their complaints, which are generally made against an intimate partner including the husband. Cultural restrictions and the imposition of strict social norms on women's behavior prevent them from coming forward. This was cited as a grave concern in the post-war regions of Jaffna and Batticaloa as well as the predominantly Hindu communities in Nuwara Eliya. While the fear of backlash and perceived social ostracism can prevent women from coming forward, Sri Lankan women also tend to conform to patriarchal norms that legitimize violence against women⁷⁵. These factors therefore, can easily disincentivize women from seeking legal redress.

The culture of suffering silently also permeates the migration process where shame of having been sexually exploited can have a devastating effect of marginalizing such victims in their own communities. Hence, social ostracism and the acceptance of such violence as a part of life can keep potential victims from seeking justice.

2.10.3 Institutional gaps

The most discussed and highlighted gaps however, exist within the institutional structures. The lack of understanding and/or awareness of the complexities of GBV or trafficking and the inadequate number of female cadres in the police stations were cited widely as problems. Similarly, in regions where ethnic minorities are predominant, officers' incompetency in communicating in the native language was flagged as a major hurdle. Absence of cultural sensitivity to the practices of ethnic minority populations, especially among the Tamil Hindu communities, was also cited as problematic. In all the regions, a more sensitive approach to extend support to victims by government service providers as well as the law enforcement was found to be lacking.

"In terms of service provision also, when you go to the police, they [Police] ask 'why didn't you run, why didn't you do anything'. If it's cyber exploitation, 'why did you send the picture?'. They ask such uncomfortable, very judgmental questions. Because of this attitude, GBV victims don't ask for help" (Service provider, Female, Colombo district, May 25, 2020).

"In certain cases when the husbands bribe the police, they [Police] take their side ignoring the victim and when the wives complain of domestic violence, police brush the case away asking the complainants to forgive the husbands. Women do not receive proper support. Children's cases are treated with more care, they know that the problems may double in the case of children. They support children better but women's issues are ignored. They try and blame the woman for the situation...there are only 2 or 3 women officers, and the rest are men. Women can't talk openly about all their issues with male officers. We can't say we receive the support of the police" (Government service provider, Female, Jaffna district, June 22, 2020).

75 Department of Census and Statistics (2020).

Whereas law enforcement receives a lot of attention, shortages in the cadre at the DS office, the officers' inability to visit the communities on a regular basis and a general perceived lack of commitment were also cited as gaps within the state's institutional framework to correctly identify victims.

2.10.4 Faith in the justice system

The institutional gaps noted above can act as strong deterrents for victims to come forward and lodge complaints or seek assistance. But what is noted among victims of domestic violence in particular is that women are increasingly coming forward and self-identifying as having undergone some form of abuse. However, the same cannot be said about TIP victims where the lack of understanding may be much more prevalent. The law enforcement respondents in particular pointed to a lack of faith in the justice system as a possible reason that keeps victims from reporting. The tedious process of seeking some form of redress since lodging a complaint with the Police can discourage victims. As explained previously, for those in the commercial sex trade, the risks of coming forward may far outweigh the benefits given the punitive lens adopted by law enforcement. Since interviews could not be conducted with TIP victims this aspect could not be corroborated. However, the tendency for potential victims who are migrant workers to prefer to continue with their lives and seek employment opportunities elsewhere was evident in a previous study⁷⁶.

In conclusion, the prevalence of different forms of violence perpetrated against women is documented in Sri Lanka in some instances, especially in relation to domestic violence. But as acknowledged by all respondents, the prevalence rates would be much higher if not for the presence of gaps in identifying and screening for victims as well as the cultural and at times, institutional impunity granted to perpetrators. On the other hand, the patriarchal structures that exist within Sri Lankan societies and the pressures on women to remain silent act as strong factors to prevent reporting as well as proper identification. In such a context, the understanding of what constitutes GBV and TIP can have far-reaching effects on identifying and thereafter referring such victims to access services. The failures to identify and carry out referrals will also impact the wellbeing of such victims, preventing them from re-integrating in society.

Making the connection between GBV and trafficking or vice versa is tenuous in Sri Lanka but a few common characteristics were identified by some. The inability of organizations and government officials focusing more on GBV, to identify trafficking and vice versa, indicates how identification can be challenging. More worrying is also the ways in which the already marginalized can be easily left out. This includes sex workers, the LGBTQI+ community as well as internal migrant workers living and working in formal settings such as the EPZs as well as workers in the informal sector, especially domestic workers. Even though they can face multiple vulnerabilities as a result of the nature of their work and/or their gendered identity, they continue to be largely ignored in a system that places greater attention on the external labor migration process.

76 International Labour Organization. 2018.

CHAPTER 3

Legal Frameworks on Trafficking In Persons and Gender Based Violence

This chapter examines the current laws in Sri Lanka with regard to Gender-Based Violence (GBV) and Trafficking in Persons (TIP), and the gaps and challenges in the laws, legal procedures and their implementation.

3.1 International instruments on TIP and GBV

Sri Lanka is signatory to the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (2000), commonly known as the Palermo Protocol. Sri Lanka is also a signatory to the Protocol against the Smuggling of Migrants by Land, Sea and Air and has ratified the Optional Protocol to the Convention on the Rights of the Child on the sale of children child prostitution and child pornography in 2006. Sri Lanka is also a member of the Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime (2002), which aims to support and strengthen practical cooperation on refugee protection and international migration including human trafficking and smuggling.

At the regional level, Sri Lanka has signed the SAARC⁷⁷ Convention on Preventing and Combating the Trafficking in Women and Children for Prostitution (2002). The SAARC Convention defines trafficking as “the moving, selling or buying of women and children for prostitution within and outside a country for monetary or other considerations with or without the consent of the person subjected to trafficking.” The scope of this Convention is limited to trafficking of women and children, and only for the purposes of prostitution.

More recently, on April 10, 2019, the GoSL ratified the ILO P029 - Protocol of 2014 to the Forced Labour Convention, 1930. With its commitment to address all forms of forced labor, the Protocol is viewed as a positive step towards introducing measures to counter forced labor and human trafficking in Sri Lanka⁷⁸. Other related international instruments that Sri Lanka is signatory to include the 1990 International Convention on the Protection of All Migrant Workers and Members of Their Families. Overall, Sri Lanka has ratified eight key Conventions concerning forced labor, freedom of association and the protection of the right to organize, the right to collective bargaining, equal remuneration, abolishment of forced labor, discrimination in employment, minimum age for admission of employment and the Convention concerning the prohibitions and elimination of the worst forms of child labor.

⁷⁷ South Asian Association for Regional Cooperation

⁷⁸ International Labour Organization (April 11, 2019). Sri Lanka Renews Commitment to Combat Forced Labour. Retrieved from https://www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/forced-labour/WCMS_685140/lang--en/index.html . Accessed: October 21, 2020

Moreover, the GoSL has recognized the definition stated in the Declaration on the Elimination of Violence Against Women of 1993 (DEVAW) as “*any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life*”⁷⁹.

In addition to becoming a signatory of the CEDAW in 1981, Sri Lanka is also a signatory to the International Covenant on Civil and Political Rights (June 11, 1980), the International Covenant on Economic, Social, and Cultural Rights (ratified on June 11, 1980) and the Declaration on the Elimination of Violence Against Women. Legislation in Sri Lanka also draws from some of these international commitments, especially in relation to TIP.

3.1.1 Provisions in Sri Lanka’s Constitution

At the outset, the Constitution of Sri Lanka does not expressly prohibit TIP, slavery, forced labor or other exploitative practices. However, it guarantees fundamental rights and freedoms including freedom from torture and cruel, inhuman or degrading treatment or punishment (Article 11); the right to equality and equal protection of the law, and non-discrimination on the grounds of race, religion, language, caste, sex, political opinion or place of birth (Article 12). Furthermore, Article 14 guarantees the right to all citizens to engage in any lawful occupation, the freedom of movement and of choosing one’s residence in Sri Lanka and the freedom to return to Sri Lanka⁸⁰.

3.2 Current national laws pertaining to Gender Based Violence

In terms of legal protections, the Penal Code as amended in 1995 identifies several offences that relate to GBV. Under Chapter XVI (offences affecting human body or offences affecting Life), the general offences of assault, hurt, grievous hurt, sexual abuse, prostitution, murder and kidnap are included. The specific provisions included are detailed below.

Table 5. Sub-sections of the Penal Code Corresponding with Respective Offences in GBV ⁸¹

Sub-section of the Penal Code	Offence
Section 345	Sexual harassment
Section 362A	Cohabitation using deceit by a man causing the woman to believe she is married to him
Section 363	Rape
Section 364(2)	Custodial and gang rape which are considered graver forms of rape
Section 364A	Incest
Section 365B	Grave sexual abuse
Sections 303 – 307	Causing miscarriage

79 Jayasundere R (2009). “*Understanding Gendered Violence Against Women in Sri Lanka- A Background Paper for Women Defining Peace*”. Women Defining Peace. Accessed: January 04, 2020

80 Siriwardhana C. (2019) Gap Analysis of the Existing National Legislation on Trafficking in Persons in Sri Lanka and its Compliance with the United Nations Trafficking in Persons Protocol and Other Relevant Instruments (Unpublished). UNODC. Accessed: January 04, 2020

81 Jayasundere R. (2009)

Sub-section of the Penal Code	Offence
Section 352	Kidnapping a girl under 16 years
Section 357	Kidnapping or abduction of a woman to compel her to marry against her will/ to seduce her for illicit intercourse

It is however, the Prevention of Domestic Violence Act No. 34 (2005), that has proven to be instrumental in enabling women to report cases of domestic violence. The PDVA allows ‘any person’ who suffers or is likely to suffer domestic violence to seek a protection order from a Magistrate’s Court. The court can issue an Interim Protection Order, with a validity period of 14 days. The Act defines physical violence as well as emotional abuse which is defined as a systemic pattern of cruel, inhuman, degrading or humiliating conduct of a serious nature directed towards an aggrieved person. Of interest is that the PDVA is not applicable only for women, but any member of the household that is a victim of physical and emotional abuse⁸². The scope of the Act is broader in terms of being gender neutral and recognizing violence that extends beyond intimate partner violence.

Even though the recognition of violence against women as criminal offences may be lauded and considered important, this may not always benefit the victims.

“Almost all laws relating to violence against women (except for the PDVA) are criminal in nature and making a complaint requires accessing the criminal justice system. Victim survivors who access this system must necessarily go through a chain of institutions and officers - from police officers, judicial medical officers, lawyers and state prosecutors to judges. The system makes no concessions to women survivors of violence... This means that all the problems of implementation that bedevil the criminal justice system are equally applicable in cases of violence against women”⁸³.

3.3 Current National Laws on TIP

Given the broad spectrum of offences that GBV and TIP covers, a number of laws pertaining to different elements are applicable in Sri Lanka. While there is an overarching law in relation to TIP, as explained below, accompanying pieces of legislation can also come into play. These inter-connections are therefore, clarified and explained where necessary.

The offence of human trafficking was first introduced by the Penal Code (Amendment) Act No. 22 of 1995 to deal with illegal adoptions and related offences. However, this Section was amended by the Penal Code (Amendment) Act No. 16 of 2006 to bring it in line with the Palermo Protocol⁸⁴. Under Section 360C “Trafficking” is defined as:

(1) Whoever—

82 Wijayatilake D. (2012)

83 Leader of the Opposition’s Commission on the Prevention of Violence Against Women and the Girl Child. (2014).

84 Guneratne C. (unpublished). Review of the Standard Operating Procedures (Commissioned by The Asia Foundation Sri Lanka, 2019). Accessed: October 17, 2020

- (a) buys, sells or barter or instigates another person to buy, sell or barter any person or does anything to facilitate or induce the buying, selling or bartering of any person for money or other consideration;
- (b) recruits, transports, transfers, harbours or receives any person or does any act by the use of threat, force, fraud, deception or inducement or by exploiting the vulnerability of another for the purpose of securing forced or compulsory labour or services, slavery, servitude, the removal of organs, prostitution or other forms of sexual exploitation or any other act which constitutes an offence under any law;
- (c) recruits, transports, transfers, harbours or receives a child or does any other act whether with or without the consent of such child for the purpose of securing forced or compulsory labour or services, slavery, servitude or the removal of organs, prostitution or other forms of sexual exploitation, or any other act which constitutes an offence under any law, shall be guilty of the offence of trafficking.

This Amendment aligns the legal provisions more closely to how trafficking is defined in the Palermo Protocol, recognizing TIP in the context of both labor exploitation as well as sexual exploitation.

In addition, the Convention on Preventing and Combating Trafficking in Women and Children for Prostitution Act No. 30 of 2005 was introduced to give effect to the SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution of 2002 where the consent of the person is considered irrelevant for both procurement and trafficking offences.

Offences related to TIP also include sections in the Penal Code related to kidnapping - Sections 351, 356, 357 and 358; Section 358A on debt bondage, serfdom, forced or compulsory labor, slavery and recruitment of children for use in armed conflict; Section 360A, 360C, 360D and 360E that details offences related to procuring for prostitution, forced labor or sexual exploitation and procuring and soliciting of children respectively⁸⁵. The Amendment to the Penal Code has also been complemented by the Assistance to and Protection of Victims of Crimes and Witnesses Act No. 4 of 2015. Specific sections under the Act set out the responsibilities of the State and the rights of the victims and witnesses to seek the protection of the State. These include security, shelter facilities and permanent relocation where necessary. The Act also enables victims to be compensated by the offender and obtain redress including physical medical treatment, counselling from State service providers, restitution, compensation, reparation and rehabilitation.

Even though not directly linked to TIP, other pieces of legislation are central to how the offence of TIP may be detected and then prosecuted. In particular, legislation that determines the processes of migration from and to Sri Lanka are important in this regard.

Central to the management of the external labor migration process is the Sri Lanka Bureau of Foreign Employment Act No. 21 of 1985. Introduced largely to regulate the labor migration process, the Act deals with the roles and responsibilities of the Sri Lanka Bureau of Foreign Employment (SLBFE). Section 62 however, directly addresses the issue of individuals or entities

⁸⁵ Ibid, p. 1

attempting to send migrant workers overseas for employment without the oversight of the SLBFE. Prosecution under this Section can only be instituted with the sanction of the Secretary of the Ministry (at present the State Ministry of Foreign Employment Promotions and Market Diversification) and carries either a fine not exceeding 1500 rupees (8 US Dollars⁸⁶) and a prison term of not less than 12 months and not more than 24 months. For those who operate an employment agency without a license, the fines can reach 100,000 rupees (537 US Dollars) and “an additional fine of one thousand rupees (5.40 US Dollars) for each day on which such offence is continued after conviction”. Meanwhile, Section 63(b) prohibits the use of “coercion, fraud or willful misrepresentation” to force an individual to migrate for work⁸⁷.

Inward or outward migration is largely regulated at the two international airports and seaports by the DIE. The actions of these officials are dictated by the Immigrants and Emigrants Act (No. 20 of 1948) and its subsequent amendments. Introduced at the time of independence, several amendments to the Act have been introduced since then. The Act regulates who is allowed to enter Sri Lanka, the conditions of stay including the imposition of any restrictions on internal mobility of migrants who have already arrived in Sri Lanka⁸⁸.

Despite internal mobility from the rural to urban hubs in search of work being relatively high in Sri Lanka⁸⁹, no laws oversee this mobility across provincial and administrative district borders. Hence, mobility within Sri Lanka takes place freely without any serious hindrance. The lack of visibility and recognition afforded to migrant workers can inhibit their ability to seek protection as a result of undergoing forced labor conditions. However, the Sri Lankan labor law contains a number of rights and protections that are designed to guarantee employment security and prevent labor exploitation in the workplace. Such protections tend to target the formal sectors of employment, rendering the informal and unregulated sectors of work to an invisible status. Of concern is that particular segments of workers who may fall within the category of at-risk populations for trafficking may thus, lack adequate protection, mostly because of the nature of their work. For instance, there is no specific law that governs and extends protection for those employed as domestic workers. However, it has been argued that the Industrial Disputes Act provides some form of protection to the domestic workers⁹⁰. But how far this can be used towards ensuring minimum standards of decent work are ensured for such workers is doubtful.

One of the most discriminated against groups are men and women in the commercial sex trade. Their status within Sri Lanka’s legal framework as well as their presence in the informal labor force is exacerbated due to the vagueness of legality of the trade as well as social stigma⁹¹.

86 Conversion rate calculated based on the Central Bank’s rate of 1 USD = 186 LKR as of 15 December 2020

87 Government of Sri Lanka (2019). Sixth periodic report submitted by Sri Lanka under article 40 of the Covenant, due in 2017. Retrieved from <https://mfa.gov.lk/wp-content/uploads/2020/06/ICCPR-Sixth-periodic-report-submitted-by-Sri-Lanka-22-February-2019.pdf> Accessed: October 17, 2020

88 International Labour Organization. (n.d) Database of national labour, social security and related human rights legislation – Sri Lanka. Retrieved from https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=37386&p_country=LKA&p_count=279 Accessed: October 17, 2020

89 Department of Census and Statistics (n.d.) Census of Population and Housing 2012. P. 115. Retrieved from <http://www.statistics.gov.lk/PopHouSat/CPH2011/Pages/Activities/Reports/FinalReport/FinalReportE.pdf> Accessed: December 22, 2020

90 Wage indicator 2019 (2019). Domestic work in Sri Lanka. Retrieved from <https://salary.lk/labour-law/domestic-work-in-sri-lanka>. Accessed: December 22, 2020

91 Amirthalingam, Jayatilaka, Lakshman and Liyanage (2010)

Although a recent judgment stated that earning a living through prostitution is not a criminal offence⁹², many women are criminalized under the Brothels Ordinance (1889) and the archaic Vagrants Ordinance (1841).

Notably, neither of the Ordinances criminalizes sex workers but rather the operation of a brothel. But this ambiguity in the law and discriminatory practices which increases incidents of violence and abuse against sex workers, have pushed the commercial sex industry to remain as part of the underbelly of the unregulated, informal economy. Faced with the constant threat of criminal action, sex workers in Sri Lanka are unable to organize or benefit from Sri Lanka's existing labor laws nor collectivize and demand for safe and dignified working conditions or obtain social security benefits⁹³.

With regard to criminal justice procedures, as reported by the GoSL, the Amendment Act No. 27 of 2017 has now introduced provisions to record statements within and outside Sri Lanka thus, allowing Sri Lankans living overseas to provide evidence remotely. As further noted, under Section 31 of Act No. 4 of 2015 provisions have been made for such evidence or statements to be recorded by the use of audio-visual means especially as a matter of expediency or as a protective measure for the victim/witness⁹⁴.

The Mutual Assistance in Criminal Matters (Amendment) Act No. 24 of 2018 governs rendering of assistance in criminal matters by Sri Lanka. To date, Sri Lanka has signed bilateral agreements on mutual legal assistance with Hong Kong, Pakistan, India, and Thailand. A multilateral agreement with the SAARC member states has also been entered into, to enhance cooperation amongst law enforcement officials.

3.3.1 Government regulations

While this section has focused primarily on specific pieces of legislation, the importance of legally non-binding government policies has been found to carry serious repercussions for migrant workers. One such regulation is the Family Background Report (FBR) imposed by the GoSL to restrict the mobility of women with young children. Since its introduction in 2013, initially by the SLBFE and later by the Ministry of Foreign Employment Promotion and Welfare and its successor the Ministry of Foreign Employment, the FBR is attributed with having a direct impact on reducing the number of female migrant workers seeking work overseas⁹⁵. According to this requirement, women with children under the age of five years are not “recommended”

92 Silva S.C. (February 19, 2020). Not an Offence to Earn a Living by Prostitution: Accessible via http://www.dailymirror.lk/print/front_page/Not-an-offence-to-earn-a-living-by-prostitution-Magistrate/238-183356#:~:text=Not%20an%20offence%20to%20earn%20a%20living%20by%20prostitution%3A%20Magistrate,-19%20Feb%202020&text=Citing%20two%20major%20superior%20court,govern%20prostitution%20in%20Sri%20Lanka. Accessed: December 22, 2020

93 Submission to the CEDAW Committee. (2017). “Status of Women Sex Workers in Sri Lanka”. Retrieved from https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/LKA/INT_CEDAW_NGO_LKA_26289_E.pdf Accessed: December 22, 2020

94 Government of Sri Lanka (2019). Sixth periodic report submitted by Sri Lanka under article 40 of the Covenant, due in 2017. Retrieved from <https://mfa.gov.lk/wp-content/uploads/2020/06/ICCPR-Sixth-periodic-report-submitted-by-Sri-Lanka-22-February-2019.pdf> Accessed: October 10, 2020

95 Weeraratne B. (2016). Protecting the Welfare of Children and its Causal Effect on Limiting Mother's Labour Migration. *International Migration*. Accessed: October 10, 2020

for foreign employment, while women with children above five years are only recommended if satisfactory, alternative care arrangements are in place to ensure the child's protection⁹⁶.

Despite claims that the regulation has led to a decline in the number of women migrating for work, evidence also suggests that many are using irregular channels of migration into foreign employment, and in some instances, unsafe migration despite the rejection of the FBR⁹⁷. In the global arena, criticism of the regulation was swift.

“The government maintained specific requirements for migration of female migrant workers including those migrating for domestic work, which observers stated increased the likelihood that women would migrate illegally and therefore, heightened their vulnerability to human trafficking”⁹⁸.

Several international entities including the Human Rights Watch⁹⁹ highlighted the negative outcomes of such a “ban” as did the United Nations Special Rapporteur on Human Rights of Migrants¹⁰⁰. The unsuccessful attempts to overturn the government circular through the filing of a Fundamental Rights petition also indicated the limits to the law as the appeal was rejected on the grounds of the rights of the children trumping over the rights of the mother (i.e., female migrant worker)¹⁰¹.

3.4 Government Plans and Policies on TIP and GBV

In addition to the legal framework, the GoSL has also introduced several policies and action plans to combat and/or address TIP and GBV. Among these, the National Strategic Action Plan to Monitor and Combat Human Trafficking (2021–2025) is currently in force. Recognizing the need for “a multidisciplinary, coordinated approach” the Action Plan lays out an ambitious plan to be implemented under the four key pillars of prevention, protection, prosecution and partnerships. Training of frontline personnel, awareness raising, vulnerability reduction as well as strengthening of data collection mechanisms have been ear-marked as activities under prevention. The importance of adopting a victim centric approach to service provision, building capacity of relevant personnel on extending assistance to victims, and sustainable provision of socio-economic and psychosocial integration have also been recognized. Importantly, strengthening the capacity to carry out investigations as well as enhancing collaboration and coordination and provision of targeted training for law enforcement officials have been identified under the prosecution pillar. Activities under partnerships pillar focus mostly on enhancing collaboration and coordination across government and non-governmental entities as well as seeking means to use diplomatic engagement for the promotion of regional and international partnerships to counter TIP¹⁰².

96 International Labour Organization (ILO) (2018). Sri Lankan Female Migrant Workers and the Family Background Report. Retrieved from https://www.ilo.org/colombo/whatwedo/publications/WCMS_632484/lang--en/index.htm

97 ILO (2018) Accessed: October 10, 2020

98 USDOS (2017). Trafficking in Persons Report 2017

99 Human Rights Watch (2007). Sri Lanka: Drop ban on mothers emigrating for work. Retrieved from <https://www.hrw.org/news/2007/03/15/sri-lanka-drop-ban-mothers-emigrating-work> . Accessed: October 10, 2020

100 United Nations Human Rights Office of the High Commissioner. 2014. UN Special Rapporteur on the human rights of migrants concludes country visit to Sri Lanka. Retrieved from <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14645>. Accessed: October 10, 2020

101 International Labour Organization (2018). Sri Lankan Female Migrant Workers and the Family Background Report.

102 Government of Sri Lanka (2021). National Strategic Action Plan to Monitor and Combat Human Trafficking (2021-2025).

The Policy Framework and National Plan of Action (NPoA) to address Sexual and Gender based Violence is one of the key policy documents. The NPoA provides a basis upon which the government can identify priorities as well as address emerging issues in relation to GBV. In the absence of Standard Operating Procedures (SOP) on identifying/screening for victims and victim assistance referral systems, the NPoA guides efforts through a three-pronged approach of prevention of sexual and gender-based violence (SGBV), intervention in situations of SGBV, and advocacy for policies and laws to combat and address SGBV¹⁰³.

As explained earlier, the rise in cyber-crimes has raised concerns on how best to address and curb its prevalence. To this end, the Women in Need (WIN), one of the leading advocates for domestic violence victims as well as a service provider, has developed a SOP to counter Cyber Sexual Harassment¹⁰⁴. Despite its public launch, the final document is yet to be made available. The importance of introducing a SOP is underscored by the current COVID-19 pandemic and the imposition of curfew/lockdowns across the country as this is widely viewed as increasing the incidence of cybercrimes.

The National Labour Migration Policy (NLMP) for Sri Lanka introduced in 2008 is considered a turning point for Sri Lanka's labor migration management. By focusing on good governance, protection of migration workers and their families and linking development and migration processes, the NLMP provided a much-needed blueprint to proactively address concerns arising out of labor migration¹⁰⁵. The limitation of the existence of such policy documents however, was highlighted when the FBR regulation was introduced in contravention of the policy directions stated in the NLMP.

An accompanying piece is the Sub-Policy and National Action Plan on Return and Reintegration of Migrant Workers Sri Lanka¹⁰⁶. None of these explicitly mention TIP nor combating the possibility of experiencing GBV. However, under the overarching theme of the safe migration umbrella, it could be interpreted to include both TIP and GBV and addressing such violence. Additionally, the Sri Lanka National Migration Health Policy was introduced in 2014 and encompasses different categories of migrant workers including inward and outward-bound migrant workers¹⁰⁷. But its shortcomings have been highlighted during the pandemic, as the focus of the Policy has been on the possible contraction of Sexually Transmitted Infections (STIs) rather than migrant workers as possible carriers and transmitters of a virus of this nature. Hence, repatriation of and access to health in countries of destination and return home are not captured in any significant way.

103 Ministry of Women and Child Affairs (2016). The Policy Framework and National Plan of Action (NPoA) to address Sexual and Gender-based Violence. Retrieved from <http://gbvforum.lk/r-library/document/SGBV%20National%20Action%20Plan.pdf> . Accessed: January 05, 2020

104 Wickramasinghe K. (March 2020). WIN Launches SOP for Sri Lanka Police Fresh Approach to Counter Cyber Sexual Harassment. Retrieved from <http://www.dailymirror.lk/plus/WIN-launches-SOP-for-Sri-Lanka-Police-Fresh-Approach-to-Counter-Cyber-Sexual-Harassment/352-184324> Accessed: October 08, 2020

105 Wickramasinghe K. (2020)

106 Ministry of Foreign Employment (2015). Sub- Policy and National Action Plan on Return and Reintegration of Migrant Workers Sri Lanka. Retrieved from https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-colombo/documents/publication/wcms_497323.pdf Accessed: January 05, 2020

107 Ministry of Health (2014). Sri Lanka National Migration Health Policy. Retrieved from http://www.health.gov.lk/moh_final/english/public/elfinder/files/publications/publishpolicy/10_Migration%20Health.pdf Accessed: January 05, 2020

In response to forced labor conditions, the Decent Work Country Programme may be of some importance. The five-year plan is in its fourth iteration and currently has prioritized the creation of decent work that is sustainable and inclusive, better governance of the labor market; rights at work for all and greater data and knowledge generation¹⁰⁸. Yet again, workers operating on the margins of society (i.e., sex workers, domestic workers) are not explicitly mentioned nor is it clear how decent work conditions can be extended to these segments of the population.

3.5 Gaps and challenges in laws and legal procedures and their implementation

The existence of these laws however, does not ensure enforcement that is equal or effective. Among the respondents interviewed for this report, there is universal agreement on Sri Lanka's ability to design and/or develop policies, Action Plans and even laws that seek to address any gaps in the existing legal and policy framework. The problem lies in enforcement and/or implementation. Some of the issues that come to bear upon the low incidence of prosecutions, as per the views of service providers and law enforcement officials are discussed below.

3.5.1 Gaps in the TIP Law

As a key pillar in addressing TIP, prosecution of the perpetrators is considered of vital importance to curb the incidence of TIP. The severity of the crime is well recognized in Sri Lanka, with indictments filed in the High Court in relation to this offence. But the apparent failure to file indictments under Section 360C Penal Code provision and the over-use of Section 360A on procurement and the low success rate illustrated by only a few convictions¹⁰⁹ being secured under the new Amendment, have all been cited as highly problematic for Sri Lanka. While not without merit, this contention raises a valid question: with the new Amendment to the Penal Code, why has Sri Lanka been unable to prosecute and secure convictions under Section 360C? What factors within and outside of the legal framework may come to bear upon indictments being filed as per the legal provisions?

From the outset, the low rate of convictions is not a shortcoming in relation to trafficking cases only. As noted elsewhere, Sri Lanka consistently has had a low rate of conviction for criminal matters, which is considered to range between 4-6 percent. Hence, the low rate of convictions for TIP must also be foregrounded in factors that impact the legal system in general in Sri Lanka. Factors specific to TIP however, also exist.

The Amendment to the Penal Code that strengthened the law pertaining to TIP is generally considered to be in line with the Palermo Protocol. This is despite consent not being explicitly spelled out in the Section in relation to adults. There are two schools of thought in this regard. One is to argue that it is logically and legally impossible to give consent when one of the means listed in the definition is used (i.e., use of threat, force, fraud, deception or inducement or by exploiting the vulnerability of another). However, the counter-argument also carries credence.

“There is nothing that says consent is negated in the case of adults. But the means are specified very clearly. Where consent is concerned, you have to deduce. Why do we need to deduce? It is better to have

108 International Labour Organization (May 2018). Sri Lanka's New Decent Work Agenda Launched. Retrieved from http://www.oit.org/colombo/info/pub/pr/WCMS_629702/lang--en/index.htm Accessed: January 05, 2020

109 Please refer to Chapter Two, Table 04

this clearly stated. Why not make that also clear? I ask this question because where Judges are concerned, don't forget that trafficking as we now know it and these new changes are relatively new [therefore] specifying is important especially where cases regarding sexual exploitation are concerned" (Senior State Counsel, Female, 29 October 2020).

Explicitly stating that consent is irrelevant in a situation of exploitation could help avoid any doubt surrounding this issue.

3.5.2 Gaps in Identification of Presumed TIP and GBV Victims

The issue of legal enforcement harks back to the gaps in identification of trafficked victims. For immigration officers, one of the main groups of officers who are equipped to identify presumed victims of trafficking – limitations are placed on their duties by the Immigration and Emigration Act. As their roles and duties are informed essentially through this Act, there is a tendency to look for those who may have violated the laws of Sri Lanka. Hence, the focus is on tracking offenders of the Act rather than on offenders and/or potential victims of TIP.

The officials also pointed out the absence of a specific piece of legislation or guiding document that mandates the officers with the task of detecting possible traffickers and TIP victims. It is therefore, through the training provided to officers that protocols on screening and identification are introduced. Similarly, the inability to track or investigate possible occurrence of trafficking when Sri Lanka is used as a transit point can fall outside the purview of the Immigration officers. Despite the officers' recognition of being the first or final government official to have contact with returning or outgoing migrants, they are unable to monitor passengers that remain in the transit lounge. Hence, while Immigration officers are aware of Sri Lanka's airport becoming a transit point in the trafficking corridor, their scope of responsibilities prevents scrutiny of the passengers on transit.

Detaining individuals with a valid visa and passport on the basis of suspicions has at times resulted in these individuals successfully seeking redress from the Human Rights Commission on the grounds of being unjustly detained. This yet again reinforces the importance of adopting standardized protocols to screen and identify potential victims.

For GBV victims and particularly those facing intimate partner violence or other forms of domestic violence, lodging of a complaint with the Police station does not necessarily always culminate in legal redress. Accusations are directed at the police stations for adopting a dismissive approach to domestic violence or intimate partner violence incidents, resulting in women being forced to return to an abusive relationship. The significant number of such examples reinforces existing evidence of Police inaction¹¹⁰.

According to the interviews with the Police officers, there is some reluctance on the part of the Police to petition the Courts for a Protection Order (PO) because of wariness that complaints are on some occasions, withdrawn by the victim, later. Even when POs are not sought, instances of women returning to the Police Station to withdraw the complaint the next day was also cited. On the other hand, the Police officers also view their role as a mediator and attempting to find a workable solution to the parties in conflict is considered the first step, especially by

110 World Health Organization (2018). Country Profile on Gender Based Violence. Retrieved from <https://apps.who.int/iris/handle/10665/273193> Accessed: January 05, 2020

bringing the spouse or intimate partner (in cases of domestic violence) to the Police station for a discussion. Where deemed necessary, the couples are referred to family counselling. If these avenues are exhausted or where the abuse is considered severe, the Court is petitioned for a PO. As previously indicated, such processes are adopted mostly in complaints regarding domestic violence. In contrast, while complaints regarding child abuse, incest, rape and sexual harassment were less prevalent, they were all considered serious crimes where investigations are expedited.

With regard to TIP, in addition to a lack of understanding, as indicated below, under-staffed and over-stretched Police officers at the police stations may also not have adequate time to pursue an investigation on trafficking even when there is some suspicion in this regard.

“The other thing is, carrying out further investigations on such cases is a bit rare. Because it is hard for us to spend more time on one case; if a protest or something is going on, we receive orders to go and handle that. In such instances, we just drop the cases we were working on, you know. Because, we have several responsibilities to cover as well” (Police officer, Colombo district, Male, 25 October 2020).

Even when such preliminary investigations are conducted, as explained below, the lack of awareness on what kinds of evidence need to be collected can further hamper the pursuance of a court case.

“You cannot look simply at the surface and what you can “see” and try to address the problem in that way. With cases such as trafficking, [officers] must approach it like peeling an onion and take one layer at a time. You peel away until you get to the core of the problem. They [police] must be taught to look beyond the surface and get the necessary information and get to the core and not remain at the superficial level” (Retired Judge, Female, September 9, 2020).

Incomplete knowledge will lead to the collection of evidence or investigations that do not meet the standards of fulfilling all three elements, especially when these complaints are referred for further investigations to the CID.

“Where investigations are concerned, here’s the issue. If we get 100 cases, only about 10 will fulfill all three elements. This is why I talked about the elements first. Investigations done by the Bureau and then filtered come to us and we conduct the investigations, talk to the victims and try to glean all the details to find out if it fulfils the three elements. This is why it is challenging” (Law enforcement officer, Male, September 15, 2020).

Even when cases fulfil all elements, the transnational nature of TIP victims in the external labor migration process prevents certain cases being investigated further. Despite legal provisions being available to seek mutual cooperation and assistance, time and financial allocations required to conduct trans-border investigations are in limited supply. These gaps in evidence-collection can result in incomplete investigations.

These gaps in investigations thus result in the AGD prosecuting offenders for procurement under Section 360A of the Penal Code rather than for trafficking under Section 360C. Since under Section 360A, establishing *actus reus* (the fact that the act was committed) is sufficient, there is no necessity to prove anything further, particularly whether the victims consented or not. These shortcomings prove to be challenging for the AGD who then work “within the

constraints of the law to prosecute offenders to the fullest extent possible”¹¹¹. But efforts are taken to ensure that indictments are filed in the High Court even though for 360A, provisions are available to file the case in a Magistrate’s Court. This is in order to ensure that the maximum sentence can be considered. This process also ensures that some form of legal action is taken against the perpetrator, rather than dismissing the case completely.

“Let’s say we do not have evidence of all three elements and the case is weak, we do not just chuck this out of the window. We file a case under 360A. I am constantly asked and questioned about this and let me make it very, very clear. Technically, 360A can be filed in the Magistrate’s Court (MC), we have that space to do so, but what I must emphatically emphasize is that we never refer these to the MC but file those indictments at high court” (Law enforcement official, Female, Colombo district, October 29, 2020).

Similarly, complaints of possible cases of trafficking that are directed through the SLBFE can easily be interpreted as a contractual issue rather than a presumed case of trafficking. The structure of the SLBFE where the Board of Directors include representatives of the Foreign Employment Agencies have been cited as being problematic because of conflicts of interest and the lack of transparency. As the SLBFE’s conciliation division oversees and handles all cases of complaints lodged by migrant workers regarding contract violations, the potential to influence the outcome of the inquiry process in favor of the Agency has been highlighted¹¹². Despite these shortcomings, about 60-70 percent of the cases referred to the CID originate from the SLBFE, indicating that processes are in place to sieve through possible cases of trafficking. However, as noted by the relevant officials in the course of data collection, only 10 percent of all the complaints received by the CID fulfill all requirements as per the law, yet again pointing to gaps in the preliminary investigations conducted.

3.5.3 Cooperation of the victim/witness

Another primary reason preventing cases from reaching the Courts is the lack of willingness of the victim/witness to cooperate with the investigations. As the main witness to the crime, their willingness to cooperate and assist the investigations is critical to file indictments. However, not all presumed victims wish to pursue a legal remedy¹¹³. Some wish to migrate again or re-integrate into their communities. As the main witness to the crime, the refusal to cooperate or withhold crucial pieces of information can make filing indictments more challenging. The implications are far-reaching especially if, as the chief witness, the victims change their statements once an indictment has been filed.

“The cooperation from the victims is very important. But the longer the courts take to deliberate or for the CID to conclude the investigations or for indictments to be filed, the less interest the victim shows in going forward. I mean why would they? This is creating more problems for them, than helping them resolve

111 Guneratne C. (unpublished). Review of the Standard Operating Procedures for the Identification, Referral and Protection of Victims of Human Trafficking

112 Shadow Report (2016). To the UN Committee on the Protection of the Rights of All Migrant Workers and Members of their Families. Retrieved from https://tbinternet.ohchr.org/Treaties/CMW/Shared%20Documents/LKA/INT_CMW_NGO_LKA_24817_E.docx. Accessed: May 17, 2021

113 ILO (2018). Presence of Human Trafficking and Forced Labour in Labour Migration in Sri Lanka. Retrieved from https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-colombo/documents/publication/wcms_735511.pdf . Accessed: October 12, 2020

any outstanding problems” (Law enforcement official, State Counsel, Male, Colombo district, November 9, 2020).

Their willingness to cooperate may also stem from fears about their safety and the safety of their family members. Law enforcement officials as well as some stakeholders closely engaged in providing protection to presumed victims, point to the pressures that can be brought on a victim to change or withdraw their statements. Even if major transnational trafficking networks have not yet been detected in Sri Lanka, the fear that undue pressure can be placed on the victims and their families is not unfounded. Similar instances were noted by shelter providers for GBV victims, intensifying the necessity to keep the location of the shelters secret even more imperative.

“If the person is a foreigner, then the threat of harming the family in the home country or safety of the family can have a strong hold on the victim. If the person is a foreigner, all they want to do is get out of this country and return home to her family” (Law enforcement, State Counsel, Female, Colombo district, November 4, 2020).

The question of the willingness of the victim to testify was cited as a problem in moving forward with cases pertaining to GBV as well. The system, as it operates now, provides no safeguards for the victims/witnesses. Even though the Assistance to and Protection of Victims of Crimes and Witnesses Act No. 4 of 2015 is in force, the extent of support it provides is not yet clear. In cases of TIP where the offence is complex and difficult to prove, the burden on the victim/witness, in the absence of these safeguards can be daunting. Their mobility may be restricted and their safety and security can be compromised.

Furthermore, the need to appear in courts on designated days, the inability to migrate overseas without the express permission of the AG’s Department, make returning to normalcy much more challenging for victims. For GBV victims, especially in instances such as rape, law enforcement officials cited the difficulties placed on young women who are unable to continue with their lives, given that the court cases remain pending for long periods of time.

For both GBV and TIP victims, the social stigma attached in coming forward and speaking up can also have far-reaching effects, especially when the victim is a young woman, creating little incentive to pursue a legal remedy that promises no easy closure to the trauma experienced. Instead, the re-victimization of victims can have devastating effects on their physical as well as mental well-being. This has been cited as a major reason why anti-trafficking measures must not place an over-emphasis on prosecution especially at the cost of prevention measures that can more comprehensively address the root causes that make at-risk communities more vulnerable¹¹⁴.

3.5.4 Court proceedings

Even when such hurdles have been overcome and an indictment has been filed, the court proceedings can prove to be frustratingly slow. Common in both GBV related and trafficking cases, the pace of examining the cases can negatively impact the victim’s ability to continue with their lives.

114 Milivojevic S. and Pickering S (2013). Trafficking in People, 20 years on: Sex, migration and crime in the global anti-trafficking discourse and the rise of the ‘Global Trafficking Complex’. *Current Issues in Criminal Justice*. 25(2). Pp. 585-604. Accessed: December 22, 2020

“The other thing is why would a victim want to pursue a case when they are re-victimized in the process? Imagine, we file the indictments this year and it is 2020 and the girl, the victim is 20 years old. By the time, a judgement is given, she will be 25 years old and during that time period, would she be able to get married? Would anyone want to marry her? We know of cases where, it’s not to do with trafficking but a rape or similar case where, by the time the judgment was given, she was married and had a child also and the child was schooling or something. This is how long it takes for justice to be delivered. When these things delay, it doesn’t allow the victim to carry on with their lives” (Law enforcement official, Male, Colombo district, September 15, 2020).

“We face a lot of time delay from the courts. No matter what the nature of the problem is, they take too long to resolve an issue, when this happens people involved in it lose interest. Sometimes, the applicants feel disheartened, and think there really is no point in going to the courts anymore, when the cases get postponed a lot. So sometimes they do not have the confidence in continuing” (Service provider, Female, Jaffna district, May 19, 2020).

Since Prosecutors are disallowed from interacting with the victim/witness because of possible accusations by the defense of the witnesses being coached, the victim/witness may not have any notion of how to engage in the question-and-answer inquiry that takes place during the hearing. This may prove to be intimidating to a victim whose statements are now being questioned, after several years since experiencing the offence.

“If the statement was given three years ago, how is this person going to recall everything that was recorded? I mean think of us, we would also find it difficult to recall and so, there are gaps and then this raises questions” (Senior State Counsel, Male, 09 November 2020).

The delays in court proceedings have been explained by law enforcement officials on multiple grounds. Even though the importance of adopting a victim-centric approach is acknowledged, the importance of the Courts to remain unbiased has been stressed by the law enforcement officials including the Judges. Working on the principle of “innocent until proven guilty”, inscribes that the defence is provided adequate time to prepare which may result in postponements. But the pace at which state institutions operate can also have a detrimental impact as illustrated below:

“In the end, everyone blames the courts saying we are slow and delay things repeatedly. But keep in mind that we are also working within a system. We have to order reports and these take time. The Government Analyst has to provide the reports and in typical style with these government agencies, there are so many demands on them and so many cases, and they are over-worked and under-funded. Until this report is tabled, the case is on hold. Then we may require additional police reports to examine certain aspects and this means the investigations have to be conducted and that takes time too. Until such time, the case is on hold. Then there are medical reports that the medical officers have to produce. Then there may be delays on the part of the AGs department. We must contend with all this, because there has to be due process. Without it, the courts cannot function” (High Court Judge, retired, Male, 22 October 2020).

Despite these gaps which can seem insurmountable when considered together, indictments have been filed in the relevant Courts and Judgements delivered. These in turn have highlighted at times the limits to the law as well as ways forward for marginalized, under-represented groups of individuals.

3.6 Key Judgements Issued in Relation to GBV/TIP

The arduous task of seeking justice from the courts can demotivate victims/witnesses from seeking assistance. However, when such efforts are undertaken, the judgements can also have far-reaching effects on strengthening the justice process. Judgements issued in relation to offences of the Penal Code which correspond with GBV and/or TIP offer an idea of the response of the Judiciary to these different forms of violence. However, as has been pointed out, the system in place can already put undue pressure on seeking redress from the Courts:

“The criminal trial derived from the procedures from colonial times is adversarial - i.e., the concept that the accused has the benefit of the principle “innocent until proven guilty”...This adversarial style of prosecution can result in a trial for GBV being a traumatic experience for the victim, especially in sexual crimes. In Rape for instance, the consent of the victim is a defence to the crime. The defence will therefore try to prove that the victim consented to sexual intercourse. This adversarial environment means that she, as well as experts like forensic evidence witnesses and others are subject to harsh cross examination”¹¹⁵.

While this section is not exhaustive, some of the key cases and Judgements are discussed in relation to their importance of testing the Provisions under the Penal Code that correspond with GBV and TIP offences.

A case filed by the Attorney General in the Court of Appeal (Attorney General v Ranasinghe (1993)) against the issuance of suspended jail sentences by the High Court on several individuals who had pleaded guilty of rape, argued that custodial sentencing should be imposed given the severity of the offence and as a means to protect women and punish the offender, among other reasons¹¹⁶. This was important especially as this pre-dated the Penal Code Amendments Act of 1995 and recognized the severity of the crimes against women.

A rather controversial yet considered important at the time, was the Judgement issued in the case of a rape in the High Court of Colombo (case No.7710/96). This tested the interpretation of consent whereby it was determined that “awareness of, or recklessness or wilful blindness to and absence of communicated consent is sufficient to [sic] found the mensrea of the offense of sexual assault”¹¹⁷. In addition to the sentencing, the accused was also ordered to pay 900,000 rupees (US Dollars 4838) of the 1,000,000 rupees (US Dollars 5375) fine as compensation to the victim.

Considered an important turning point in the interpretation of consent at the time, the conviction was however overturned in a subsequent appeal filed in the Court of Appeal in *Kamal Addaraarchchi v State*¹¹⁸. Among the reasons stated was that the “[t]he trial judge has

115 Goonesekere S. 2017. Compendium on Law, Gender based violence and reproductive rights. United Nations Population Fund, Sri Lanka. Pp. 7. Retrieved from https://srilanka.unfpa.org/sites/default/files/pub-pdf/UNFPA%20Compendium%20of%20Law%20Book_2017%2012%2012%20FINAL_0.pdf. Accessed: June 7, 2020

116 Centre for Equality and Justice (2018). Rape and Sexual Violence in Conflict: Definitions under Domestic and International Law. Retrieved from <http://cejsrilanka.org/wp-content/uploads/Rape-and-Sexual-Violence.pdf>. Accessed: June 7, 2020

117 Samararatne, D (2020). “Reframing feminist imperatives in adjudication through a reading of Sri Lankan jurisprudence” in (ed). M. Crouch. *Women and the Judiciary in the Asia-Pacific*. Cambridge University Press. Retrieved from https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3709558. Accessed: December 22, 2020

118 *Kamal Addaraarachchi v State*. (CA NO. 90/97 H.C. COLOMBO 7710/96. Retrieved from <https://www.lawnet.gov.lk/wp-content/uploads/2016/11/034-sllr-sllr-2000-v-3-kamal-addaraarachchi-v-state.pdf>. Accessed: December 22, 2020

misdirected herself on the law relating to consent by holding that “the law has no place for tacit consent”¹¹⁹,

“...the court held that in cases where it is the word of the victim against the accused “then consent becomes a matter of inference to be made from evidence of previous or contemporaneous acts and conduct and other attendant circumstances”, thereby introducing an assessment of the victim’s conduct into the constituent elements of rape”¹²⁰.

Moreover, it stated “no court should try to mollicoddle a victim as has happened in this case”¹²¹. This point is important since State Counsels interviewed also pointed to the importance of maintaining a distance from the victim/witness to avoid being accused of coddling them.

Subsequently, a Special Leave to Appeal application examined at the Supreme Court in Inoka Gallage v Kamal Addaraachchi and Another (SC Leave to Appeal 30/2001) was also refused.

But there have been other instances, where Judgements have clarified the importance of recognizing the severity of the offences. For example, in a recent Judgement in the case of the Hon. Attorney General v Premadasa Nilantha Jayakody¹²², the Judgement issued stated that a suspended sentence cannot be issued in a case of statutory rape. This challenged in some instances, the existing practice of issuing suspended sentences to the accused and upheld the sentencing prescribed in the Penal Code. Similarly, in Attorney General v Susil Dammika Somasundara (CA87/2015), in the Court of Appeal¹²³, the Judgement stated that in instances where the sentence exceeded over two years, a suspended sentence cannot be ordered. This again helps challenge the issuance of suspended sentences on the accused.

A similar landmark judgement was issued in the filing of a Fundamental Rights petition on sexual harassment experienced by a schoolteacher. In Manohari Pelaketiya v Secretary, Ministry of Education¹²⁴, the Supreme Court found that the Petitioner was “a victim of constant sexual harassment and abuse”, at her workplace. Importantly the Judgement held that

“...sexual harassment or work place stress and strain occasioned by oppressive and burdensome conduct under colour of executive office would be an infringement of the fundamental rights of the Petitioner and clearly the fact that the Petitioner in this case snapped under the long and prolonged oppressive conduct directed towards her cannot be held against the petitioner...”¹²⁵.

119 Ibid

120 Centre for Equality and Justice (2018). Rape and Sexual Violence in Conflict: Definitions under Domestic and International Law. Retrieved from <http://cejsrilanka.org/wp-content/uploads/Rape-and-Sexual-Violence.pdf> Accessed: December 22, 2020

121 Kamal Addaraarachchi v State. (CA No. 90/97 H.C. COLOMBO 7710/96. Retrieved from <https://www.lawnet.gov.lk/wp-content/uploads/2016/11/034-sllr-sllr-2000-v-3-kamal-addaraarachchi-v-state.pdf>. Accessed: December 22, 2020

122 Hon. Attorney General v Premadasa Nilantha Jayakody (CA (PHC) APN 136/16)

123 The Attorney General of the Democratic Socialist Republic of Sri Lanka vs. Susil Dammika Somasundara (CA 87/2015). Retrieved from http://courtofappeal.lk/index.php?option=com_phocadownload&view=category&download=4756:ca-hc-87--2015-susil-dammika-somasundara-vs-hon-attorney-general-hon-s-thurairaja-pc-j-&id=90:march-201-8&Itemid=133

124 Manohari Pelaketiya v Secretary, Ministry of Education SC (FR) 76/2012. Retrieved from http://www.janasansadaya.org/uploads/files/SC%20SC%20FR%20_76_2012.pdf. Accessed: December 22, 2020

125 Ibid, p.16

Notably, the provisions of the Bribery Act have been tested in the *Abdul Rashak Kuthubdeen v Republic of Sri Lanka*¹²⁶. In its Order, the Appeals Court upheld the High Court Judgement that the demand for sexual favors in consideration of a career promotion fell under Section 25(1) of the Bribery Act - soliciting and attempting to accept a gratification.

A little-known judgement issued by a Magistrate's Court early this year may also prove to be important. In it, the Magistrate's Court rejected the accusation of prostitution by pointing out the absence of such a law in the Penal Code¹²⁷. This may prove to be important because this interpretation may become more prevalent among Judges. The discrimination that sex workers in prostitution encounter when charged under the Vagrancy Law was highlighted thus:

"I mean even when [they] are brought to a court, what does the Magistrate do? They order a medical report to be submitted. Why is that necessary? Where does it say in the law that a medical report is required? Even judges forget the principal credo of the justice system "innocent until proven guilty". How can you order a medical report to test for STIs on an alleged sex worker when she has not been found guilty of any crime? How do you prove that she is a sex worker?" (High Court Judge – Retired, Male, 22 October 2020).

The conviction secured in the *Republic of Sri Lanka v T.T Banu*¹²⁸ is considered important since it was the first conviction for TIP issued under Section 360C of the Penal Code. In this case, two female victims, citizens of Uzbekistan were trafficked for prostitution to Sri Lanka under the promise of employment. On the account of trafficking, three individuals were convicted. All three were sentenced to nine years imprisonment each and a fine to be paid to the State amounting to 100,000 Rupees (537.30 US Dollars)¹²⁹ and 50,000 rupees (268.80 US Dollars) as compensation to the victims. However, the sentences were suspended by the Judge¹³⁰.

According to the submissions made to the United Nations' Human Rights Committee by the GoSL, the determination of same sex sexual conduct that is criminalized in the Penal Code may have received some form of relief through a Supreme Court Judgement.

*"In SC Appeal 32/11 (2016), the Court acknowledged: "contemporary thinking, that consensual sex between adults should not be policed by the State nor should it be grounds for criminalization". "While acknowledging that such offences are part of Sri Lanka's criminal law, the court held that imposing custodial sentences would be inappropriate in cases where the impugned acts were between consenting adults".*¹³¹

126 *Kuthubdeen v. Republic of Sri Lanka*, (CA. NO. 44/94 H.C. COLOMBO B 839/93 614/2012) (2/CA) Decided on 31/07/1998. Retrieved from <https://lslanka.org/wp-content/uploads/2017/11/english-20160728120605.pdf> . Accessed: December 23, 2020

127 Silva S.C. (February 18, 2020).

128 United Nations Office on Drugs and Crimes (2020). *Republic of Sri Lanka V. T.T. Banu and others*. Retrieved from https://sherloc.unodc.org/cld/case-law- doc / traffickingpersons crimetype / lka / 2011 / republic_of_sri_lanka_v._t.t._banu_and_others.html. Accessed: December 21, 2020

129 UNODC (2020)

130 USDOS (2019). *Trafficking in Persons Report 2019*.

131 Government of Sri Lanka (2019). *Sixth periodic report submitted by Sri Lanka under article 40 of the Covenant, due in 2017*. Retrieved from <https://mfa.gov.lk/wp-content/uploads/2020/06/ICCPR-Sixth-periodic-report-submitted-by-Sri-Lanka-22-February-2019.pdf> Accessed: December 21, 2020

This deliberation, though not widely discussed during the data collection phase, may help to shift the defence of criminality of the act associated with the LGBTQI+ persons and facilitate their access to law enforcement without the fear of being prosecuted. As discussed previously, the punitive lens used by law enforcement towards such individuals prevent them from seeking support when they either become victims of abuse of intimate partner violence and/or are trafficked into the commercial sex trade.

These judgements may not always render positive advancements in relation to GBV and TIP as was noted in the case of determining what constitutes consent in the case of rape. But in other instances, the judgements create an environment where gaps in the law are addressed and regressive laws or their interpretation can be questioned.

In conclusion, these factors, when considered together, make the pursuit of a trial appear a tedious and time-consuming task. In the absence of special courts to examine such cases or any special provisions to expedite these GBV and TIP cases through the Courts, appearing in Courts and seeking redress can be daunting for a victim. On the other hand, unless the identification of the presumed victims is further strengthened and the necessary technical knowledge and inputs are provided to key law enforcement officials, the number of investigations that are conducted will not culminate in indictments being filed in High Courts under Section 360C. The gaps noted in relation to filing indictments under Section 360C in particular can only be addressed if both identification and screening are enhanced and identified victims have enough support to pursue a legal redress through the provision of adequate services.

CHAPTER 4

Service Provision Framework and Access to Services

This chapter focuses on two main topics related to services. The service delivery frameworks that determine access to services for Gender Based Violence (GBV) and Trafficking in Persons (TIP) victims and secondly, the access to services for these victims and the differential access to TIP and GBV victims. The Chapter concludes by identifying the gaps in service provision and by examining the possibility to integrate or maintain separate service provision frameworks for TIP and GBV victims.

4.1 Service Delivery Frameworks in Sri Lanka for GBV

Access to services for victims of violence, especially in the case of GBV, has received the attention of the Sri Lankan government. To this end, guidelines have been issued by multiple government entities with the strengthening of state-led institutions to provide adequate assistance to such identified victims (such as, the Family Health Bureau, SMWCD).

For GBV, the principal guiding document is the Women's Charter of 1993 issued by the GoSL which clearly identifies SGBV as a concern that requires the critical attention of the Government. Accordingly, the Charter identifies legislative reforms (preventive and punitive) which identifies women as victims of violence; structural reforms in the law enforcement entity including sensitization to improve their ability to respond to violence women encounter and finally, provision of support to NGOs and Community Based Organizations (CBOs) to extend support including counselling for women victims, as measures to be adopted¹³². All these measures are in order 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*”¹³³.

These measures include the introduction of a complaint mechanism within the Ministry's purview for victims of GBV and the development of the first National Plan of Action for Women (2007-2012). Sri Lanka is currently in the second phase of the National Plan of Action (NPOA) spanning the timeframe of 2016-2020. In the absence of SOPs, service frameworks for GBV draw from this NPOA. The current version of the NPOA is based on a “*comprehensive and holistic three-pronged approach of: prevention of SGBV, intervention in situations of SGBV and advocate for policies and laws to combat and address SGBV.*”¹³⁴

132 National Committee on Women (1993). National Women's Charter. Retrieved from <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/50168/110633/F1379312050/LKA50168.pdf>. Accessed October 4, 2020

133 Ibid

134 Ministry of Women and Child Affairs (MWCA) (2016). The Policy Framework and National Plan of Action (NPOA) to address Sexual and Gender-based Violence. Retrieved from <http://gbvforum.lk/r-library/document/SGBV%20National%20Action%20Plan.pdf>. Accessed January 02, 2020

Broad in its scope, the NPoA works on the three pillars of prevention, intervention and policy advocacy. Most of the service provision framework is spelled out in the intervention phase as these are mostly concentrated on victims of SGBV. The services that are provided include temporary shelters for female victims as well as their children and make reference to the importance of referral systems as well as economic reintegration.

“Appropriate and standardized service delivery to the survivors [include services] such as health care, psycho social support, protection in shelters, counseling, legal aid depending on the urgency and long-term needs. Service points are to be strengthened with human and other resources, and made effective by linking with hotlines, and referral systems. The strategies for economic redress of survivors are to be connected to the existing systems for economic advancement, self-employment, skill building, access to credit facilities and financial services”¹³⁵.

While the NPoA provides an overarching framework, a central role is also performed by the Family Health Bureau (FHB) and its dedicated unit for Gender and Women’s Health. Within Sri Lanka’s policy of free access to public services such as health and education, the Ministry of Health (MOH), through the FHB has initiated several activities aimed at addressing the prevalence of GBV. These documents provide a benchmark for the services to be offered through its public health networks. Some of the guiding documents so far made public include: National Guideline for First Contact Point Health Care Providers (2019)¹³⁶; Protocol for Gender-based Violence Care Centres¹³⁷ (2015) and the Standard Operating Procedures for First Contact Point Health Care Providers¹³⁸. In addition to these, National Guidelines on Examination, Reporting and Management of Sexually Abused Survivors for Medico-Legal Purposes have also been developed by the Sri Lanka College of Forensic Pathologists. Developed in 2015, these guidelines “introduce a rights-based approach and emphasizes a survivor-centered medico-legal response”¹³⁹.

The focus in all these guidelines is on the health care providers and the health systems and services in place within the MOH. Hence, little attention is paid to the ways in which collaboration across other state structures – including multiple relevant Development Officers attached to the DS office – can help enhance and strengthen the services being provided. However, for the MOH and its multiple service points, these offer a guideline on how to direct victims to receive assistance with regard to any health-related concerns that may arise as a result of violence.

Independent of the NPoA but largely aligned with its overarching objectives, the MOH has also developed a parallel National Action Plan for Health Sector Response on Prevention and Management of Gender Based Violence in Sri Lanka. Spanning a five-year period from 2017-2021, the Action Plan is based on the pillars of prevention, intervention and policy advocacy. Developed using gender-neutral terminology, the Action Plan echoes the language used by the

135 Ibid

136 Family Health Bureau (2019). National Guideline for First Contact Point Health Care Providers. Retrieved from <https://drive.google.com/file/d/1rLQIBuRnn3kpJfYUIVeqnCRGEqOvOPNC/view>. Accessed 13 June 2020

137 Family Health Bureau (2015). Protocol for Gender-based Violence Care Centres. Retrieved from

138 Family Health Bureau (FHB) (2019). Standard Operating Procedures for First Contact Point Health Care Providers. Retrieved from <https://drive.google.com/file/d/1FQMM4chTk3AnFeDPkHoDDTAiXis4Mlsd/view> Accessed June 13, 2020

139 World Health Organization. (2018). Country Profile on Gender Based Violence in Sri Lanka. Retrieved from <https://apps.who.int/iris/handle/10665/273193> Accessed June 13, 2020

NPoA on S/GBV and recognizes it as “an umbrella term for any harmful act that is perpetrated against a person’s will, and that is based on socially ascribed differences between males and females”¹⁴⁰. One of the key areas of interventions and planned activities is to increase the number of Mithuru Piyasa/Natpu Nilayam¹⁴¹ centers from 56 in 2017 to 100 by the end of 2021. As a focal point center for extending services including psycho-social counselling to victims of GBV, befriending, coordination with other services and the opportunities for follow-up visits¹⁴², the expansion of these centers within the hospitals would help ensure that victims have better access.

The Action Plan is a positive step towards recognizing the centrality of the role that health care providers perform in providing assistance to victims of violence. The importance the health sector in Sri Lanka plays with regard to reaching the vulnerable and/or marginalized communities is further elaborated later in this chapter. Hence, the importance of the sector and its push to introduce guidelines and SOPs cannot be underestimated.

4.2 Service Delivery Frameworks in Sri Lanka for TIP

For stakeholders engaged in identifying and assisting victims of TIP, the principal document referred to widely, is the Standard Operating Procedures for the Identification, Referral and Protection of Victims of Human Trafficking issued by the Ministry of Justice and Labour Relations. The SOPs are governed by the three principles of respect for and protection of human rights, victim friendly procedures and adopting a multi-disciplinary approach¹⁴³. Of the several phases, in Phase One, guidelines are offered from the point a complaint is lodged to the possibility of a rescue, the subsequent screening of the presumed victim by the Immigration officials or the Police and the preliminary needs assessment, especially in relation to ensuring their safety and security.

From the start, the SOP recognizes the multi-sectoral response that is required. It clearly states that the first response should be psycho-social, given the severity of the trauma experienced. Food and clothing, anxiety and/or stress, pain, psychological support and counselling are identified as potential immediate needs requiring attention¹⁴⁴. Minimum standards for shelter as well as the process of gaining consent of the victim for further investigations and filing of an indictment and the post-trial steps to be undertaken in the case of foreign nationals are all explained. Through the five phases – from the time of the receipt of a complaint to screening and conducting investigations and providing services until the end of the trial - the SOP offers a comprehensive, step-by-step guideline for first responders as well as other service providers.

Since its introduction, a major shortcoming noted is that not many stakeholders adhere to the SOPs. An unpublished review of the SOPs has found that the CID and the SLBFE refer to their

140 Family Health Bureau (2017). National Action Plan for Health Sector Response on Prevention and Management of Gender Based Violence (GBV) in Sri Lanka https://drive.google.com/file/d/1bVIFgAbLc8e5__Ilb8MB2BhWkm8cHA9/view Accessed: June 13, 2020

141 The terms are in Sinhala and Tamil and refer to centers set up within identified hospitals to support female victims of violence with counselling, etc.

142 FHB (2019)

143 Ministry of Justice and Labour Relations (2015). Standard Operating Procedures for the Identification, Referral and Protection of Victims of Human Trafficking. Accessed: January 02, 2020

144 Ibid, p. 134-35

own screening measures, raising questions of the viability of the SOPs as a universal instrument for use. Another major setback, as noted in the Review, is that the SOPs come into play only when a presumed victim is identified whereas, it does not offer any guideline on how to identify potential victims from at-risk populations. Therefore,

“It is suggested that the SOP should be reformulated to include the identification, protection and referral of victims in all situations which may require protection and should not be confined to victims of trafficking only. As noted above, trafficking is a complex offence to establish and it is difficult to ascertain whether a person is a victim of this offence. The nature of the offence should not pre-determine whether a person qualifies for protection under the SOP”¹⁴⁵.

4.3 Service Providers and Types of Services

Interestingly, Sri Lanka’s continued policy of providing health and education as public services, has allowed Sri Lankans to access public health care. Additionally, programs focused on eradicating poverty as well as gender discrimination are implemented at the community level through the officers attached to the DS office. Hence, the next sections on service providers and access to services reflect on both NGO-led (NGO) efforts as well as those offered by government-led programs.

4.3.1 Service providers and types of services for GBV victims

As the NPoA indicates, there are multiple pathways for victims to access services. The service providers or referrals can be generated through the helpline operated by the NCW, hotlines established by leading civil society organizations (CSOs) such as the Women in Need and other helplines operated by national level organizations such as the Family Planning Association. For the national helpline, the NCW coordinates with the Women’s Bureau to direct the complaints to the appropriate DS level officers for follow-up and assistance. The fact that the Ministry and the Bureau has its own counselling unit with a drop-in center operationalized within the Ministry premises, makes the referrals process less cumbersome. Apart from this, the Mithuru Piyasa drop-in centers can also become a service point that leads to further referrals.

But referrals to access services can operate beyond these established and well-recognized structures. As noted earlier, many female victims of GBV tend to approach the local level government officials and seek assistance. Hence, the first point-of-contact could be the GN, a Police officer or a WDO. However, accessibility to the DS office and these government officials is not necessarily the most convenient option. Accessing government service providers may require both time and money as the nearest hospital and the respective DS office can be over 20 kilometers away. In such instances, the community mobilizers of CSOs play a significant role in making referrals. Confirming existing literature¹⁴⁶, it was evident that for the plantations in particular, the reliance on CSOs to support such victims continues to be extremely high. Therefore, service providers span the spectrum of actors currently engaged in issues related to GBV.

145 Guneratne C. (unpublished). Standard Operating Procedures for the Identification, Referral and Protection of Victims of Human Trafficking. (Year of review, 2019)

146 United Nations Population Fund (2021). Mapping of Social Service Sector for the Prevention and Response to Sexual and Gender Based Violence Affecting Women and Girls. Retrieved from <https://srilanka.unfpa.org/en/publications/mapping-social-services-sector-prevention-and-response-sexual-and-gender-based-violence> Accessed: February 29, 2020

Rather than a rigid or unidirectional system of referrals, there are many overlaps and multiple entry points from which services can be accessed. Such a system allows victims to enter at any given time into the existing service framework and secure assistance but on the other hand, specific services may also be denied based on when they attempt to access services.

An ability to access services also hinges on the capacity of the government institutions as well as the CSOs to respond effectively to the needs of the victims. Funding for GBV related concerns has declined in the past few years – a fact confirmed by a national level stakeholder who pointed to Sri Lanka’s graduation to a Middle Income Country as a key reason for the drying up of funds. In this context, local NGOs that had been instrumental in providing services to presumed victims of GBV, are reduced to making referrals. How do service providers, government and CSOs respond?

The general response among the CSOs is to offer advice and counselling and then refer the individual to either the hospital, the Police or the relevant officer at the DS office. Many tend to play the role of a mediator especially in cases of GBV and domestic violence, providing an immediate yet in many cases, a temporary solution to the problem.

“Yes, we have referred people to counseling because there are people who are broke inside, and some have mental disorders. And if we can listen to them properly, sometimes after sharing all their stories, they get some clarity about their problems on their own. In our society, we don’t have people like that to listen to others. It is not something easy to actually listen to someone’s struggles, not everyone can do that. But there must be at least a few who do that” (Service provider, Female, Nuwara Eliya district, May 11, 2020).

But specific services aimed at supporting GBV victims are also in existence. Though the outreach may be limited, these services offer some form of support to victims.

4.3.2 Counselling Services

Among the few that do have a more comprehensive program in place to respond to the incidence of GBV, the focus is on counselling and providing legal aid.

“I would say the first thing they require is good communication; they need someone to listen to their problems and help them relax. In certain cases, when the victim comes with wounds, treatment may be required first. So, it varies according to each problem... sometimes certain victims may come seeking protection... in such cases we need to provide police protection...and if they need counselling ...we first talk to them” (Service provider, Female, Jaffna district, May 19, 2020).

While there are several recognized CSOs that provide professional counselling, not many of the organizations operating at the community level have trained counsellors among their cadre. Instead, what is offered is a form of a ‘befriending’ where the service provider or a community mobilizer listens and offers assistance to the presumed victims. This form of interview or discussion is considered very important as it allows the victims to speak with an outsider about her fears and the experiences she has undergone.

Ideally, two Counsellors are assigned to each DS office – one representing the Women’s Ministry and the other from the Social Services. While they do accommodate drop-in clients, many tend to be referred through the hospitals especially after receiving medical care. The counsellors are

able to carry out any follow-up sessions as required. Accessing the DS office and the expenses to be incurred in doing so prevents individuals from using this service. Some of the counsellors share their official contact numbers so that the clients may reach out to them, a process that helped vastly during Sri Lanka's COVID-19 induced lockdown.

Counsellors also understand that the nature (i.e., perpetrated within the household) and the form of (domestic violence) requires that counselling be provided to not just the abused victim but at times, other members of the family as well. While attempts to reach out to the spouse or partner of the victim may not always be successful, resistance is anticipated and responses adapted to suit the situation.

“When we talk to the victims, we can understand the kind of violence they go through. Normally, it's the nature of women to share everything once they start telling their stories. We cannot decide whether it's the husband's fault or not, without talking to both parties. Because sometimes, wife's issues also have contributed to the problem. Therefore, we try to talk to both parties. We use some approach to get close to the husband as well and get to know his side of the story. If we understand that he has some personal issues, we try to address them after building rapport. If we try to come up with restrictions, they will not listen to us. So, we have to handle all the situations properly” (Government service provider, Male, Colombo district, June 26, 2020).

Counselling alone however, is considered inadequate in the process of trying to mediate between the victim and the abuser, especially in instances where the perpetrator is the spouse.

“Counselling efforts will be useful when it is conducted in conjunction with complementary orders. If a man is causing violence because of extreme alcoholism, then he needs to undergo rehabilitation, simply speaking to him alone might not work. There are several centers that offer this...people are being referred to rehab through other cases, if they cause public nuisance and if police arrest them, they are being referred to rehab centers. But for domestic violence it is not being actioned” (Legal counsel, female, Batticaloa district, July 7, 2020).

Knowledge about the purpose of counselling can derail the ability to provide assistance. Frustrations were voiced by counsellors who are unable to ensure that clients continue with their sessions. From an administrative point of view, the government stationed counsellors bemoan the lack of privacy and a separate space for counselling sessions. Even though some other DS divisions or offices in other districts have received such separate sections, as an ongoing process, the counsellors lack a dedicated space. When clients do approach, they tend to find a “quiet space” within the DS office to offer some element of privacy.

4.3.3 Economic support

What is largely lacking is support in the form of livelihoods. Extending such support hinges on the organization already having such a program in place and then finding means to include the identified victim within such programs.

“Earlier we didn't have procedures to provide financial assistance to the people who are in need. Those days we tried to coordinate with NGOs who work on such issues. So that people can receive some support from those NGOs. But now in the Women's Ministry, there are certain programs to help people financially. So, we refer the people to the ministry. But it takes 2-3 months to work out. Depends on the

nature of the case too. No programs are available to receive funds right away” (Government service provider, female, Colombo district, July 11, 2020).

But even when such programs are available, they may not match the skills of the recipient.

“The thing is the rehabilitation that is received, is different from the rehabilitation that one wants. So, let’s say you as a victim wish to establish a beauty parlor and stand on your feet, but you have been given sewing machines and asked to practice tailoring. So, this is the reality here” (NGO service provider, Male, Jaffna district, July 22, 2020).

The frustrations voiced by service providers operating at the community level is because of this inability to ensure that the victims are supported to be economically independent. The emphasis placed on economic independence by a majority of the respondents is based on two reasons: they view poverty as one of the root causes that lead to violence and advocate for economic freedom/independence for the women as a long-term solution to address the prevalence of GBV. This also helps address the idea that women’s refusal to leave a violent spouse is largely because of her co-dependence on him to provide shelter as well as food and clothing for her as well as her children. Breaking this cycle is considered a critical step which is then hindered by the fast-disappearing options for livelihood improvements that are on offer.

A similar sentiment was expressed by the government officers attached to the DS office. For them, the lack of a common fund to respond to the immediate needs of the victims who seek out their services is a key point of contention. In such situations, the officers’ immediate response is to use one’s own money to provide a meal or the bus fare required for the return home. Rarely are victims referred to other service providers on the first instance of approaching the DS office, not necessarily because of the incompetence of the Officers but either because of the absence of service providers within the DS division or the officers not possessing the necessary information to make referrals for victim support. Referrals to the Police and the Hospitals is the only form of service that the officers can make immediately.

4.3.4 Legal Aid

Sri Lanka’s legal aid policy aims to provide equal access to justice thereby ensuring that the vulnerable and marginalized have means to access legal counsel. This service is instituted through the Legal Aid Law (No. 27 of 1978) which has led to the establishment of the Legal Aid Commission. With 84 centers in operation across Sri Lanka, the Legal Aid Commission is meant to extend its services to ‘deserving persons’¹⁴⁷.

Since the definition of “deserving persons” has not been provided, the Commission uses internationally recognized tests such as the ‘means test’ (an individual who receives an income of Rs. 25,000 (US Dollars 134) or less and must be verified by the Grama Niladhari of the area), ‘justice test’ (when the ambit of the litigation transcends adjudication of personal disputes to affect a group or a wider class of persons), and ‘Special Status for Woman in Maintenance Cases’ (legal aid is made available to all women seeking maintenance for themselves and for their

147 Legal Aid (1978). Legal Aid No. 27 of 1978. Chapter 112. Retrieved from http://www.commonlii.org/lk/legis/consol_act/la112107.pdf Accessed: September 16, 2020

children irrespective of their income or financial status)¹⁴⁸. The latter is widely cited as one of the main roles of the Legal Aid Counsels. Referrals are made to the Legal Aid Commission but mostly the victim requires legal counsel to petition the Courts for a divorce or when they seek alimony from their partner. As indicated below, there is some doubt cast on the ability of the Legal Aid Counsels to provide adequate services in relation to the severity of the violence they experience.

“I must say though, legal aid is not the best in this country. They do not have a lot of capacity and they are young and still learning. Most of them gain the experience and then move on so there is no retention of good lawyers. This is a problem because the poorer segments then lose out. I am not saying they are not good at all, but that they need more exposure and experience. If the lawyer is not experienced enough, then they should look to hire or consult with a senior lawyer who specializes in that area so that the juniors can be guided properly. Why can't these lawyers offer that kind of free service?” (Retired High Court Judge, Male, October 10, 2020).

4.3.5 Documentation

Providing assistance with documentation in Sri Lanka's context is not common. However, this does come up as important in the postwar regions where people have had to reacquire documents lost due to multiple displacements. A similar situation was noted in the plantations where gaps in possessing valid documents may arise only when children are admitted to a government-run school or during applying for a registration of marriage. The lack of proper documentation for the ethnic minority Indian Tamil community as a result of State policies that denied them access to citizenship were prevalent several decades ago but there have been concerted efforts to provide identity documents in the recent past. None of the CSOs specialize in facilitating this process but usually direct the victims to the relevant government authorities and support them by filling in the necessary application forms.

4.4 Provision of shelter services

A more cohesive service provision framework is visible wherever a recognized shelter is operating. While there is a shortage of accessible shelters for both TIP and GBV in Sri Lanka, only a few of those operating falls within a regulatory framework with oversight of the Women's Bureau.

According to the Voluntary Social Services Organization (Registration and Supervision) Act of No. 31 of 1980, all shelter homes are to register with the ministry in charge of the subject area for which social services are provided. All shelter homes relating to the subject area of this study have been registered with the SMWCD, and more specifically with the Sri Lanka Women's Bureau and/or the Department of Probation and Child Care Services.

Rather than solely operate all its shelters, the Women's Bureau has linked with several, reputed NGOs to operate these shelters in a few selected locations. While the Women's Bureau continues to operate three-four shelter homes on their own, the other GBV dedicated shelters are managed, with some oversight, by the NGOs.

148 Legal Aid Commission of Sri Lanka (n.d). Legal Aid Beneficiaries. Retrieved from <http://www.legalaid.gov.lk/index.php/our-services/legal-aid-beneficiaries> Accessed: September 16, 2020

Beyond this regulated setup, several unregulated shelters continue to function on an ad-hoc basis. From the interviews, it was evident that the lack of access to a near-by shelter, becomes a major stumbling block in providing some form of protection to the most vulnerable. Such incidents were reported by government as well as CSO respondents who would then resort to provide temporary shelter either in the office of the NGO or sometimes, at the residence of the female officer. Access to shelters, where available, may not also be equipped to respond to emergency situations given the protocols they follow in admitting an individual to the shelter.

Access to a shelter can be secured through multiple ways. Where instances of violence are deemed as posing a threat to the wellbeing of the woman, the Police refer such victims to a shelter, where available. Similarly, the WDO can also make such referrals, though this is not common. In some of the districts, the Courts refer victims to the shelters, ordering the service providers to provide shelter. Women can also approach the shelter provider if counselling and drop-in centers are available. In such instances, an assessment is carried out to ascertain the need for shelter.

The role performed by Counsellors is critical in gauging the need for shelter facilities. The Counsellor conducts the initial assessment to identify the needs of the victim and then refers them to these services. Such services can be just counselling or counselling and legal aid, etc. Access to the shelter facility is determined on the immediate need for a safe place and protection for the victim and her children and the consent of the victim to access the shelter.

4.4.1 Protocols Governing Shelter Services

Notably, there was no evidence found of a standard protocol being referred to or used commonly by the service providers. Rather, a set of generic practices are adhered to across the shelters. Once a potential victim agrees to move to a shelter, the process can appear daunting to a victim. They are accompanied to the nearest Police Station where a complaint is lodged against the perpetrator and her agreement to receive shelter care is made clear in the statement. This step is considered important because the shelters are held accountable for the wellbeing of its residents. Furthermore, given that both parents have guardianship rights over their children, the removal of children from home can be contested by the father. Hence, these legal protections are first secured before the victim is provided access to the shelter.

The consent of the individual is also important for other reasons. Confidentiality and maintaining secrecy of the location of the shelter is of critical importance to shelter providers. This is to ensure that the shelters remain inaccessible to potential perpetrators. Furthermore, once in a shelter, for the duration of their stay, the children are not allowed to attend school – which is considered a violation of their right to education, by those who are working in this field. However, given the issues of protection and the impracticalities of sending children to schools in different locations, these stipulations are strictly adhered to, in both the government and non-government shelters.

As these conditions indicate, receiving shelter is not a given, even when the severity of the violence may mean that the women require assistance. Due to regulations governing the shelters, they also do not accept any victim after-hours. Even when such victims approach the shelter provider during closing hours, they are instructed to find alternative accommodation with a friend or extended family member rather than returning home, alone.

These existing protocols that help ensure protection, safety and confidentiality may appear to be contrary to a victim-centric approach that needs to be adopted. The difficulties in accessing the shelter have led to the organic growth of similar centers that can provide overnight stays for presumed victims. These irregular, ad hoc setups are akin to shelter homes but lack the legitimacy and the capacity to provide a range of services targeting the wellbeing of the victim.

The duration of stay can also vary. Some shelters offer a maximum of 14 days and other shelters offer anything between 3-6 months. But where serious offences have been committed, the victims may stay for over a year as ordered by the Courts. When the Courts refer such victims to the shelters, this 14-day regulation can easily be ignored as the resident is required to use the shelter facilities until the next Court hearing.

The safety and security of the shelter, its residents and staff is paramount for the NGOs and the government-run shelters. Hence, male presence is not allowed within its premises and if there is a Security Guard he is kept outside of the building. While the government-run shelters have access to some form of dedicated transport, the NGO-operated shelters tend to use either platform apps or established cab services to get a vehicle. Reliance on neighborhood three-wheelers is considered risky as they may unwittingly reveal the location of the shelter or expose the location if a perpetrator follows them from the court premises. In some of the shelters, CCTV monitoring is set up to compensate for the lack of adequate security.

Residents are generally discouraged from discussing their individual experiences with other residents, and in some instances, even with the shelter Manager as she is not considered a *trained counsellor*. Such protocols can be considered restrictive but are viewed as mitigating the risk of victims' mental wellbeing compromised by stray comments.

“See, if they talk about their rape with us, if we even accidentally say, “Why didn’t you fight back?” it could seriously affect the victim. So, we don’t talk to the victims about their case, only the counsellor does” (Shelter provider, Female, Colombo district, September 02, 2020).

4.4.2 Case management at shelters

Despite the challenges in accessing a shelter, case management is far better implemented for the shelter residents. Regular counselling sessions are mandated for the duration of the stay as well as in most instances, the teaching of some type of skills. Sewing, handwork are common activities that are taught by the Shelter Managers. If the resident requires the services of a legal counsel, this too is facilitated along with accompanying the victim for Court appearances and medical assistance. Hence, during her period of stay, she is provided with a wide spectrum of services that have been deemed as necessary by the assigned Counsellor.

“We need to be supportive to these women, help them change their thoughts, help them understand what life is. We definitely should aim to help them change their thoughts in life, help them develop a spiritual outlook. Most of them come here with severe depression and suicidal thoughts; but when they leave, we see that they have developed mental strength, with clarity of thought and decisiveness. We engage them with meditation, relaxation techniques, storytelling and music” (Shelter provider, Female, Mullaitivu district, July 22, 2020).

A well-managed stay at a shelter home can render positive outcomes for the victims. A reprieve from a violent environment and the personal attention given to the residents are oftentimes, the first focused attention they have received. This makes their exit from the shelter home difficult especially when the conditions at home have not been resolved completely.

“I was so happy in the shelter home because everyone looks at each other as equals. But when I left the shelter home, I was so worried, I couldn’t bear to leave them and I cried so much. Because they looked at me more carefully than my family and they met my needs and understood my feelings. All my needs were met in the shelter home and I was there with so much peace of mind. When I want to share my feelings, they come and ask me and care about me. They talk to me and they listen to me. That was very valuable to me” (Former resident of shelter home, Northern Province, September 23, 2020).

4.4.3 Reintegration and rehabilitation

The exit from the shelter home can be disconcerting especially if the reintegration process is not managed properly. Attempts are made to ensure that the women have some form of a stable income either by petitioning the courts for the payment of alimony by the spouse or by linking the women to some form of livelihood opportunity. These may not always serve the victim in re-entering the community where stigma of having experienced violence can lead to her marginalization. This was evident in attempting to speak with them of their experiences, with several counsellors as well as community mobilizers indicating that such former residents do not wish to be known for having accessed shelter facilities. Among the victims interviewed, the perception of the services appears to be high but this cannot be taken to reflect on the general satisfaction level with shelter services provided. Shelters consistently pointed to how former shelter residents make referrals and direct presumed victims to access their services.

4.4.4 Groups with limited access to shelter

It is evident that shelter services are not provided to potential male victims, except in the case of one shelter that operates a separate unit for young men. But even among shelters dedicated to female victims of GBV, some reservations were raised regarding giving access to TIP victims. Though these sentiments were not common and only a single instance was recorded, the undercurrent of who is considered a TIP victim was evident, especially as women who do not fit the socially ascribed role for women or victims.

“That is a problem [in housing TIP victims] when domestic violence victims are innocent women with children. Domestic violence victims may not like it when their children get too close to the TIP ones. We still haven’t experienced them together – we haven’t had two separate cases like that stay with us. We also don’t get many trafficking victims” (Shelter provider, Western Province, Female, September 02, 2020).

This confirms the argument of a few service providers who work closely with sex workers that existing social values can impinge upon their attempts to access such services. Hence, despite being gender-neutral and recognizing all forms of violence, perceptions of ‘good’ and ‘bad’ women and the potential for the latter to ‘corrupt’ the former can come into play even among service providers.

4.5 Services for TIP victims

Except for a few instances of having offered shelter services to presumed TIP victims previously, a majority of the service-providers were not offering any type of specific services to TIP victims exclusively. Except for a limited number of organizations that are currently partnering with the IOM to assist presumed victims of TIP by making referrals to legal as well as livelihood assistance, no medium to long-term services were being offered by either the government or the NGO sector. While problematic, in the context of the data collected, this is not necessarily unexpected. Rather, it is reflective of a) the lack of understanding and knowledge about TIP and how to identify a presumed victim and b) the gaps in identification that do not lead to such victims being offered services by the existing networks of support.

At the same time however, a few of the service providers had come into contact with TIP victims or could recall providing some form of limited services to such victims.

“Back then, we would keep anyone who we were asked to. One [foreign] lady sent to us spoke no English and was a serial smoker. She needed a cigarette every fifteen minutes. She scared everyone else staying with us too. There was also a vehicle that kept loitering on the road nearby and we were really scared. She didn’t stay with us for too long, but I nearly lost the Matron because she was under so much stress [laughs]. I think we ended up giving her a leave of absence also, because it had been so stressful” (Shelter provider, Colombo district, Female, August 13, 2020).

Instances of TIP are not usually detected because the service providers are not actively screening for TIP. Instead, the stories of presumed victims become apparent when such victims reveal their experiences to the service providers when they seek some form of support for another matter. Under-reporting, coupled with the shortcomings of identifying victims correctly by law enforcement, can therefore lead to presumed as well as victims of TIP from being left outside of the support network. In this context, marginalized groups like female sex workers and individuals identifying themselves as LGBTQI+ can face insurmountable hurdles in accessing services.

4.5.1 Access to Public Health Services

One of the entry points that remain open to presumed TIP victims, including the LGBTQI+ community is the public health services. Sensitization of medical experts, especially those working on issues related to community medicine as well as STIs was found to be complemented by specific funds such as the Global Fund, to support identified health risks among these groups. While the focus may be on preventing the spread of STIs including HIV/AIDS, the programmatic work carried out under these programs creates an environment for these individuals to openly discuss the stigma and the barriers they encounter in accessing services.

“The doctors have been instrumental in giving the sex workers voice. They are learned people of course, but the sensitivity they show towards sex workers and their issues goes a long way in creating understanding. They treat these workers with respect and listen to their perspectives which is really, really valuable” (Representative body for Sex Workers, Gampaha district, Female, November 17, 2020).

Sensitivity towards GBV however, is not widespread and has been recognized by the MOH as a challenge. Examples of transgender individuals being discriminated against by the Judicial

Medical Officers was reported in the media¹⁴⁹ very recently, prompting the newly appointed Minister of Justice to make a public statement condemning such forced examinations. The discrimination faced by transitioning transgender individuals were also cited as problematic during a Key Person Interview¹⁵⁰, where such experiences are marred by how nurses and the medical assistants treat these individuals.

In general, however, the health services continue to be one of the few entry points at which both suspected TIP and GBV victims may receive medical attention regardless of being identified as a presumed or victim of TIP or GBV. Furthermore,

“All admissions to hospitals with injuries due to GBV or with a history of sexual violence including rape are reported to the police if the survivor discloses the incident and/or desires to take legal action. Once these incidents are reported to the police, it is the responsibility of the JMOs or the doctors who are dealing with medicolegal cases to record the incidents and appear in the courts as expert witnesses”¹⁵¹.

4.5.2 Shelter Access for TIP Victims

One of the key issues for presumed or victims of TIP is to have access to shelter facilities. In recognition of this need, a dedicated shelter was established in Sri Lanka in 2005. Its administration and operations were also assigned to the Women’s Bureau as the primary focal point for the other GBV related shelters in operation in the country. This dedicated shelter which was for female TIP victims has now been closed. Confusion reigns over the existence of the shelter among the main stakeholders involved in identifying and investigating cases of TIP because of the ambiguity of its existence.

The dedicated shelter was closed for multiple reasons. The building itself was not the property of the SMWCD and was leased from another state entity. The said Department requested the return of the building. While the negotiations were ongoing, the under-utilization of the shelter was questioned by the Government auditors since expenses were still being expended for the staff and the upkeep of the place without any evidence of its use by TIP victims. In the bureaucratic wrangling that ensued, the building was returned to its original owner and the dedicated TIP shelter was closed. To maintain some space for TIP victims, one of the existing shelters for GBV victims has now been assigned for both GBV and TIP victims and the staff amalgamated into the existing cadre. The present capacity of this GBV and TIP shelter is limited to a maximum of 07 residents at one time, with three trained officers acting as its staff¹⁵². Hence, although technically, there is a shelter in existence, there remains no dedicated shelter to respond to the needs of TIP victims alone.

The timing of the closure is extremely unfortunate. As explained in one of the case studies¹⁵³, the detection of 30 Nepali women in transit in Sri Lanka during the COVID-19 induced curfew period, led to questions being asked about where to provide the women shelter. The large

149 Daily Mirror (30 October 2020). Forced anal probe on LGBT people. Justice Minister disturbed. Retrieved from http://www.dailymirror.lk/breaking_news/Forced-anal-probe-on-LGBT-people-Justice-Minister-disturbed/108-198954 Accessed: December 21, 2020

150 Interview with an advocacy group focusing on the transgender community in Sri Lanka (July 10, 2020)

151 World Health Organization (2018). Country Profile of Gender Based Violence in Sri Lanka.

152 Key person interview with Senior Government Official (July 9, 2020)

153 Please refer to Annexure 1 Case study 1

number of women and the fact that the shelter was closed during the curfew period meant that shelter facilities could not be provided to the women as intended. The inability to house presumed victims at a dedicated shelter carries the indirect impact of overburdening the existing GBV shelters to house these victims.

Aside from the absence of a dedicated shelter for TIP victims, accessing such shelter facilities is also complicated. While GBV victims are granted access by lodging of a complaint at the Police station closest to the shelter provider, presumed TIP victims must be referred to a shelter through an order issued from a Magistrate's Court. Such a request is generally lodged through the Police once a police complaint is lodged, or through service providers after counsellors have seen the victim. While this is the standard process, some form of compromise is also possible:

“This [a court order] is not compulsory but this is what is usually supposed to happen I believe. I mean sometimes there are extenuating circumstances like let's say the victim is also accused of another serious crime, such as murder. Then the Magistrate's intervention is necessary so that the courts can decide how to ensure the safety of the victim while also this other crime is being investigated” (Senior State Counsel, Female, Colombo, November 04, 2020).

Rather than an exception, access to shelters has to be eased in the case of TIP. As explained, investigations take time and must go through the several levels of referrals and until such time, the TIP victims would not be granted access to the shelter, since a court order from the Magistrate's Court is generally considered necessary to be provided shelter. As one law enforcement official pointed out, until the time the victim is called for an inquiry at the CID, the perpetrators are able to influence and add pressure to the victim to withdraw her statement. Shelter facilities are therefore, critical to ensure that these presumed victims' safety is not compromised. It has the added benefit of ensuring that victims feel confident enough to cooperate with the law enforcement officials as well as receive the necessary specialized counselling and medical care they require.

The question of who has access to the shelter is also important to raise. As of now, only female TIP victims have access to shelter facilities. But given the hurdles that need to be cleared before gaining access to a shelter, the status of presumed victims until such time is a question mark. Since internal migrant workers are rarely identified as TIP victims, the question of providing immediate shelter facilities does not appear to come up. The interviews point to different solutions.

For women engaged in the sex trade, if preferred, they may be referred to a shelter for GBV victims temporarily, but this is again based on the presumed victim's preference and whether shelter facilities are available. For those who have returned from overseas, many do not wish to seek shelter but stay with their families until the investigations are completed. The transit shelter facility maintained by the SLBFE in close proximity to the Bandaranaike International Airport, provides returning female migrant workers a brief reprieve. This is when women lodge a complaint at the SLBFE complaints desk at the airport regarding abuse or an issue related to their work abroad. While overseas, women who manage to reach the Embassy, may receive access to the short-term shelters (15 in total) managed by the SLBFE¹⁵⁴.

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But what becomes of those who have no place to return to, such as in the case of presumed foreign victims as well as transgender victims who, as has been noted in this report, are unable to return home? While the transgender community continues to be placed outside of the service framework for GBV and TIP, the foreign victims pose a more pressing challenge.

Given the low number of identifications, so far, the IOM has stepped into support foreign victims and find them shelter facilities. But as highlighted in the case study about the detection of a considerable number of potentially trafficked Nepali women at the start of the COVID-19 lockdown and as explained by the officers of the DIE, the detention center to hold individuals found to be in violation of Sri Lanka's immigration laws, became the default "shelter".

Reservations regarding whose primary responsibility it is to oversee the wellbeing of the victims is considered a setback. The SOP emphasizes the importance of adopting a multi-disciplinary approach and the coordination among the members of the NAHTTF and that referrals to service provision can happen once the initial screening is concluded.

"As for the government shelter with the women's bureau, well it exists and there is no issue in accessing it but the timing has to be right [since the shelter may not have space]. There is a problem about who is taking the responsibility for the victims and that makes officers rather reluctant to refer them to different places also" (Law enforcement officer, Male, Colombo district, September 15, 2020).

At which point and who should refer the presumed victims to shelter services is confusing to many in the law enforcement whereas the lack of shelter facilities can result in presumed victims being directed to detention centers and being treated as offenders.

"There is definitely a need to connect the possible people with shelter at least but that is generally beyond our purview and scope of work. How this is being done at that senior level, I am not very clear about it. I don't want to comment on something I am not very clear about" (Law enforcement officer, Male, Colombo district, October 01, 2020).

"We do not get directly involved in providing shelter facilities. We don't have a direct power to do that. We do keep them in our investigation unit temporarily, at the airport. That is done until we can send them to the CID or SLBFE. According to the needs assessment done there only, a court order is obtained, and shelter is given. As far as I know, from the victims we have identified, no one has been sent to a shelter. We only do the initial identification" (Respondent, Male, Focus Group Discussion with law enforcement officials, October 08, 2020).

4.5.3 Legal Aid and Psychosocial Support

The failure to offer a comprehensive support system to TIP victims continues to be a major setback in Sri Lanka. With the TIP shelter being sidelined and under-funded, other services that should be designed to suit the particularities of TIP become further sidelined. Despite the lack of services, there is agreement among the relevant stakeholders that counselling as well as legal aid support and economic reintegration must be provided by service providers who understand the needs of such victims.

"In these kinds of situations, why would a victim want to pursue a case? Their main issue is the poverty and the lack of a stable income and by pursuing a case, it is their income that is getting further eroded."

So, what do they do? Go back to the same situation regardless of the risk and the vulnerability” (Law enforcement officer, Male, Colombo district, September 15, 2020).

While legal aid can be provided by the Legal Aid Commission for Sri Lankan victims who fulfil the criteria set by the Commission, it is also important that the Counsels are aware of the TIP law and its complexities. To this end, an international NGO is in the process of training selected Legal Aid Counsels on TIP¹⁵⁵

Providing services and in particular shelter and counselling to victims of TIP must also confront the issue of the lack of trust between service providers and law enforcement officers.

“I do agree that there must be support and very specific support for the victims that are identified but who can coordinate with us? They must also gain our trust and confidence. This is a case that is going through the justice system and there are a lot of confidential information being shared and we can’t run the risk of NGOs using that information. That trust must be gained, on both sides. We really have to think far ahead because ... I must say we have no hidden agendas but we don’t know what these other entities will do. So, the question is can we entrust the victims to them?” (Senior state counsel, Female, Colombo, October 29, 2020).

One of the few organizations that is considered important in facilitating on behalf of the victims is the IOM. Its reputation and past history of working with the law enforcement and ensuring the protection and safety of the victims is well-documented. But as an international entity, the long-term viability of this reliance is problematic and underscores the need for these responsibilities and tasks to be assumed by a local entity – ideally, a combination of CSO and state officials. In a context where access to shelter is already limited, the necessity to maintain a stronger relationship with service providers who can fulfil the basic needs such as shelter cannot be under-estimated. To this end, trust-building and transparency must happen on the part of the service providers as well as the law enforcement officials.

4.5.4 Rehabilitation and reintegration

As per the SOP, the needs of the victims must be duly assessed and their needs met. Reintegration is recognized as focusing “...on their reunion with their family or community or their integration in a new community. Besides the act of return itself, this also includes the victim’s integration in the social environment and is meant to be a long term social and economic solution”¹⁵⁶. But the process of accessing these services is not detailed in the SOPs.

Similar to GBV victims, access to medical and psycho-social counselling is facilitated by either the very few service providers working with presumed TIP victims or by law enforcement officials. Since these services are provided through the public health care system, access remains open. It is however, with regard to re-integration into the community, especially through sustained and long-term assistance that the service framework appears to be the most inefficient.

155 Key person interview with I/NGO representative, Colombo district, male, June 26, 2020

156 Ministry of Justice and Labour Relations (March 2015). Standard Operating Procedures for the Identification, Protection and Referrals of Victims of Human Trafficking. P. 159

At present, one project intervention of an UN agency enables local NGOs to collect information on returnees and carry out screening and if presumed to be TIP victims, they can receive some form of support towards economic reintegration. Such efforts have been highlighted as well.

“The government partnered with international organizations to provide medical, psycho-social, legal, and some reintegration support to identified victims regardless of their decision to cooperate with law enforcement. Observers reported reintegration assistance remained inadequate to support victims”¹⁵⁷.

The lack of understanding on TIP, the presence of only a very few NGOs that support TIP victims and the TIP victim identification happening mostly within the law enforcement sector combine to make access to services for such presumed victims much more challenging. There are no provisions for compensation, unless pursued through the Courts. Hence, unless the government or non-governmental service-providers are able to make representations on behalf of the presumed victim to access an existing government program that provides livelihood support, access to any form of medium to long-term support for TIP victims is not possible.

During the COVID-19 pandemic, the government shelter meant to house GBV and TIP victims was closed since there were no residents at the time of the imposition of the curfew. As discussed previously and explained in the case study, this also proved to be a short-sighted decision since a considerable number of women were detected and required shelter support.

The analysis of the services being provided and the narrow pathway from which presumed victims may access services raises a much more pertinent question. Whereas the SMWCD has been identified as the Ministry which would design and oversee GBV related concerns, who is ultimately held responsible to ensure that TIP victims have access to services? The multiple service providers that must ideally offer services while extending support to the investigations and prosecutions is clearly reflected in the number of government representatives in the NAHTTF, but coordination among these different entities where victims are concerned, appears to have been ignored. This is in contrast to GBV victims who may receive a more cohesive service framework that encompasses accessing support through the WDO, Social Services Officer and any other officer attached to the respective DS office. While the Courts may order the victims to receive shelter, the tenuous status of protection until such time raises serious concerns regarding how presumed victims can be expected to come forward and lodge formal complaints.

4.6 Reasons for Gaps in Service Provision for TIP and GBV Victims

When access to services is placed against the backdrop of the policy frameworks and Plans of Action developed at the national level, several shortcomings are visible. The key being that there exists a mismatch between the written documents and the actions/efforts that take place at the community level. Some of the key shortcomings that stakeholders in both government as well as non-governmental sectors point to include the lack of funds. Whether it is in relation to translating activities mentioned in the national policy frameworks or funding organizations that are working at the ground-level to support victims of GBV and TIP, service providers have to contend with the changes in the funding landscape. Hence, rather than tangible measures that focus on existent gaps such as return and reintegration of the victims, the service providers

157 USDOS (2020). 2020 Trafficking in Persons Report

limit their actions to referrals to possible government service points, which may or may not materialize.

4.6.1 Lack of funds

For the non-governmental sector, the lack of funding has also meant a scaling back of their activities at the community level and a retrenchment of its staff. This means that in communities such as those in Nuwara Eliya district where existing state structures do not also reach the far-flung parts of the district, victims of GBV and TIP may not receive the assistance they require¹⁵⁸. Noticeably, many of the non-governmental organizations that had been identified for providing services for GBV victims in particular, are increasingly shifting towards program interventions where access to funding is available. A similar trend is noted in relation to supporting migrant workers. Those few that are already engaged, are heavily reliant on donor funding and the sustainability and a scaling back of activities would be inevitable when the funding depletes.

Similarly, the basic skills that are taught in the shelter homes to their residents point to the lack of funding as well as access to expand viable livelihood options for women who would have to reintegrate into society. The offer of sewing or paper bag making skills provide no concrete means of earning a stable income. Hence, acquisition of such skills would not translate to any constructive and useful outcomes, unless they are further strengthened with access to raw material and technical inputs on how to set up and scale up a micro enterprise. But such activities also require funding and staffing – both in short supply within the shelters.

4.6.2 Limited number of shelters

The few shelters in operation is a challenge for government, non-governmental service providers as well as law enforcement officials. The Police are compelled to send women back to an abusive house when there is no immediate solution for temporary shelter. All attempts are made to find an alternative option for GBV victims for the immediate future but the lack of an emergency fund to support these victims has been highlighted by all government service providers and law enforcement officials. The scarcity of shelters however, also compels service providers to provide temporary shelter in their office premises or on some rare occasions, in their households.

4.6.3 De-prioritizing GBV

The changing priorities of the GoSL can also determine the outcomes for victims. The downgrading of the Ministry of Foreign Employment and the Ministry of Women's and Child's Affairs to State Ministries may have an impact on their respective budget allocations as they have now lost their Cabinet Portfolio. It may lead to a downgrading of commitment on extending support services. In such a context, the limited number of shelter facilities, which is highlighted as a major gap by service providers, may not receive the necessary funding or human resources.

Ironically, in a situation where funding for the NGOs is on the decline, an increased number of referrals are made to government stakeholders. But when adequate budget allocations, along with adequate training and skills enhancement are not provided to these stakeholders, potential victims may not receive the due care and attention they require.

158 Refer to Annexure 1, Case study 2 on how NGOs in Nuwara Eliya is responding to these gaps

The gaps in services were heightened during the COVID-19 induced curfew period. The lack of coordination between service providers, the government service providers and law enforcement led to victims not being properly identified. But more worryingly, access to services were restricted or denied during this period. Even though Counsellors attached to the DS offices pointed out that they were able to keep in touch with their clients over the phone, the ways in which other government officers adapted to work from home may not have been successful. This also points to the lack of infrastructure to enable these officers means of reaching out to their constituents remotely. The lack of preparedness to respond to an increase in prevalence of either GBV or TIP point to the importance of including these elements in Sri Lanka's disaster preparedness plans.

In light of the increased burden placed on Sri Lanka's public health sector in this current context, the access to health services offered from the hospitals for victims of GBV/TIP may also be restricted. It may also be more difficult to access services such as psycho-social counselling which may not be deemed as a priority.

4.7 Possibilities to integrate or separate services for TIP and GBV

In a context where TIP victims – presumed or otherwise – are deprived of access to services or the existing frameworks are not attuned to serve the needs of TIP victims, including offering shelter, the question of integrating or separating services draws conflicting perspectives.

At present, the coordination among the different stakeholders in order to assist identified GBV victims is somewhat successfully implemented through case management and case conferencing. In this, the relevant officials from multiple entities interact and share information on specific cases. Case conferences are able to bring together government as well as non-governmental shelter providers, the WDO and the Counsellors attached to either the DS office or the hospitals, the Police and Public Health Midwife or a Medical Officer of Health. A needs assessment and status of progress of the victim is reviewed and future actions discussed through such case conferences. Though highly beneficial in ensuring that parallel systems work together to offer services to the victims, this practice is neither common across all districts nor frequently held but highly appreciated for its ability to strengthen coordination.

Apart from this example, services tend to be provided not systematically, as spelt out in the policy documents, but in an ad-hoc manner and where funds and resources allow for such services to be aligned. In this current context, the question of integrating services can be considered a moot point as services targeting TIP and GBV victims are provided through the same service points. There are benefits and drawbacks to this organically developed framework.

Among some of the stakeholders working on issues related to TIP, separating services for TIP and GBV is considered desirable and the ideal that Sri Lanka should aspire for. This argument is driven by the notion that trafficking is a serious crime where the victim's experiences can be much more devastating than what a GBV victim may essentially experience.

“Since TIP at the core is about exploitation, psychosocial support is necessary and however you look at it, it must be differentiated from GBV. Trafficking can be very serious. Otherwise, it would be simplistic and easy to say about sex workers especially, “coming here after loitering around and having had a

good time [gihilla, ravum gahala, natala avilla”¹⁵⁹]. But they are victims. This is why I say even for such people who provide services, their own mindset must be changed. It must change and if that doesn’t happen, the services provided are not going to be helpful. They must be sensitive to the victims and to the issue at hand” (Senior State Counsel, Female, October 29, 2020).

The concern is then partly motivated by who can potentially become a victim of sexual exploitation and the fear that such women, as found in this study, can be considered as bad women by the service providers. Even among shelter providers who are sensitized about TIP victims and their vulnerabilities, there is an underlying fear of the “threat” such TIP victims may pose to other GBV victims.

“Yes. A separate place is better because trafficking victims have different problems. If they talk with the other victims, others may get shocked. When everyone is together, the innocent ones may get abused by the others” (Shelter provider, Female, Colombo district, August 13, 2020).

Not all respondents however, hold this view, among them shelter providers who specialize in extending services to domestic violence victims.

For law enforcement officers who are invariably called to tackle the problem of finding adequate shelter facilities, access to a safe shelter is paramount over maintaining a separate shelter.

“As I said before because the victim becomes the witness, we should not keep them with serious criminals in prison or in these detention centers [of the DIE]. It defeats the purpose of protecting them and fighting for justice. So why not use the existing shelters regardless? And keep them in a safe space for the time being?” (Law enforcement official, Colombo district, Male, September 20, 2020).

“There is no need to keep the victims separated and away from the GBV victims. I don’t understand why that would be a necessity. They just need a safe place to stay and with many of the victims, the challenge is that they don’t have a place to stay so a shelter would be good. As for housing possibly sex workers with other victims of violence, they are all women at the end of the day, so I don’t understand why there needs to be some form of a separation. As for threats, I don’t believe the situation is that bad it requires a trafficked victim to be kept completely separated out from the rest” (Law enforcement officer, Male, Colombo district, September 15, 2020).

One of the strongest and compelling arguments to maintain separate services, especially the shelter, comes from a concern about the security threat. The transnational nature of the crime, the possibility of crime syndicates being involved in the trafficking of persons and the resultant threats the victims may face as the primary witness of a criminal offence, are considered critical enough reasons to maintain separate services. As indicated earlier, subtle forms of threat can be exercised around the vicinity of the shelter despite the attempts to keep the location secret.

Past experiences, especially the case of two women trafficked from Uzbekistan to Sri Lanka which led to a successful conviction, indicates the possible threats that can be imposed on victims as well as those providing shelter.

“The shelter was surrounded by traffickers and the Manager was threatened by the traffickers. Subsequent to the threats received by the shelter staff from traffickers the victims were immediately transferred to

159 Original statement as communicated in Sinhala to the research team.

*the immigration detention center under police protection for safety. The victims were kept in the detention center until the court proceedings were completed and repatriated to their country*¹⁶⁰.

However, shelter providers maintain that GBV victims also face such risks and have warranted protection measures. Hence, the emphasis placed on maintaining and observing strict guidelines on security and the location of the shelter. A more non-traditional argument about extending support, which is universally understood as very important in the case of TIP victims, is to re-think what shelter constitutes. While acknowledging the importance of shelter, the idea is to ensure that there is a “shelter” in a non-institutional setting as well.

“This idea of a shelter should not be so narrow where it is only seen as a physical entity or refuge or a designated singular place, but look at the larger scope of things and then make a decision on what providing shelter means. Shelter for the victim should be provided in the most appropriate place rather than the other way around. What is important is that the victim can stay and receive protection in a safe environment” (Senior State Counsel, Female, November 4, 2020).

This argument may hold sway especially in relation to presumed victims. An investigation to determine whether the individual is a victim of trafficking will take time but until such time, they may be provided protection by the law enforcement. As the review of the SOPs highlights, access to services can hinge on some evidence to indicate that the individual is a TIP victim but in this instance, the definition of shelter can be broadened until such time adequate evidence is collected.

The argument for separation holds merit only on the grounds that those providing services to TIP victims must be specially trained to deal with and provide the necessary services to the TIP victims. Adopting a similar approach as to GBV may not work in this instance since in most cases, access to shelter services is provided in conjunction with an ongoing investigation or during a hearing in the High Courts.

“But providing services for victims is so much more complicated and NGOs must also realize this. It is not a straight case of providing some kind of shelter and support. These are victims who have undergone a lot or experienced even trauma. IOM of course takes the lead in many of these things and we also tend to ask for support from them. They have always been reliable and have, I must say, given us support when required” (Law enforcement official, Colombo, Male, September 20, 2020).

Even though divergent opinions were forthcoming from the interviews regarding the maintenance of separate or common shelter, with regard to all other services, there was a common understanding that services can and should be integrated wherever possible. With only finite resources, funding and otherwise, maintaining separate services for TIP victims while desirable and considered the “ideal”, the insights offered suggest that maintaining separate services including shelters may not be practical in the long-term.

But such integration comes with a strong caveat that service providers are trained on the particularities of experiences of the TIP victims and their psyche. Given that TIP victims could include sex workers, male migrant workers and individuals identifying as LGBTQI+, sensitization and proper training and capacity building is critical. Given that the existing service providers

160 Ranasinghe R. (2019). pp. 1-8

tend to consider violence against women as the primary form of violence, the inclusion of these broad spectrum of presumed victims would require a confrontation of their own pre-conceived notions and expertise in handling the various situations.

However, the integration of services must not impinge on the existing services aimed at GBV victims becoming overburdened and their funding and staffing and shelter spaces over-stretched to accommodate the TIP victims. Instead, what may probably work is pooling of resources towards common facilities with trained personnel to direct and manage the TIP victims' needs throughout the process.

This analysis of the existing service frameworks clearly points to the shortcomings of the system in place to support victims of GBV and TIP. Medical as well as shelter and other services are offered to identified or presumed victims of GBV. However, access to such services is asymmetrical and uneven for both GBV and TIP victims. Access is determined by the capacity of the identified victim to reach such services and by their preference to continue with the services or drop out of the system altogether, especially where positive results are not as evident in the short-term. But service provision can also be uneven depending at which stage a victim is identified and this too is common for GBV and TIP victims.

On the other hand, the lack of long-term funding to sustain a comprehensive service framework prevents service providers from continuing to offer such services in the long-term. This is the most common gap noted by all stakeholders and those working on issues related to GBV as well as TIP. The fact that even with regard to TIP, the organizations' activities tend to be tied to specific projects is problematic as sustainability of such activities cannot be assured. This in turn, places a heavier burden on the government's officers to assume the responsibility for such victims especially in the return and reintegration phase.

The existing gaps in relation to access to services for TIP victims and in light of the closure of the dedicated shelter, integrating services is considered a natural step as some services – counselling, medical and legal – can be referred to the State's existing framework. But such integration would only be successful if the necessary understanding of TIP as well as how their needs may overlap or differentiate from those of GBV victims is made clear to such service providers, both within and outside the government.

CHAPTER 5

Findings and Recommendations

The aim of this study is to identify the existing gaps in the identification and screening, and the service provision framework for trafficking in persons (TIP) and gender based violence (GBV) victims. As a response to these identified gaps, the objective is to critically examine the possibility of integrating or maintaining separate services for TIP and GBV victims. In this concluding chapter, the major findings are discussed in the light of how Sri Lanka can possibly respond to ensure that GBV and TIP victims have access to and receive comprehensive and efficient services to help mitigate the impacts of the violence they have experienced.

5.1 Major Findings

This section summarizes some of the main findings of the report on the basis of the primary objectives of the study.

5.1.1 Understanding of concepts and gaps in identification

The existence of multiple policy documents to address an identified social issue is common in Sri Lanka. Several overarching national-level policy documents provide a somewhat cohesive framework regarding defining GBV, access to services and preventative measures and policy interventions that are required. The policy coherence across these documents is questionable but the use of a common definition of what constitutes GBV specifically is important. Adoption of a gender-neutral lens and recognition that violence constitutes not merely the physical but the less visible and apparent forms as well, provides a more inclusive framework. However, the gap between policy and practice is quite wide.

GBV is defined through a narrow lens as constituting mostly violence against women and that too within the domestic sphere by the interviewed stakeholders. Though recognized as emergent issues, there is little knowledge about how to address cybercrimes and online sexual harassment. This narrowing of the definition of what constitutes GBV impacts identification as well as extending support to such victims. The focus on women reflects existing socio-cultural norms that frame women as the weaker sex, and in need of protection that culminates in creating a paternalistic approach to enabling access to services as well. But socially held values can also conveniently marginalize women such as sex workers who are viewed as “bad” women and whose exploitation is considered as a ‘choice’, rather than a necessity. At the same time, this narrow definition also keeps out vulnerable men as well as persons identifying as LGBTQI+, despite the latter’s vulnerabilities being further complicated by the ambiguity in the law that affords them no identity and recognition¹⁶¹.

¹⁶¹ Please refer to section 2.4 of Chapter 2 for further details

If GBV is understood through a narrow lens, the understanding of TIP is very poor among some categories of law enforcement officers and among a majority of the service providers. Even though some marked exceptions exist, such understanding of TIP tends to be informed by the broader definition of violence that such organizations and individuals adopt. The lack of understanding adversely impacts who is identified as a victim or is at-risk of TIP: both men and the LGBTQI+ individuals as well as sex workers thus remain outside of this understanding of who could potentially be a TIP victim. The attention on the external labor migration process has led to the sidelining of internal migrant workers who seek employment in the informal as well as the formal sectors of the economy and the possible presence of TIP in the form of sexual exploitation or forced labor¹⁶².

The gaps in understanding of GBV and TIP draw an incomplete picture of why victims are not identified. Social pressures along with shame and stigma act as strong deterrents for potential victims to come forward and lodge a complaint. Similarly, the normalization of violence within Sri Lanka's dominant patriarchal social structure and individual choices to forego bringing the incidence of violence to the notice of service providers, hinders the identification of victims. The latter is viewed as the main reason why service providers are unable to continue to support presumed victims. But institutional gaps regarding language incompetency whereby the dominant language of the region is not spoken by government service providers and law enforcement officials, the absence of female staff especially in Police stations and the lack of sensitized staff as well as perceived complicity with the perpetrators also prevent victims from coming forward to seek help¹⁶³.

5.1.2 Gaps in the legal framework and enforcement of the law

Despite some gaps in relation to the interpretation of the law, provisions in the Penal Code adequately provides means to seek convictions on both serious crimes. As mentioned earlier, Sri Lanka's legal and policy framework in most parts tend to meet international norms and provide an adequate framework. However, the limited understanding of the concepts by service providers and law enforcement officials results in gaps in identification of presumed victims. Notably, it is the Prevention of Domestic Violence Act (No. 34 of 2005) that provides a powerful and relatively easily accessible form of protection to presumed victims of domestic violence¹⁶⁴.

For TIP, the Penal Code (Amendment) Act No. 16 of 2006 has helped align the definition of TIP to that provided in the Palermo Protocol. The incidence of filing of indictments under Section 360A (procurement) instead of 360C (trafficking) must not necessarily be viewed in isolation of the process that results in indictments being filed. Despite referrals for investigations being directed from the SLBFE and the Foreign Ministry to the CID, the gaps in investigations result in roughly only about 10 percent of the investigations being forwarded to the Attorney General's Department. As has been noted previously, Sri Lanka already has a low conviction rate for criminal offences, pointing to factors that are not exclusive to TIP offences. This yet again underscores the importance of bridging the gaps in knowledge among law enforcement officers. The absence of a standardized and commonly used protocol to screen for and identify

162 For more information, please refer to Section 2.5 of Chapter 2

163 For more information, please refer to Section 2.9 of Chapter 2

164 For more information, please refer to Section 3.2 of Chapter 3

TIP victims, adds to this challenge. This prevents service providers as well as local level officials from identifying victims properly¹⁶⁵.

But conducting investigations as well as filing the indictments in the High Courts also hinges on the cooperation of the presumed victim/witness. The prolonged delays in normal court proceedings in Sri Lanka also impact TIP and GBV victims; the victims who come forward experience re-victimization as the process of seeking justice is long drawn. On the one hand, threats of intimidation and coercion from the perpetrators and on the other an individual choice to carry on with life independent of seeking justice can prevent indictments being filed. The lack of understanding of one's rights as well as the process to seek compensation and protection that existing laws provide for, further exacerbate existing gaps¹⁶⁶.

The COVID-19 situation has also highlighted how law enforcement can become further delayed as officers, as frontline workers, experience a higher risk of exposure and infection. The localized lockdowns that appear to be the practice adopted by the GoSL will also mean that court proceedings are delayed.

5.1.3 Gaps in Service Provision for TIP and GBV victims

While the SOPs in the case of TIP and the multiple policy documents in the case of GBV offer several pathways to access medical, counselling as well as legal counsel, uptake tends to be stymied by lack of funding for service providers as well as accessibility issues especially for those living in the North and East as well as the tea plantations in the Central Province.

In general, befriending and counselling is offered to GBV victims in particular, the former by community mobilizers, the latter available through either the DS office or the hospitals and a few specialized organizations. Access to legal aid is less clear though the Legal Aid Commission has wider outreach to assist presumed victims in dealing with domestic violence related concerns. But it is the shelter access that remains uneven. With only a limited number of shelters available, access is determined by the needs assessment carried out by the Counsellors. The strict protocols followed can appear daunting to a victim¹⁶⁷.

For TIP victims, access to services hinges on who makes such referrals and at what point in the identification process. In general, access to any form of support is asymmetrical for TIP victims. Shelter services in particular remains a challenge. There remains no dedicated shelter. Instead, space has been provided within a shelter dedicated for GBV victims. Access to this shelter is for female victims of TIP only. Both men and transgender individuals have no dedicated shelters. A central question is who must take the responsibility to manage the needs of the identified victim, especially in seeking shelter services.

While the IOM is generally cited as stepping into support presumed victims, the lack of trust of external service providers by law enforcement officials can impede access to services for TIP victims whose investigations may result in the filing of indictments under Section 360C of the Penal Code. This also raises the question of the role the National Anti-Human Trafficking Task Force can perform in ensuring that victims have access to these services and how best to work

165 For more information, please refer to Section 3.3 of Chapter 3

166 For more information, please refer to Section 3.5 of Chapter 3

167 For more information, please refer to Sub-Section 4.3.1 of Chapter 4

with at least an identified group of service providers to extend support to such TIP victims. Such partnerships can also be strengthened by enhancing the knowledge of the existing NGOs on TIP which would help towards such entities providing services specially for TIP victims¹⁶⁸.

5.1.4 Victim identification and support during the lockdown

The COVID-19 pandemic has helped redirect attention on access to services for victims of GBV and TIP. The strict imposition of the mobility restrictions through a nation-wide curfew from mid-March to mid-May 2020 has had varying effects on potential victims. While there is general agreement that service provision was greatly hampered, verifiable data on complaints received and challenges in accessing services is still scarce. Until the data is disaggregated however, it remains difficult to ascertain the nature of the problems women faced and sought recourse for¹⁶⁹. The status of the Nepali women¹⁷⁰ for whom law enforcement officials could not find adequate shelter facilities is only one example of how service provision for victims of TIP failed in this emergency situation.

5.1.5 Separation or integration of services

In the context of these existent gaps, the choice to integrate or separate services becomes challenging. While maintaining separate services for TIP victims is considered ideal, for a country such as Sri Lanka with limited funding and resources, it remains challenging. But while medical, legal, counselling and documentation support can be provided by making referrals to state-led and NGO service providers, the need to enhance the knowledge of the service providers was emphasized. This was in order to identify the specific needs of the TIP victims as opposed to GBV victims especially in being sensitive to the multiple forms of violence they may have encountered and the trauma they may experience as a result. In contrast, the question of a separate shelter for GBV and TIP victims, hinges on concerns of adequate protection as well as access to resources. Given the intimidation and threats the TIP victims/witnesses in particular may face during the investigation period, one argument is to provide shelter and protection at a place of convenience to the victim rather than a designated shelter facility. On the other hand, use of existing shelters, as is the practice now, is considered more viable¹⁷¹.

5.1.6 Future research

This research specifically examined the gaps in identifying and accessing services for both GBV and TIP victims. As the findings highlight, while services for GBV victims are somewhat institutionalized, TIP victims may have to confront multiple challenges, starting from being identified correctly as a presumed victim of TIP. This in turn raises questions about maintaining separate services or seeking to integrate existing services. However, what is also evident is the lack of evidence in how specific groups of people in Sri Lanka may be disproportionately impacted in attempting to access services.

A reason for the lack of data/research is the existing and perceived notions of illegality, as seen in the case of sex workers and the LGBTQI+ community, as well as strongly gendered notions

168 For more information, please refer to Section 4.5 of Chapter 4

169 For more information, please refer to Section 4.6 of Chapter 4

170 Please refer to Annex 1, Case study 1.

171 For more information, please refer to Section 4.7 of Chapter 4

which places men as invulnerable to abuse and exploitation. It is therefore, very important and timely to understand the potential for exploitation and how these different groups experience and internalize violence. Furthermore, it is important to understand how access to services when determined on these very basis – i.e., gender identity and perception of engaging in illicit activities such as sex work – can render such victims to be placed beyond the scope of the service framework.

Furthermore, given the lack of data and understanding of how internal migration for work may expose young women and men to exploitation, trafficking and GBV, a more in-depth understanding is required. These understudied areas of research would help cast light on how best to improve existing service structures to support these marginalized groups as well as draw the attention of policymakers and practitioners to proactively work towards their inclusion.

5.2 Recommendations

The understanding of the different concepts, screening and identification and referral to services while pursuing a legal remedy can be time-consuming and can easily discourage victims. Therefore, easing access to services is paramount in order to ensure that regardless of seeking justice through the courts, victims are not left outside of the support network. In the light of these findings, recommendations are suggested for consideration of a viable way forward to address these existent gaps. It is recognized that responses to gaps in service provision is largely determined by limited financial as well as human resources. The recommendations are proposed considering these limitations, with a major focus on how existing service providers as well as government service frameworks can be better improved and aligned to respond to the gaps in services. Hence, the recommendations are grouped on the basis of who can potentially take the lead in effecting change. However, given the degree of coordination required, some of the recommendations overlap and therefore, can be taken up for consideration by any of the stakeholders involved in this process.

5.2.1 Government

5.2.1.1 Strengthening capacity

One of the major gaps noted is the lack of understanding of TIP among local police station officers. This prevents possible victims of TIP from being identified. Similar to efforts conducted to improve understanding of the PDVA, specialized training that focuses on screening and identification tools to be used in TIP can be used to improve knowledge as well as enhance the ability of these first responders to assist with correct referrals as well as investigations. Since the SLBFE and the Foreign Ministry already make referrals on possible TIP victims who are working overseas, the strengthening of the capacity of the Police officers at the local stations would have a direct impact on improving identification of internal trafficking.

5.2.1.2 Awareness building

Sensitization of public health officials is critical as they can help to screen and identify TIP as a form of violence. This should involve the counsellors and Medical Officers of Health operating within the Mithuru Piyasa centers as well as the Public Health Midwives. Since marginalized groups such as sex workers and LGBTQI+ persons have relatively easier access to public health services, there is an urgent need to recognize the role these officials can perform in this

process. This would support the health sector to recognize the inter-connectedness between GBV and TIP, especially GBV as a contributing factor to TIP. The importance of the health sector in service provision can be further strengthened by including the Ministry of Health in the NAHTTF.

5.2.1.3 Placement of Labor Officers

The Sri Lankan government's decision to withdraw the Labor Officers attached to some of the Sri Lankan embassies in the Gulf Cooperation Countries can deter efforts to support regular as well as irregular migrant workers, especially in instances where they may experience forced labor or sexual exploitation. This makes it imperative that any officer appointed by the Foreign Ministry to extend support to migrant workers also receive specialized training to help in the screening and identification process.

5.2.1.4 Strengthen role of NAHTTF

The NAHTTF must play a much more proactive role to help make referrals as well as keep presumed TIP victims within the service framework. The reluctance on the part of some law enforcement officials to hand over the responsibility of the victims to an external entity must be considered in the light of which entity or office is primarily responsible for the victims. Anchoring the victims to a state entity which can oversee the case management as well as adequate and timely referrals must be clarified.

5.2.1.5 Clear referral mechanism

Considering the gaps noted and the lack of resources, a more cohesive means of making referrals to services must be designed for TIP victims. As detailed in the SOPs, identified entities – government and NGO - must be included within this framework and the necessary personnel trained and sensitized to offer legal, medical, documentation and counselling services. The fact that many of these services are ultimately linked to public services is helpful since a system is already in operation to provide these services. In turn, this may, in the long run, lead to a smoother transition to integration of services for GBV and TIP victims.

Such an amalgamation of services of a focal point to manage the services provided to TIP victims must not lead to a reduction in resources at the disposal of NGOs to support GBV victims. Since TIP and GBV are viewed as distinct forms of violence which require customized service provision, the identified NGOs must be incentivized with training as well as financial resources to provide counselling and legal counsel to TIP victims.

5.2.2 Non-Government Stakeholders

5.2.2.1 Expand awareness at the community level

The key to addressing the prevalence of GBV as well as TIP is to focus on preventative efforts. The overwhelming support in this regard at the grassroots should be steered in a way that awareness about how TIP manifests and its interplay with GBV is made clear in a simplistic, easily understandable manner. This can be achieved by identifying possible stakeholders at the community level who already have an interest in working on issues related to GBV and internal and external migration. It is imperative such efforts do not exclude the few organizations that work with men and women engaged in the commercial sex trade, domestic workers' unions and

associations as well as the Associations that represent the LGBTQI+ community and a selection of NGOs that support workers of the Export Processing Zones.

5.2.2.2 Cross-fertilization through trainings

As explained, government officials at the DS level such as the Women Development Officer, Migration Development Officer, the Social Services Officer, Economic Development Officer and Counsellor, play a central role in identifying as well as linking presumed victims to services. Hence, existing training efforts targeting these officials must also be strengthened and where possible, consultations held with the respective line-Ministries to explore how understanding of TIP and GBV can be included in the training modules for the officers. Cross-fertilization of knowledge on the two concepts would help understand how both constitute different forms of violence. The line ministries represented in the NAHTTF can be used as a starting point to reach out to their respective officers.

5.2.2.3 Needs assessment on shelter services

The question of whether a separate shelter is required must be explored through a comprehensive needs assessment. The COVID-19 pandemic and the lessons learned so far can only increase the urgency of finding a solution that supports victims as well as law enforcement officials in ensuring that victims receive legal redress while receiving adequate protection. This assessment can focus on what form shelter services must take, including whether protection can be provided within a non-institutional setting, the geographical location of the shelter on the basis of need, the costs of setting up this separate system and under whose authority. This recommendation is made in response to the lack of consensus regarding the importance of maintaining a separate shelter facility.

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APPENDIX

Case Studies

Highlighting the Need for a System-Driven Coordinated Effort in Handling TIP Victims

Introduction

On the 1st of April 2020, thirty Nepali women and one Indian woman were found illegally quarantining in a private house in Minuwangoda, a suburb in the Western Province of Sri Lanka. Media reports on this incident were inconsistent, with the terms ‘smuggling’ and ‘trafficking’ used interchangeably to describe what the law enforcement authorities suspected as the reason these women were in transit through Sri Lanka. What is most thought-provoking is the management of the case, beginning with the discovery of the women till their placement in the Negombo prison, even after being suspected as possible victims of TIP. The incident highlighted the gaps in policy and practice in terms of coordination that is essential for case management through a victim-centric approach. The fact that the case could not be managed through a victim-centric approach had far reaching consequences concerning diminished access to essential victim services and the potential to affect the proper investigation and prosecution of the case. The protection framework in Sri Lanka is weak and the fact that the Minuwangoda incident took place while Sri Lanka was under lockdown due to COVID-19 also exposed how sensitive the weak protection framework for TIP victims is to external stimuli. The overall TIP landscape in Sri Lanka has changed and requires a re-evaluation from a policy, practical, and institutional level to achieve a more functional, well-instituted protection framework.

Background

The media in Sri Lanka reported the discovery of 31 women (30 Nepali and one Indian) in early April of 2020. The Minuwangoda police discovered the women after the Sri Lankan Government had declared an all-island curfew and established a regulation compelling all foreigners and Sri Lankan nationals who had arrived in the country after the 1st of March 2020 to declare their arrival to the Police Station nearest to their current place of residence in an effort to control the spread of COVID-19 in the country¹⁷².

The private house in which the 31 women were discovered was given on rent to two people of Sri Lankan nationality. It was found that the Sri Lankan nationals had visited Nepal and got in touch with these women through a middleman. Initial questioning of one of the two Sri Lankan nationals involved revealed that the 31 women were in transit, claiming they were in self-quarantine, although neither the Minuwangoda police nor the Public Health Inspector (PHI) in the area were informed of this fact. The two Sri Lankan nationals were arrested, and the 31 women were allowed to remain in the house and instructed not to leave even after their 14 days in quarantine was over, until the case was taken up in court¹⁷³.

172 Farzan Zulfick (2020) Quarantine curfew raid uncovers human trafficking operation. News First. Retrieved from: <https://www.newsfirst.lk/2020/04/02/quarantine-raid-uncovers-human-trafficking-operation/>. Accessed: 30 October 2020

173 Sinhala YouTube Clip reported by Siyatha: <https://www.youtube.com/watch?app=desktop&v=1-bbwpKMzJQ&feature=youtu.be> Accessed: October 30, 2020

On the 19th of May 2020, the case was taken up at the Minuwangoda Magistrate's Court. The Officer-In-Charge of the Minuwangoda Police Station stated that the Embassy of Nepal, Indian High Commission, and the Department of Immigration and Emigration were informed of the incident. According to the police report, the 31 women arrived in Sri Lanka on different dates and with valid tourist visas. They had crossed the Nepal-India border by bus, taken flights to Bandaranaike International Airport, Sri Lanka and thereafter, made their way to the house. With the help of a translator, the police were able to take statements from the women. Out of the 31, 28 women stated that they were brought to Sri Lanka for the purpose of sex work while the others stated they were visiting Sri Lanka¹⁷⁴.

The Magistrate's Court ordered that the women be placed under the custody of the Superintendent of the Negombo Prison and be placed in the Mirihana Detention Center until such time as they are deported. Further investigation in the case was ordered, and the women were later transferred to the Negombo Prison¹⁷⁵.

On the 21st of May 2020, the two Sri Lankan nationals were released on bail (Rs. 50,000¹⁷⁶ cash bail and Rs. 200,000¹⁷⁷ surety bail each) after being arrested on the suspicion of intending to use the 31 women for sex work¹⁷⁸.

Evaluation

The "Minuwangoda incident" echoes the 2017 incident of TIP involving a group of Nepali women reported by the Trafficking in Persons Report¹⁷⁹ which, for the first time, cited Sri Lanka as a country of transit for TIP and migrant smugglers. The respondents in this exploration reinforced this stating that large groups of foreign nationals seeking employment use Sri Lanka as a transit country. Nepal, other South Asian countries, Indonesia, and the Philippines were cited as some of the countries where big groups of 30 to 40 women would transit and leave for the Middle East. However, while there have been similar incidents to the Minuwangoda incident on record, no victims have ever been identified.

"There are few incidents similar to the Minuwangoda case. They are probably potential victims, and I do not think we have gone into the tail end of the identifying process to say they are real victims or identified and categorized as victims. But there are - for the last 5 or 6 years or more- incidents like that"
[Interview with an expert on TIP, October 2020].

This highlights major gaps in policies and procedures in identifying potential TIP victims transiting through Sri Lanka - a sentiment shared by the interviewed respondents commenting on the vacuum of procedures relating to TIP victims in transit and is further substantiated by literature. For example, The Review of the Standard Operating Procedures for the Identification,

174 Athukorala, Tony K. (2020) 31 foreign women found in a house in Nilpanagoda taken to the Mirihana Detention Center. Mawbima. Retrieved from: <https://mawbima.lk/news/23/print-more/26193>. Accessed: November 2, 2020

175 Ibid

176 268.80 US Dollars

177 1068.60 US Dollars

178 Athukorala, Tony K. (2020) Bail granted to the couple involved in housing 31 foreign female sex workers and breaking quarantine law. Mawbima. Retrieved from: <https://mawbima.lk/news/23/print-more/26472>. Accessed: 3 November 2020

179 Department of State (2017), Trafficking In Persons Report. United States. Retrieved from: <https://www.state.gov/wp-content/uploads/2019/02/271339.pdf> Accessed: November 2, 2020

Protection, and Referral of Human Trafficking¹⁸⁰ highlights that the Standard Operating Procedures (SOPs) were launched before Sri Lanka was considered a country of transit. As a result, little attention is paid to those within the transit area of the airport, and those with transit visas entering Sri Lanka.

Monitoring of passengers in the transit area within the airport falls under the purview of the Department of Immigration and Emigration officials. However, respondents confirmed that Immigration and Emigration officers do not often interact with passengers in transit to identify possible instances of TIP, unless a tip-off is received by them. As explained in this report, this is attributed to gaps within the Immigration and Emigration Act, No. 20 of 1948.

In the case of the 31 women, they possessed transit visas and had entered the country, were subjected to Sri Lankan law, and therefore became the responsibility of the local system which, deals with potential victims of TIP and not just the responsibility of immigration and emigration officers. However, there are no clear procedures in place to screen TIP victims in transit:

“There is no procedure (for screened TIP victims brought out of transit). Nothing mentioned anywhere and no facilities either. Then they will be more vulnerable in Sri Lanka. So that has to be taken as a novel issue, look at the real problem and then find solutions with everything - with shelters, other facilities, who’s going to bear the costs, how long will it take to conduct investigations, how long can you keep them here?” [Interview with an expert on TIP, October 2020].

While the SOPs are applicable in a situation where a victim has been brought out of transit, pertinent issues such as the availability (or lack thereof) of a shelter home facility, lengthy investigations resulting in a prolonged stay in Sri Lanka, associated costs, hinder the ability to provide services to victims of TIP.

Post discovery, the 31 women were identified as ‘victims’ by the Criminal Investigations Department (CID) when a case was filed by the Attorney General’s Department in the High Court. The fact that they were not identified as TIP victims but as victims of procurement made it ambiguous if they were eligible to access services, especially the shelter facilities. The lack of space and the COVID-19 lockdown resulted in the victims being placed in a government-run detention center which is commonly used to house those in violation of immigration law before being deported. While immigration detention is a civil form of custody and not criminal punishment (and in the case of the 31 women, the justification was that they were placed in the detention center under protective custody), the facilities, personnel, and standards used to hold immigration detainees draw from the criminal justice model¹⁸¹. Placing victims in a detention center and thereafter in the prisons means that a victim centric approach gets marginalized, and victim needs, and rights are ignored.

Despite the existence of provisions in the law to extend protection to the victims, a number of their rights were violated, starting from the women’s right to security and shelter home facilities to access to counseling services and other facilities afforded to victims of crime, in this case - the crime of TIP.

180 Guneratne C. (2019) (unpublished). Review of the Standard Operating Procedures for the Identification, Referral and Protection of Victims of Human Trafficking.

181 Kalhan A. (2010), Detention Reform and Its Discontents (Dorf on Law). Retrieved from: <http://www.kalhan.com/2010/10/detention-reform-and-its-discontents/> Accessed: November 2, 2020

While one respondent expressed the possibility that not all 31 women were TIP victims (as some might have been irregular migrant workers), all respondents agreed that the women were still entitled to victim services as they were victims of a more serious crime.

The fact that the Sri Lankan couple involved received bail shows that the offenders' rights were adhered to. This comes in contrast to the 31 women placed in the detention center and then later transferred to the Negombo prison with no chance of leaving and no access to victim services.

All stakeholders involved in the Minuwangoda case (the CID and Attorney General's Department in particular) were conscious of following a victim-centric approach to case management and tried to find adequate shelter home facilities to place the 31 women, but were unsuccessful considering the circumstances. The placement of the women in a detention center (and later in the prison) was considered highly problematic. Given that the government-run TIP shelter home does not have the capacity to house such a large number (and no private shelter home alternatives have the capacity to do so either) and the additional barrier of navigating through the lockdown after the second wave of COVID-19 (for example, restrictions on travelling and gathering, court closure, resources being directed towards addressing COVID-19), finding adequate shelter home facilities proved to be impossible. However, all respondents agreed that it is a very weak justification for putting the victims into the criminal system and is a violation of their rights as victims (as set out by the UN Palermo Protocol).

The fact the Minuwangoda incident took place during the COVID-19 related lockdown also exposed how vulnerable the TIP protection framework is to external shocks.

"Ideally, they should not be kept in the prisons and this is what I am saying about services being a luxury in this context. We need better systems in place to accommodate and provide these basic necessities" [Interview with State Counsel, Female, Colombo District, October 29, 2020].

"From the beginning we can suggest many things, but the infrastructure is very poor. There is no place to keep them as victims. And now they are in prison which is very wrong. This shows the poor response so far, we have. Even when you say these are potential victims, we do not have a place to keep them. That is the main thing. Basic structures are not available" [Interview with an expert on TIP, October 2020].

To access any of the protection services, including getting justice should the case be prosecuted - a victim should however, be first identified as TIP victim.

"If you do not identify a victim as a victim from the very beginning, then the entire investigation can get botched. And then the court case - because the victim has to come and give evidence as the victim - gets messed up and there's not enough evidence" [Interview with an expert on TIP, October 2020].

While victim contributions are of extreme importance for the proper investigation and prosecution of TIP cases, collective approaches to case management from stakeholders involved in addressing TIP is of equal importance.

Conclusion

The Minuwangoda case illustrated the gaps present in the protection framework for TIP. It exhibited how uncertain TIP victims' access to services can be (and its potential effects on investigation and prosecution) as a result of a lack of a system-driven coordinated effort in case management. As such, the overarching recommendation by respondents is a complete overhaul of the protection framework in place to deal with TIP victims. It is clear that Sri Lanka lacks a proper shelter home facility with the capacity to house a large group of victims, and that the shelter home available lacks the support needed to stay operational during crisis situations. There is thus, the need to look at increasing the capacity and supporting the continuous operation of TIP shelter homes, and also to look at TIP victim screening and identification in transit. This requires procedures and policy documents to be revised to include screening and identifying TIP victims in transit.

Even within the existing frameworks, however, steps could have been taken to ensure that victim rights and needs were not ignored in this particular case. While the protection framework evidently has its gaps, the treatment of victims via a victim-centric approach to case management is clearly laid out in policy and procedural documents (both international and local). With this basic principle as guidance, the courts could have been moved to give an order to place the victims in a shelter home so as to grant them access to much needed protection services. Further a TIP focused investigation and prosecution (even during the pandemic) would have ensured investigation and prosecution of the more serious crime of TIP. There are lessons in this case which are valuable to help ensure a victim centric approach for future possible TIP cases.

Linking Plantation Communities with Service Providers: Keeping attention of Government stakeholders on GBV related issues

Introduction

The obstacles in accessing services for victims of Trafficking and Gender Based Violence are much more prevalent in already marginalized communities of the Nuwara Eliya district. The existing socio-economic drawbacks of the district, which is heavily reliant on the tea industry to offer employment opportunities to the ethnic minority Indian Tamil population, add multiple layers of issues that need to be addressed to ensure that prevention and protection for victims are ensured. In a context where funding to address GBV concerns at the grassroots level is depleting, the PALM Foundation's efforts to ensure that potential victims are linked to services, is examined to understand how it offers a possible model of going forward. However, for such efforts to be successful, they have to be adopted districtwide and be complemented with measures to address institutional and capacity building gaps.

Background Information

Historically, the district of Nuwara Eliya has been marked by high levels of poverty. It reflects the poor working and living conditions of the Indian Tamil ethnic minority working and living in the tea plantations. For decades, the District has also been a site from which cheap labor is tapped into work in the domestic work sphere as well as the informal sector elsewhere. Hence, internal migration as well as external labour migration are common patterns noted in the District. CEPA's own research has pointed to the importance of migration as a measure to move out of poverty.

While the rate of poverty may have eased over the years, access to government services continue to be hindered by poor transport network, inadequate road networks and the nature of the plantation management-worker relationship that continues to exist in these regions. The importance of access to different types of services become more imperative when considered in light of the range of GBV and TIP related issues the residents of the District face.

These include high levels of domestic violence – commonly attributed to high rates of alcoholism among the men – as well as underaged marriages, high divorce rates and sexual harassment. While these may not be reflected in official reports of the Police Department, the existence and prevalence of these issues have been consistently cited in interviews held for this research, with service providers in the Nuwara Eliya district. What is important to note is that violence permeates all communities regardless of their ethnicity and their residence within the tea estates.

As yet, there is no government-approved shelter for domestic violence victims in the District. Extending any form of immediate assistance to potential victims is also made difficult because of the changing funding environment. NGOs working at the ground level have had to contend with a depleting stream of funding that focuses primarily on GBV related concerns – a fact confirmed by a national-level multi-lateral stakeholder. It is in this context that PALM (Participatory Action and Learning Methodologies) Foundation¹⁸² – a non-governmental organization primarily working with poverty-stricken communities in the District, has developed its own means of continuing to place attention on GBV, albeit within its own purview of communities they are currently engaged with on multiple livelihood and community empowerment projects. To do

182 Information about PALM can be accessed from <https://palmfoundation.lk/>

so, PALM has focused on the communities they are currently working in and aimed to build a bridge between potential victims and government stakeholders.

Evaluation/ Presentation

PALM has continued to evolve with the changes even though funding to address GBV has reduced, by mainstreaming gender into all their project interventions and thus, provide capacity building for its 40-strong staff, including field level mobilizers. Through consistently sharing new information and ideas with the staff, regardless of which types of project interventions they are engaged in, PALM has been able to gear its staff with the necessary basic skills to respond in a meaningful manner to ensure that gender is considered in project implementation.

When instances of GBV are reported or noted by the mobilizers, one of the major challenges faced is the difficulty of linking such potential victims with service providers as well as highlighting these concerns with government stakeholders for further action. The few number of government officials are unable to reach these far-flung communities and therefore, PALM has developed a referral mechanism that allows community members to raise GBV related concerns at the district level. This has been developed from ground-up, with the establishment of a Gender Committee in each of the locations PALM currently operates in.

Rather than establish yet another community level group, representatives are drawn from existing community-led groups to form a group comprising at least one or two active women community leaders, a male community leader, representatives from among the religious leaders or a retired teacher or Principal and the Welfare officer of the (Tea) Estate management, where relevant.

Afterwards, the members of the committee are provided with necessary capacity building including leadership training, case management training, training regarding gender equality, training on gender-based violence and case management.

PALM trains the committee representatives on their screening tool to help the members identify possible GBV victims. Importantly, information regarding the available government service structures is also shared. This helps these community members to refer potential victims to access the correct information or services, whether it is from the Police station, the nearest hospital or from the Divisional Secretariat office.

As a next step, PALM has also helped develop a network of such committees at the Divisional Secretariat level. This way, the committee representatives have a platform in which they can raise issues with the government officials and seek solutions. These are linked to the district level forum which is chaired by the District Secretary and is conducted in coordination with the Ministry of Women and Child Development – a first of its kind in the district. This helps ensure that even after PALM exits a community, the committees remain sustainable and continue to have access to the district-level discussions. The district-level meetings chaired by the District Secretary has proven to be effective with women raising their concerns and receiving solutions through this process of engagement.

By linking the local level communities to the district-level processes, this network is able to both highlight the emerging issues for victims of GBV as well as highlight the gaps in service provision. For example, the problem of micro-credit debt and how this can lead to incidence of

GBV in different forms – either as domestic violence, verbal abuse or sexual harassment – have been discussed at these district-level convenings.

For potential victims, such meetings signal that their experiences are considered serious and receive due attention of the government service providers. Of similar importance is that the information shared at these meetings allows District-level Government officials, to make proper representations to national-level consultations and conversations. As pointed out by multiple non-government service providers, trivializing or normalizing GBV is prevalent among some government officials, including law enforcement officers. Hence, such a streamlined process enables a flow of information both ways and importantly, helps highlight the severity of the issue and the importance of addressing GBV through existing service frameworks.

By providing such a platform, community members are also able to influence the decisions regarding the services they require especially by highlighting the gaps in service frameworks. But such advocacy has its limitations. While the absence of a shelter for adult victims has been highlighted, a solution is yet to be offered, indicating the limits of such networks to bring about immediate changes. However, the benefits to be reaped from such a network outweigh the downsides especially in continuing the discourse around GBV and the importance of keeping the momentum of addressing different forms of violence that potential victims may encounter.

Conclusion

PALM Foundation's ability to set up and operate such gender committees is aided by its intervention model, where engagement with the community is relatively long-term and not necessarily limited to a short period of 12-24 months. This allows the organization enough time to build capacity of the committee members, challenge entrenched ideas of GBV and also connect the community with government structures that remain geographically far removed from these communities. The gender committees and the network that is operationalized does offer a sliver of hope in the post-funding era for GBV and how best to utilize existing state service structures to address GBV.

However, as service providers across the different districts have pointed out, sensitizing government officials is critical to ensure that services are indeed provided to victims who seek support. The lack of understanding of what constitutes GBV, officers' own subjective interpretation of GBV and narrowing it to domestic violence, as well as normalizing GBV, can deter victims from speaking up and seeking services. While these committees can act as a strong representative voice to lobby for victims and seek redress, the effectiveness of the solutions offered will also be dependent upon how best the government representatives understand GBV in its multiple forms and their receptiveness to finding a workable solution. As a PALM representative pointed out,

“We can refer the victims to responsible authorities, institutions, but we cannot be sure of the quality of the services they will provide to the victims. The problem is that. There is no system to follow up on the victims after referring them to the service providers. There must be some confidential database to store the information of such victims. They should be monitored. So, a lot of work to do, to bring the service provision to that level”.

The establishment of these gender committees thus, is a positive step forward in situations where funding for GBV related interventions is on the wane. As a best practice, it has allowed PALM to continue its commitment to raising GBV related concerns and offers a glimpse of how to move forward. But there continue to be major gaps in services that need to be addressed to ensure that victims are not left outside of the service provision framework.



The Asia Foundation

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