Women’s Human Rights
Issues of Implementation in Sri Lanka
Abstract

This thesis is about issues concerning the implementation of women’s human rights in Sri Lanka.

Sri Lanka has had a conflict between the Government and the Liberation Tigers of Tamil Eelam, LTTE for two decades. Since 2002 there has been a ceasefire agreement in place, which is being violated by both parties. Before being abandoned in 2003, one woman was present during the peace talks that were held.

In this paper I present the results of my field research conducted in Sri Lanka in November and December of 2005. The aim was to find out how women were active in the peace process since it is stipulated in international conventions that they have a right to participation. During the interviews with women activists it became evident that women were not involved in the official peace process. Therefore the thesis is about women’s human rights in Sri Lanka and the obstacles for their implementation.

Two main reasons for the lack of implementation of women’s human rights in Sri Lanka are identified. Firstly, for reasons of culture and patriarchal structures, there is a general lack of implementation internationally of women’s human rights. Secondly, the unresolved conflict situation in Sri Lanka, which reflects the unequal power relations between men and women that existed prior to the conflict. The lack of implementation of women’s human rights in Sri Lanka results in women not being present in the political life and they are therefore not part of the official peace process.

International conventions such as the Convention on the Elimination of Discrimination Against Women, CEDAW and the UN Security Council Resolution 1325 on peace and security are addressed in the thesis in order to examine women’s human rights and their right to participation in politics and peace building.

Finally, I conclude that in order to include women in the official peace negotiations women need to actively participate in politics. The method presented to ensure such participation is that of affirmative action. It is a measure that falls under the category of temporary measures, which is suggested in CEDAW article 4.1.
Acknowledgements

Foremost I would like to thank the women that took time to meet with me and be interviewed. Their work and commitment to peace and women’s issues was inspiring and of great help for the thesis.

I would also like to extend my gratitude to Padmi Liyanage, my contact person in Sri Lanka who provided me with organizations and names which were very useful.

This thesis would not have been possible without the generous scholarship provided by the Swedish International Development Agency, SIDA, and the support from the Department of Behavioural, Social and Legal Sciences at Örebro University. Especially the help of my supervisor Richard Sannerholm has been invaluable.

Because of the difficulties I encountered during the field research the support of my friends and family has been of great importance as has that of the kind people I met during my stay in Sri Lanka.

Finally, I would like to acknowledge my grandmothers and mother that suffered through a dictatorship and for their courage to continue with their lives. They are my main inspiration with my work with women’s human rights and the reason why I wrote this thesis.
Main Abbreviations

CEDAW - Convention on the Elimination of Discrimination Against Women
ICCPR - International Covenant on Civil and Political Rights
ICESCR - International Covenant on Economic, Social and Cultural Rights

CHR – Commission on Human Rights
CSW- Commission on the Status of Women
UNHCHR – United Nations High Commissioner on Human Rights
UNIFEM – United Nations Development Found for Women

LTTE - Liberation Tigers of Tamil Ealam
SLMM – Sri Lanka Monitoring Mission
UNSC – United Nations Security Council
CFA – Cease Fire Agreement
Contents

1. Introduction ................................................................................................................... 6

2. Objectives and Central Questions ............................................................................... 6

3. Method and Materials .................................................................................................. 8
  3.1 Delimitations and Constraints .................................................................................. 9
  3.2 Structure of the Thesis ............................................................................................. 9

4 Sri Lanka ......................................................................................................................... 10
  4.1 Ethnicity of the Population ...................................................................................... 10
  4.2 The Political Context .............................................................................................. 10
  4.3 Pluralistic Law system ............................................................................................ 11
  4.4 The Cease Fire Agreement ...................................................................................... 12
  4.5 Present ..................................................................................................................... 14

5 Women’s Rights in Sri Lanka ....................................................................................... 15
  5.1 The UN Human Rights System .............................................................................. 15
  5.2 Hard Law, Soft Law ............................................................................................... 17
  5.3 Critique of Women’s Human Rights ...................................................................... 18
  5.4 CEDAW ................................................................................................................. 19
  5.5.1 CEDAW, article 7 ............................................................................................ 20
  5.5.2 Sri Lanka and CEDAW ..................................................................................... 22
  5.6 Security Council Resolution 1325......................................................................... 23

6. Obstacles towards the Implementation of Women’s Human Rights .............................. 25
  6.1 Asian Values ........................................................................................................... 26
  6.2 Universalism versus Culture Relativism –
      From a Women’s Human Rights Perspective .............................................................. 29
  6.3 The Sri Lankan Context .......................................................................................... 30
  6.4 How Women in Sri Lanka Have Been Affected by the War .................................... 31
  6.5 Possibilities within War: Changing Gender Roles .................................................... 32

7. Women in the Peace Process in Sri Lanka .................................................................... 33
  7.1 Gender Sub Committee ......................................................................................... 34
  7.2 Why Are Women Not Involved? ............................................................................. 35
  7.3 The Roles of NGOs as Advocacy Networks: Affecting International Law ............ 36
  7.4 Women’s Advocates in Sri Lanka; Issues of Concern and Obstacles ..................... 37
  7.5 Possible solutions ..................................................................................................... 38

8. Conclusions ................................................................................................................... 40

References ......................................................................................................................... 41

Appendix .............................................................................................................................. 45
1. Introduction

Wars cause suffering and loss of life of both men and women. However, women are affected differently than men by war, they experience a gender biased violence that takes the shape of sexual harassment, rape, body searches, fear of rape and sexual violence.

The fear of sexual violence that the situation of insecurity in armed conflicts entails, limits and inhibits most women’s mobility and hence their livelihoods, choices and realities.¹

For this reason there is a point in bringing a gender analysis into the impact of war and participation of the post-conflict peace building, since women have different experiences of war and therefore different experiences to bring to the peace process.

Sri Lanka has had a civil war for 18 years, and a fragile cease fire agreement since 2002 that is being tested. The conflicting parties are the Liberation Tigers of Tamil Ealam (LTTE) and the Sri Lankan Government. The LTTE wants a separate Tamil state, or greater autonomy because they feel discriminated by the government.

The original intention of this thesis was to examine women’s human rights, and how women’s right to participation was incorporated in the peace process in Sri Lanka. To achieve this interviews with non governmental organization’s (NGO’s) working with peace and women’s issues were conducted to find out their views and experiences of women in the peace process. The result was not the expected one.

During the two months field research in Sri Lanka, in November and December of 2005, the Cease Fire Agreement (CFA) was at its most crucial point; being heavily attacked and many times it seemed as if war was close. People laughed when peace process was mentioned: what peace process? They said. Furthermore, it turned out that only one woman had been represented in the official peace talks that had taken place until the peace talks broke down in 2003.

The thesis took a new direction to find out why women’s rights were not implemented and why women were not active in the peace process. The interviews with NGO’s showed that there are women’s advocates that work to implement international law and to bring peace to their country; it is about their work and the challenges they face that this thesis is about.

2. Objectives and Central Questions

This thesis is about women’s human rights and their implementation. The thesis concludes that there are primarily two issues that impede the implementation of women’s human rights in Sri Lanka; the general lack of implementation internationally of international law relating to women’s human rights, and the presence of conflict. This leads to the absence of women’s representation in peace negotiations.

The focus is on women’s participation in peace building in Sri Lanka from a non governmental perspective, to see why the government’s signing and ratification of relevant international law has not had a practical and real impact for people and organizations working with issues pertaining to women's rights and peace building.

This thesis will not focus on how women can contribute to peace, or why they should be involved on the bases of sex or gender, other than the fact that they are human beings and therefore have a right to be a part of discussions that will affect their lives and how they live them.

The need for women to be a part of all aspects of the peace-building process should be self-evident and does not rest on claims to their being innately more peaceful. This is a right that rests on the simple but profound principles of justice and democracy. As half or more of humanity, women have the right to be part of decision-making on all critical activities that so deeply affected their lives.

As stated in article 25 of the International Covenant of Civil and Political Rights (ICCPR) every citizen, without distinctions such as race, colour, sex, language, political or other opinion, national or social origin, property, birth or other status, “shall have the right and opportunity” “[t]o take part in the conduct of public affairs[…]”.

It is of interest how member states of conventions relating to women’s human rights implement them, due to the fact that states such as Sri Lanka have ratified all human rights conventions concerning women. In spite of this, women are still being excluded in such important matters as peace negotiations, as is the case in Sri Lanka. This indicates that the explanation for the exclusion of women lies beyond the conceptualization and ratification of conventions.

In Sri Lanka there are many non-governmental organizations (NGO’s) that work to better the conditions of the people of their country. Several of them are NGO’s working for peace in a country that has had a civil war, and at present has a fragile ceasefire. They want peace and for the conflicting sides to respect human rights. Within this context, women’s rights may not be a prioritized issue, but as women’s advocates and NGO’s have pointed out that if a country hopes for sustainable peace, everyone needs to be included - Sinhalese, Tamils, Muslims, Christian, women and men. As it is now, only one woman has participated in the peace negotiations.

Existing international law specifically mentions member states’ responsibility to ensure that women shall, on equal terms with men, “participate in the formulation of government policy and the implementation thereof”. A Security Council resolution is calling on participants that are negotiating and implementing peace agreements to involve women in all of the implementation mechanisms of the peace agreements. Inspite of such international laws and resolutions, discrimination against women still persists and especially in conflict prone areas.

---

2 This choice has been made in order to avoid getting tangled in the essentialist vs. constructivist discourse.
4 International Covenant on Civil and Political Rights – ICCPR art. 2.
5 ICCPR art 25.
6 Convention on the Elimination of All Forms of Discrimination against Women – CEDAW art. 7(b).
7 UN Security Council Resolution 1325 art. 8(b).
like Sri Lanka, and that is what this thesis is about. The questions that this thesis attempts to answer are: why are women’s human rights not implemented in Sri Lanka, and how can these rights be implemented?

3. Method and Materials

The materials used for the thesis are UN conventions, resolutions, declarations, committee reports and comments with the main focus being The Convention on the Elimination of all forms of discrimination against Women referred to as CEDAW from 1979 and the Security Council Resolution 1325 on women peace and security from 2000.8

The original focus of the thesis was to find out if and how women were participating in a peace process and from that draw conclusions about women’s human rights in practice, a focus which after the results from the field research was changed. Sri Lanka was chosen as the country for field research since it had experienced a war, and had a ceasefire agreement but not a peace agreement, and therefore was in a period of peace building.

The objective of the field research was to get in contact with those working with women in the peace process to find out if women were incorporated in the peace process and how. The field research in Sri Lanka was carried out in November and December of 2005 in Colombo and Kandy.

Eleven people were interviewed during November and December of 2005; eight were active in NGO’s,9 one was a person from the Sri Lankan Monitoring Mission (SLMM)10, another was a teacher in charge of the women’s human rights masters program at Colombo University11 and finally the Chairperson for The National Committee on Women.12 The selection of people was based on contacts that were given by a contact person in Sri Lanka, and actors within women’s issues and the peace process that were referred to by some of the people that were interviewed.

The interviews were carried out one on one13 with a semi structured approach. It started out with them talking about their work and how it was related to women or/and gender. The two main questions were: what does your organization work with and which problems do you encounter? Other questions were posed when something was unclear, or of specific interest. Important questions such as where they think the problem lay; they always brought up themselves and offered solutions.

The method of mostly listening was one that was chosen primarily because several of the interviews were with people and organizations that I was not familiar with, and in fact knew little about. In many cases our contact was preceded by e-mail communication where I had declared my intent and what I needed to know, therefore they were often prepared.

9 For a detailed list see the enclosed appendix.
10 The Sri Lanka Monotoring Mission (SLMM) monitors the Cease Fire Agreement (CFA). The meeting was set up to get a better understanding of the conflict.
11 The meeting was to discuss the current Sri Lankan legislation concerning women’s rights.
12 The National Committee on Women monitors the women’s charter in Sri Lanka.
13 Except an interview in Kandy that was held with an interpreter provided by the organization.
While conducting the interviews I found that they were used to talking about their projects and often used a similar structure when talking about their work. They would explain why their work was necessary, the problems they encounter and what would help them. At times it seemed as if they might be “selling” me their concept as the conversation most of the times came to be about the lack of funds.

3.1 Delimitations and Constraints
Because of the political climate during the field research the original plan of visiting the east and north was not feasible. Two weeks after the start of the field research a presidential election was held. Because previous elections had seen a violent pre-election period people were anxious about what could happen before the elections and therefore wanted to wait with giving appointments until after. It turned out to be the most peaceful pre-election time that they had experienced post-conflict.

After the elections there were concerns that the Cease Fire Agreement (CFA) was in jeopardy, and many incidents did occur in the East and North which led to fear of war being inevitable.

A contact had been established in Jaffna but due to the escalating violence in the region it was cancelled. Therefore the interviews were restricted to Colombo and Kandy, even though several of the interviewed were active in projects in the north and east the thesis does not give an accurate account for all Sri Lankan women’s participation in the peace process and politics, only the Sinhalese women’s.

3.2 Structure of the Thesis
In writing the thesis it has been important not only to write about facts, figures and legal issues but to find a way to emphasise the empirical material from the field research. In order to give a voice to the women’s rights advocates that were interviewed, and that shared their practical experiences and thoughts on the subject. For this reason their information and sometimes personal experiences have been included continuously in the thesis.

In part 4, Sri Lanka, facts about the country; the political context, the history of the conflict, the peace process and the judicial system are explained in order to understand the context and reasons for why women’s human rights in Sri Lanka are not being implemented.

To understand women’s rights in Sri Lanka or lack thereof, an overview of women’s human rights within the UN system and its development as well at criticism towards it is presented in part 5, Women’s rights in Sri Lanka. The Convention on the Elimination of all forms of Discrimination against Women, CEDAW, and The United Nations Security Council Resolution 1325 are also examined in part 5 and focus is put on specific articles that are of importance for the objective of the thesis.

Part 6, Obstacles towards the implementation of Women’s Human Right’s, deals with what has been observed to be the two main obstacles for the implementation of women’s rights in Sri Lanka. Firstly, the general lack of implementation internationally of women’s human rights due to various reasons such as cultural relativism and religion, and, secondly, the conflict in Sri Lanka. Possible positive changes that might occur during times of armed conflict are also discussed.

14 City in the North controlled by the government and surrounded by the LTTE.
15 Nine interviews were held in Colombo and two in Kandy.
16 There are also Muslim women and they are not specifically mentioned either.
In part 7, *Women in the Peace Process in Sri Lanka*, women’s role in peace building, their issues of concern and possible solutions such as affirmative actions are examined as well as the role of NGO’s and how they can affect international law.

The conclusion in part 8 summarizes the objective of the thesis as well as the conclusions drawn from the study, and possibilities to get women included in the peace process are presented.

4 Sri Lanka

Sri Lanka has been torn apart by a civil war and even though there has been a cease fire in place since 2002 the country does not have peace. Some claim that there is a hidden war going on and there is truth to that; since the cease fire 182 assassinations have been reported to the Sri Lankan Monitoring Mission (SLMM) which monitors the Cease Fire Agreement.17

4.1 Ethnicity of the Population

Sri Lanka has a population of around 19 million, 9.7 are men and 9.3 women. It is a country with high literacy rate, although the numbers are higher for men; 90.5% and 82.4% for women.18

74% of the population are of Sinhalese ethnicity, 18% are of Tamil ethnicity, 7% are of Moors ethnicity and 1% consists of other ethnicity.19 Most Sinhalese are Buddhist, Tamils are mainly Hindu and a small percentage of each ethnic group are Christians, and 7% of the population are Muslims.20 Both ethnic groups have their own language: Singhalese and Tamil. Muslims speak the language of the region they live in. Sri Lankan Tamils have traditionally lived in the north and east, many now live in the south due to employment, education or displacement because of the war. In the country hills there are Tamils from resent Indian origin that was brought to Sri Lanka by the British to work on their tea plantations. They are often referred to as hill country or Indian Tamils. Due to the conflict there are basically no Sinhalese or Muslims in the Northern provinces.21

4.2 The Political Context

Sri Lanka has always been a multi-cultural country with different ethnic population coexisting. Historically it was a decentralized society with plenty of autonomy for the regions. This changed during the British colonisation that lasted over 150 years, 1796-1948. During this period the foundation for today’s ethnic conflict was laid out.22

Christian missionaries led to the creation of a Buddhist resistance in the shape of Sinhalese nationalism and the British colonial mechanism paved way for centralized governance. The

technical advancements within communication and transport led to the state for the first time being able to control the entire island.\textsuperscript{23}

Traditionally the Buddhist monks were the education providers but the British prioritization of the Christian schools marginalized the monks influence. The concentration of power and financial growth was centred to Colombo. Tamils from northern and eastern parts of the country moved there to seek employment within the public sector. This led to the Tamils becoming overly represented in higher education and as civil servants in the colonial administration. The Christian missioners made the Buddhist representatives feel threatened which led to a Buddhist counter reaction that argued that religion should be connected with the state, and that Sri Lanka should be a country where Buddhism should be the state religion.\textsuperscript{24}

After the independence the Sinhalese control increased fuelled by nationalism, they gained power and influence on the cost of the Tamils. A series of regulations were enforced that discriminated against the Tamils.\textsuperscript{25}

During the island’s transition period towards independence, 1931-1948, the Tamil leaders wanted Tamils and Sinhalese to share the power between them. After the independence they wanted a federal state. The Tamils tried to make their voices heard by non-violence actions which were brutally stopped by the establishment; this led to a radicalisation of the Tamil resistance that now wanted an independent Tamil state in the northern and eastern parts of the island.\textsuperscript{26}

The tension reached its peak when the Tamil Tigers, LTTE, killed police officers in the northern city of Jaffna in 1983 which led to riots against the Tamils. The government did little or nothing to stop the aggressions that were being committed against the Tamil minority. About 1000 Tamils are estimated to have been killed and 100 000 fled to the northern parts. This was the starting point of the civil war. The two combating parties have been the Sri Lankan government and the armed group Liberation Tigers of Tamil Ealam (LTTE).\textsuperscript{27}

4.3 Pluralistic Law system
Sri Lanka’s legal system is influenced by different legal traditions, the criminal law is British, civil law is Roman-Dutch and laws regarding marriage and divorce and inheritance are regulated communally, which makes it a pluralistic law system.\textsuperscript{28}

Issues related to family law, including divorce, child custody and inheritance are adjudicated by the customary law of each ethnic or religious group and results in discrimination against women.\textsuperscript{29}

An example of the difference in law and how it affects women is the minimum age of marriage. In 1995 the minimum age for marriage in Sri Lanka was change from 12 to 18 years except for Muslims; they continue to follow their customary practice.\textsuperscript{30}

\textsuperscript{23} Höglund and Svensson, p.3.
\textsuperscript{24} Ibid. p.3-4.
\textsuperscript{25} Ibid. p.4.
\textsuperscript{26} Ibid. p.4-5.
\textsuperscript{27} Ibid. p.5-6.
\textsuperscript{28} US department of State: http://www.state.gov/r/pa/ei/bgn/5249.htm (May 2, 2006).
An interview with a teacher at the law school in Colombo gave further information on the pluralistic law system of the country and its effects.

At present there are three marital Laws in Sri Lanka. The General which applies to those not included in the other two, the Kandian that applies to the Kandy area and the Muslim Law. In reality there exists specific laws within the LTTE areas but they are unknown and are not officially recognized. For the General Law and the Kandian Law the legal age of marriage is 18, for the Muslims there is no minimum age. For Muslim girls there is no right to consent to marriage; their guardians consent. Within the Muslim law there is a separate divorce law for women and men. The General and Kandian law are equal except when it comes to divorce. Men can due to infidelity divorce but not women; they need to prove incest or cruelty.

There is a proposal for a new matrimonial law, in which no matrimonial fault needs to be proven. It is an improvement for women as it will be easier for them to be granted a divorce. Under the new Law they have to prove that the marriage has failed and do not need the approval from their spouse. The new law is intended to replace the General and Kandian law and make it into one that will be applicable to the entire island, except for Muslims.

Even though the laws that exist in the LTTE areas are not known there is a law that is applicable only to the Tamils in the north; it is called Tesawalami and deals with land rights. The law discriminates against women; women can own property but not dispose of it as they wish. If they want to sell the land they need their husband’s consent. Tesawalami is described as a customary law and is only applicable to Jaffna Tamils and not Eastern Tamils. Tamils outside of Jaffna have to prove that they have maintained close contacts to Jaffna in order to fall under the law.

The law of land is also different for Muslims; they have their own laws which differ even within the Muslim society.

The inequity in the country’s pluralistic law system that has religious undertones has been addressed by the Law Commission of Sri Lanka, with the conclusion that it is deeply rooted within the ethnic minorities of the country and a sensitive issue.31

The Government does not seem to want to change the pluralistic law system, a reason for that might be that they do not want to lose the votes of the minorities. Officially it seems as if it is due to the fact that they live in a multi cultural and ethnic society and wish to respect their culture.32

4.4 The Cease Fire Agreement
In 2002 a ceasefire agreement entered into force between the Government of Sri Lanka and the Liberation Tigers of Tamil Eelam (LTTE).33 The objective of the Cease Fire Agreement (CFA) is to find an end to the ongoing conflict. As part of the agreement the parties agree to “accept on-site monitoring of the implementation of the Agreement by the Sri Lanka Monitoring Mission (SLMM)”34.

---

31 CEDAW/C/LKA/3-4 – Sri Lanka’s third and fourth report submitted to the Commission on CEDAW.
32 From the Interview with the teacher from the Law department at Colombo University.
34 The Cease Fire Agreement: http://www.slmm.lk/ (October 18, 2005).
The long anticipated CFA brought an end to the war but it did not bring peace, events during the last six month’s have shown the fragility of the ceasefire. In August of 2005 the Sri Lankan foreign minister was killed and the assassination was blamed on the LTTE by the Government.

The Government of Sri Lanka declared a state of emergency following the assassination of the Foreign Minister in Colombo on 12 August. The state of emergency gives enhanced powers to assist the police in their investigation. The state of emergency conflicts with the International Covenant on Civil and Political Rights, to which Sri Lanka is a member of and has derogated from.

During the end of 2005 and up until May of 2006 several severe incidents that threaten the Cease Fire Agreement (CFA) have occurred; most of them in the north and eastern parts between what seem to be two factions within the LTTE. Perhaps one of the most serious incidents was a suicide bomb in Colombo. It was the first attack in Colombo in several years, something that led to beliefs that war was unavoidable.

The talks on the CFA had been commenced in February of 2006 and were suppose to continue in April but were suspended.

During the years that have passed since the CFA in 2002 life has slowly been getting back to normal, although it has been a tense period for people in the east and north with much uncertainty.

After the CFA there were six rounds of peace talks that stared in September 2002 and were abandoned in March 2003 without reaching a peace agreement. During the last six months it has been most observers’ belief that a war is eminent. Several reasons have been stated, amongst them the outcome of the election in November of 2005. In his campaign President Rajapakse ruled out autonomy for the Tamils in the east and north and promised to review the peace process.

Some analysts say the rebels are trying to provoke the government into retaliation and war. Others believe the rebels have been trying to strengthen their hand by showing they mean business before entering any talks.

In February of 2006 talks on the CFA were started. They were not peace talks per se, but because they were the first official talks dealing with the conflict since the break down of the peace talks in 2003 it was seen as a start. A second round was planned to take place in April:

40 Ibid.
of 2006 but the LTTE pulled out due to unsolved questions concerning the safe transport of their leaders within the east and north of the Island.\textsuperscript{41}

4.5 Present

During the period for the field research for the thesis, November and December of 2005, a presidential election was on the way. An election that would shape the future peace process. The two main presidential candidates had very different ideas as to what would bring about sustainable peace and it seemed more urgent than ever to reach a final settlement as the ceasefire seemed to be at its most crucial stage.

The two main presidential candidates presented what seemed to be two radical different approaches towards a peace process. Prime Minister Mahinda Rajapakse which was considered to be the more hardliner, and the opposition leader Ranil Wickramasinghe; representing a more compromising position. The hardliner Prime Minister Mahinda Rajapakse won with a small marginal probably due to the boycott of the LTTE in the Tamil areas of the north and east.

Sri Lanka is also recovering from the devastating Tsunami that occurred in December of 2004 and damaged several costal areas. Much of the country’s resources are being allocated to the affected areas. Several of the NGO’s that were visited during the field research were involved with post-tsunami rebuilding. While most tried to include the rebuilding work with peace building some put their regularly peace work on hold.

Sri Lanka has a very low representation of women in Parliament, 4.9%.\textsuperscript{42} According to numbers from the 2005 Human Development Index\textsuperscript{43} Sri Lankan women earn less than men and are in other ways disadvantaged in comparison with men:

<table>
<thead>
<tr>
<th>Seats in parliament held by women (% of total)</th>
<th>Female administrators and managers (% of total)</th>
<th>Female professional and technical workers (% of total)</th>
<th>Estimated female income (PPP US$)</th>
<th>Ratio of female earned income to male earned income</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Rwanda (45.3)</td>
<td>1. Philippines (58.1)</td>
<td>1. Barbados (71.3)</td>
<td>1. Luxembourg (34,890)</td>
<td>1. Kenya (0.93)</td>
</tr>
<tr>
<td>2. Sweden (45.3)</td>
<td>2. Fiji (50.6)</td>
<td>2. Lithuania (69.7)</td>
<td>2. Norway (32,272)</td>
<td>2. Switzerland (0.90)</td>
</tr>
<tr>
<td>3. Norway (38.2)</td>
<td>3. Tanzania, U. Rep. of (49.1)</td>
<td>3. Estonia (69.2)</td>
<td>3. United States (29,017)</td>
<td>3. Cambodia (0.76)</td>
</tr>
<tr>
<td>148. Armenia (5.3)</td>
<td>66. Paraguay (22.6)</td>
<td>53. Spain (47.0)</td>
<td>85. Belize (2,695)</td>
<td>84. Uruguay (0.53)</td>
</tr>
<tr>
<td>149. Ukraine (5.3)</td>
<td>67. Peru (22.5)</td>
<td>54. Cyprus (46.8)</td>
<td>86. Azerbaijan (2,683)</td>
<td>85. Ethiopia (0.52)</td>
</tr>
<tr>
<td>150. Algeria (5.3)</td>
<td>68. Honduras (22.3)</td>
<td>55. Peru (46.6)</td>
<td>87. Swaziland (2,669)</td>
<td>86. Indonesia (0.52)</td>
</tr>
<tr>
<td>162. Yemen (0.3)</td>
<td>85. Pakistan (2.4)</td>
<td>86. Saudi Arabia (6.4)</td>
<td>154. Sierra Leone (325)</td>
<td>154. Oman (0.19)</td>
</tr>
</tbody>
</table>

41 Ibid.


43 The Human Development Index 2005:

5 Women’s Rights in Sri Lanka

Human rights are violated on a daily basis, women suffer abuse in the same way as men but most of the human rights violations they experience are gendered, and “[…] women’s freedom, dignity and equality are persistently compromised by law and by custom in ways that men’s are not.”

Women whose rights are being violated for reasons other than gender (as political prisoners or members of persecuted ethnic groups) often also experience a particular form of abuse based on gender, such as sexual assault.

Women’s human rights are violated daily whether in peace or war time, “[g]ender based abuse and discrimination may be sanctioned by society, made into law, or simply tolerated.”

5.1 The UN Human Rights System

The United Nations human right law system consists of seven treaties: International Covenant on Civil and Political Rights (ICCPR, 1966), International Covenant on Economic, Social and Cultural Rights (ICESCR, 1966), Convention on the Elimination of All Forms of Racial Discrimination (CERD, 1965), Convention on the Elimination of Discrimination Against Women (CEDAW, 1975), Convention against Torture, and Other Cruel, Inhuman and Degrading Treatment (CAT, 1984), Convention on the Rights of the Child (CRC, 1989), International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICRMW, 1990). Each treaty has its own separate monitoring body. The Universal Declaration of Human Rights (1948) does not have the same legal status, legally binding, as the rest of the treaties and is considered to be soft law but some of the rights are argued at times to be part of customary law or having jus cogens status. The Universal Declaration together with the ICCPR, its optional protocols and the ICESCR are referred to as the International Bill of Human Rights. There are three regional human rights systems: the European, Inter-American and African, there is no similar human rights system in Asia.

---

49 Jus Cogens is described in the Vienna Convention on the Law of Treaties 1969 in article 53 as “a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character”. See also Shawn, Malcolm N., INTERNATIONAL LAW, fifth edition, Cambridge University Press, 2004, p. 117.
50 Kouvo, p. 31.
Sri Lanka is a member of all the seven main treaties and all the optional protocols with two exceptions: the second Optional Protocol of the International Covenant on Civil and Political Rights (ICCPR-OP2) that aims at the abolition of the death penalty and the Optional Protocol to the Convention Against Torture (OP-CAT).

The United Nations Charter from 1945 stipulates in article 68 that:

The Economic and Social Council shall set up commissions in economic and social fields and for the promotion of human rights, and such other commissions as may be required for the performance of its functions.

As a result The Economic and Social Council (ECOSOC) was established. In 1946 ECOSOC ordered the installation of a Commission of Human Rights (CHR), the Council mandated the Commission to report to the Council on different issues. The Council determined that the CHR would need assistance in questions regarding women’s status and therefore established the Commission on the Status of Women (CSW) that was to present reports on the status of women. The CHR has established sub-commissions and working groups that study specific human rights concerns.

In 1947, the Chair of the Commission on Human Rights, Eleanor Roosevelt the First Lady of the United States started, as mandated by ECOSOC, the drafting process of the International Bill of Rights. The Commission later “decided that the International Bill of Human Rights should consist of a ‘declaration,’ a ‘covenant,’ and ‘measures of implementation.’” In 1948 the Universal Declaration was unanimously adopted by the United Nations General Assembly.

Once the Declaration was adopted work began on adopting a Covenant, something that proved to be very complicated. The problem in hand was that so called “developed” countries did not agree that the social and economic rights that were mentioned in the Declaration should be made into human rights. They maintained that these rights were goals rather than rights. The disagreement resulted in the drafting of two separate covenants; the ICCPR and the ICESCR. After a long process the final drafts of both covenants were presented for signature in December of 1966.

The United Nations Decade for Women 1976-1985 helped to further women’s human rights and to create new policies, a concrete result of the Decade was The Convention on the Elimination of All Discrimination Against Women (CEDAW). Three meetings were held during the Decade: 1975 in Mexico City, 1980 in Copenhagen and 1985 in Nairobi. Each of the official meetings was accompanied by Non Governmental Organizations (NGO’s) Forums in which women from all over the world “met and were able to exchange strategies and develop ongoing working relationships.”

---

53 According to the Vienna Convention of the Law of Treaties from 1969, Article 11 “The consent of a State to be bound by a treaty may be expressed by signature, exchange of instruments constituting a treaty, ratification, acceptance, approval or accession, or by any other means if so agreed.”


56 Ibid. p.18.

57 Ibid. p.20-21.

The United Nations Universal Declaration of Human Rights and other conventions related to human rights extend to all humans, men and women:

Article 1
All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.\textsuperscript{59}

Article 2
Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.\textsuperscript{60}

Despite this it has been believed that women’s rights have not been properly considered and that their humanity has not been enough to guarantee them security under international legislation.\textsuperscript{61} For this reason, several conventions have been signed to emphasise women’s right to human rights, and also to include specific right’s dealing with issues concerning women that had not been addressed in the previous human right’s treaties. It is interesting to notice that article 1 in the Universal Declaration from 1948 states “acting in the spirit of brotherhood” something that might be seen as excluding women despite of the first sentence in the same article declaring that \textit{all human beings} are born free and equal.

5.2 Hard Law, Soft Law

The main sources of international law are treaties\textsuperscript{62} and customary law. Non-binding documents and declarations are often referred to as soft law, they are not legally binding as hard law is but the boundaries between the two are not always clear and in some cases soft law can lead to a convention being created such as the case with the ICCPR and the ICESCR that are composed of what is stated in the Universal Declaration. Before the creation of CEDAW there was also a declaration, \textit{The Declaration on the Elimination of Discrimination of Women (DEDAW)} which was soft law and led to the creation of the \textit{Convention on the Elimination of Discrimination of Women (CEDAW)}.\textsuperscript{63}

Soft law, hard law and policy differ because of the different state obligations they create. The main sources of international law are specified in by the International Court of Justice (ICJ) in article 38:

\begin{itemize}
  \item a. international conventions, whether general or particular, establishing rules expressly recognized by the contesting states;
  \item b. international custom, as evidence of a general practice accepted as law;
  \item c. the general principles of law recognized by civilized nations;
  \item d. subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.
\end{itemize}

\textsuperscript{59} UN Declaration on Human Rights 1948, art. 1.
\textsuperscript{60} Ibid. art 2.
\textsuperscript{61} History of CEDAW: http://www.un.org/womenwatch/daw/cedaw/history.htm (February 10, 2006).
\textsuperscript{62} According to the Vienna Convention on the Law of Treaties 1969, article 1 (a) ”’treaty’ means an international agreement concluded between States in written from and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation”.
\textsuperscript{63} Shaw, p.110-111. Kouvo, p.35, note 68.
There seems to have been “a shift of focus within the UN and international human rights frameworks from codification to implementation via not only legal, but also soft law and policy-based methods.”

Within the framework of international human rights law, and especially women’s human rights law and other relatively marginalized spheres of international human rights law, the shifting and imploding boundaries between law/politics, hard law/soft law, legislation/administration, national/international, et cetera might also be due to the fact that working within these areas is not solely the prerogative of lawyers, but also the prerogative of political scientists and social scientists in general.

The documents produced in conferences are not legally binding. However, they can effect the development of international law “and politics as political platforms or soft law”. Women’s rights activists have focused on soft law, and different sources of law because of the lack of existing hard law regarding concerns such as violence against women and reproductive rights. Even in areas where women’s rights treaties have been adopted they have not dealt with the core of the discriminating structures. Therefore “soft law solutions have been added to the codified women’s rights framework.”

If states fail to comply with their obligations under human rights treaties which they are party of there is in reality no consequences. NGO’s at times publish reports where the countries breaches are highlighted, something that may shame the State that has breached its obligations. For the States there is political prestige involved and in some cases for developing nations international aid may be attached to conditions of compliance with international human rights law.

5.3 Critique of Women’s Human Rights
There are different feminist views and approaches to human rights, the focus here will be on different issues raised by feminists from various directions of feminism.

Women were for a long time excluded from the creation and the early development of international law, which includes human rights law, something that has led men to be the norm within human rights. CEDAW “has been criticized by many feminists as being outdated; specific disapproval focuses on its tendency toward advocating equality on a litmus test delineated an equal to men.” By some it has been viewed that CEDAW reinforced stereotypes and does not deal with the “underlying systematic discrimination that women experience”.

Another critique has been that in policy discussions and drafting of new laws the women/gender “question” has not been asked; are there “gender implications of the proposed

---

64 Kouvo, p.31.
65 Ibid. p.35.
66 Ibid. p.32.
67 Ibid. p.32.
69 Hernández-Truyol, p.3.
70 Ibid. p.4.
71 Gardam and Jarvis, p.9.
lawmaking?”, how will this law affect women? Some of the critique by women’s human rights activists may be summed up by Hilary Charlesworth’s words:

Because the law-making institutions of the international legal order have always been, and continue to be, dominated by men, international human rights law has developed to reflect the experiences of men, and largely to exclude those of women, rendering suspect the claim of objectivity and universality of international human rights law. Until the gendered nature of the human rights system itself is recognized and transformed, no real progress for women can be achieved.

Although there is truth in the critique towards CEDAW and other conventions and documents dealing with women’s human rights, it is important to also remember that for women all over the world these conventions have been a first step towards gaining access to their human rights.

5.4 CEDAW
In 1979 The Convention on the Elimination of Discrimination Against Women, better known as CEDAW, was adopted to incorporate women’s rights. The convention “included attempts to interpret and transform human rights in order to adapt it to women’s diverse realities”. CEDAW has 30 articles; article 1 defines discrimination against women as

any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

Article 2 presents policy measures to be undertaken to eliminate discrimination, the member states “agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women”. They agree to ensure “the practical realization” of the principle of equal right with different means among them legal means.

Articles 7 and 8, which the thesis will focus on, deal with political and public life and participation at the international level. Article 17-22 detail the establishment and function of the monitoring committee, amongst other things each member states undertakes to submit a report;

on the legislative, judicial, administrative or other measures which they have adopted to give effect to the provisions of the present Convention and on the progress made in this respect.

According to article 18 the report should be submitted at least every fourth year. Article 23-30 details the administration of the convention, in article 24 the Member States “undertake to adopt all necessary measures at the national level aimed at achieving the full realization of the rights recognized in the present Convention”.

---

72 Hernández-Truyol, p.38.
74 Kouvo p. 16.
75 CEDAW art. 1.
76 Ibid. art. 2 (a).
Sri Lanka ratified CEDAW in 1981 and has not made any reservation to the convention. At present 182 states are members of the convention, which makes it the second most signed convention after The Conventions of the Child (CRC) that is ratified by 192 member states. CEDAW is also the convention after Convention on the Elimination of All Forms of Racial Discrimination (CERD) with most backlogs, which means that country reports are not submitted on time.

There is an Optional Protocol to CEDAW that entered into force in December of 2000 and is a separate treaty that gives individual women the right to bring their cases before the committee if the national possibilities have been exhausted. So far three cases have been brought before the Committee. Sri Lanka ratified the optional protocol the 15th of October 2002. In total there are 78 parties to the optional protocol.

Reservation to CEDAW can be made by countries upon signing the convention as stated in article 28, paragraph 1, of the convention. Reservation should be done with restriction and “[a]reservation incompatible with the object and purpose of the present Convention shall not be permitted”.

According to the Vienna Convention of the Law of Treaties, article 19 (c) states may make reservations unless “the reservation is incompatible with the object and purpose of the treaty”. CEDAW has many reservations, some of them could be argued are incompatible with the object and purpose of the treaty. The Committee that monitors CEDAW has repeatedly asked Member States to withdraw reservations or refrain from making reservation with little success.

Although CEDAW is one of the most ratified conventions it is also one of those with most reservations. Member States seem eager to show good will towards women’s human right but are not prepared to accept or implement steps towards greater equality when it inflicts on traditions and customs. The resistant from Member States leads to difficulties to fulfil the aim of CEDAW; to end discrimination against women.

5.5.1 CEDAW, article 7
Article 7 of CEDAW is of importance because according to it states bind themselves to take appropriate measures to eliminate discrimination of women in the political life:

States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right:

(a) To vote in all elections and public referenda and to be eligible for election to all publicly elected bodies;

---

79 Kouvo, p.108.
82 CEDAW art. 28 (2).
83 Kouvo, p.33.
(b) To participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government; 
(c) To participate in non-governmental organizations and associations concerned with the public and political life of the country.

Article 7(b) in the Convention on the Elimination of Discrimination Against Women, CEDAW, is relevant to this thesis as it urges states to ensure women the right to participate in “the formulation of government policy” which might be understood as women’s right to participate in peace talks and agreements. The Security Council expresses a similar view of women’s right to participation when they in their resolution 1325 urge Member States to “increase representation of women at all decision-making levels”. In the Beijing Platform for Action that came out of the Fourth World Conference on Women that was held in Beijing in 1995, it is expressed that women’s equal access and full involvement in “resolution of conflicts are essential for the maintenance and promotion of peace and security”. The Platform that was adopted by the Beijing Conference suggests that Governments should:

Take action to promote equal participation of women and equal opportunities for women to participate in all forums and peace activities at all levels, particularly at the decision-making level[…]86

The idea that women should participate in peace talks does not seem controversial because states are encouraged in different documents to take actions to increase women’s participation. However, the documents in which action is expressed are not legally binding, with the exception of CEDAW.

The Committee on CEDAW has made a General Recommendation on article 7 and 8 where they place a responsibility on States to act against discrimination of women; under article 7b they state that:

It is the Government's fundamental responsibility to encourage these initiatives to lead and guide public opinion and change attitudes that discriminate against women or discourage women's involvement in political and public life.87

In their recommendation the Committee on CEDAW recommends that measures to fulfil article 7(b) should include steps to ensure “[e]quality of representation of women in the formulation of government policy”.88

Article 7(a) declares that states should ensure women the right to “be eligible for election to all publicly elected bodies” and since the article declares that the state “shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country” it could be argued that the States has a duty to do all in its power to ensure women the rights that are put forward in the article, due diligence.

---

86 Ibid. para. 142.
87 Committee on CEDAW – General recommendation No. 23 -- sixteenth session, 1997 women in political and public life, para. 28.
88 Ibid. para. 46.
This is relevant as one reason for women not being part of the peace process is women’s overall absence in politics and if the article is interpreted as putting due diligence on the Member States, The Sri Lankan government, has a duty to increase women’s participation in politics.

Further, article 7(c) mentions women’s right to “participate in non-governmental organizations” which is of interest as the field research for the thesis was conducted mainly with women active in NGO’s and focus was put on the difficulties they encounter in their work. From the information gathered through the interviews the difficulties the active women in NGO’s encountered were due to the overall violence and lack of funds. They did not express other difficulties related to their involvement in NGO’s which does not mean that they do not exist; it only means that we did not discuss it.

5.5.2 Sri Lanka and CEDAW
State agencies and women’s organizations created a Women’s Charter adjusted to the Sri Lankan context with CEDAW as the model. In 1993, to comply with CEDAW, the charter was accepted as state policy and the National Committee on Women (NCW) was instated to monitor the Women’s Charter.89

During an interview with the Chairperson of the National Committee on Women their work with CEDAW was discussed. The work of the Committee consists of suggesting legislation, policy and monitors the implementation of the charter; they try to create awareness through the media in order to achieve gender sensitivity. The Committee also has a trainee program to promote women’s participation in politics. This is something that they are doing by trying to get women involved at grassroots level, and have them run for lower political posts.

Every ministry in the Government has a gender focal point which is a person in charge of ensuring that their ministry takes gender into account. The NCW has had a series of programmes with the gender focal points on different issues including one on resolution 1325 which was very well received.90

There are ongoing discussions about changing the status of the Committee to that of a Commission which would give them more resources and power. Power such as to investigate and bring cases before court. In the past they have tried to turn it into a commission but failed, in November at the time of the interview it had been approved by the cabinet and with the legal drafter, and was waiting to be passed on for a decision by the parliament.

Since the Charter has the status of a policy it is not legally binding, and seems to be “a policy document reflecting aspirations and intentions”.91 According to a teacher at the legal department in Colombo there is a Women’s Rights Bill that has been waiting for approval since 2002 and it includes the Women’s Charter, if the Bill is passed it will be a law.

In 1999 Sri Lanka submitted its fourth and third Country Report to the Committee on CEDAW as they under CEDAW article 18 are required to. In 2002 the Committee held their twenty-sixth session where the Sri Lankan report was considered.

90 The UN Security Council Resolution 1325 is explained further in this thesis, chapter 5.6, page 22.
91 Ibid. p.3.
The report from Sri Lanka reassured the country’s commitment to the Convention and pointed out the adopting of the Women’s Charter that is modelled after CEDAW. Further the report states that Sri Lanka is a developing country with economic difficulties resulting from the years of armed conflict. The state has made efforts to prevent the harassment of people affected by the armed conflict, specially women and children. Upholding human rights during armed conflict is a challenge but violence against women and human rights violations by security personnel is not condoned.

The Committee commended Sri Lanka for the efforts it had made to implement the convention “despite the difficult socio-political situation” and recognized that the armed conflict in the country complicate the implementation of the convention.\textsuperscript{92} The Committee expressed its concern with the “contradiction between the constitutional guarantees of fundamental rights and the existence of laws that discriminate against women” and, mentioned the Muslim personal law, which is allowed and does not have a minimum age for marriage.\textsuperscript{93} The Committee thought it was important that the government realized the implementation of the Women’s Charter and where appropriate to legislate where needed to realize policy.\textsuperscript{94} Further, the committee was concerned with the low participation of women in the politics and public life, and urged the state to undertake appropriate measures such as those expressed under article 4, paragraph 1 of CEDAW\textsuperscript{95}.

Adoption by States Parties of temporary special measures aimed at accelerating de facto equality between men and women shall not be considered discrimination as defined in the present Convention, but shall in no way entail as a consequence the maintenance of unequal or separate standards; these measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved.\textsuperscript{96}

In light of the concerns with the unstable situation in the east and north; “[t]he Committee calls on the State party to ensure full and equal participation of women in the process of conflict resolution and peacebuilding”.\textsuperscript{97}

**5.6 Security Council Resolution 1325**

In October 2000 the United Nations Security Council (UNSC)\textsuperscript{98} adopted resolution 1325 on women, conflict and peace building. The resolution has been seen as groundbreaking since it acknowledges women’s and men’s different needs in armed conflict.\textsuperscript{99} In the resolution women’s special needs in war and peace building were taken into consideration and it expressed its concern that civilians, particularly women and children, account for the vast


\textsuperscript{93} Ibid. para. 274.

\textsuperscript{94} Ibid. para. 277.

\textsuperscript{95} Ibid. para. 278, 279.

\textsuperscript{96} CEDAW art.4 para.1.

\textsuperscript{97} A/57/38, para. 299.

\textsuperscript{98} The Security Council is an executive organ of the United Nations with the responsibility of the maintenance of international peace and security. The UNSC consists of five permanent members; USA, United Kingdom, Russia, China and France which all have the veto. An additional 10 members are elected by the General Assembly for a term of two years, and geographic location is considered (see UN Charter 1945, art. 24 and art. 23). Any resolution passed must be accepted by at least all the permanent members and four of the other UNSC members. According to article 25 of the UN Charter: “The members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter”.

\textsuperscript{99} Getting it Right, Doing it Right: Gender and Disarmament, Demobilization and Reintegration, United Nations Development Found for Women 2004 , p.1.
majority of those adversely affected by armed conflict.\textsuperscript{100} In the resolution the UNSC urges the Member States;

\begin{quote}
\textit{to ensure increased representation of women at all decision-making levels in national, regional and international institutions and mechanisms for the prevention, management, and resolution of conflict.}\textsuperscript{101}
\end{quote}

The resolution was received with great enthusiasm among women’s rights NGOs as the document recognized that women were affected in specific ways by war, and that women’s contribution was important. They hoped that the document would increase women’s participation in the peace building and prevention process. As the case in Sri Lanka shows, little improvement has come in spite of the resolution.

A UNSC resolution is not binding but the fact that it has been made by the Council suggest that it is seen as an important issue. The resolution could be seen as a guideline for how Member States should act.

In article 8 of the UNSC Resolution 1325 the participation of women is stressed:

\begin{quote}
\textit{Calls on all actors involved, when negotiating and implementing peace agreements, to adopt a gender perspective, including, inter alia:}
\begin{enumerate}
\item The special needs of women and girls during repatriation and resettlement and for rehabilitation, reintegration and post-conflict reconstruction;
\item Measures that support local women’s peace initiatives and indigenous processes for conflict resolution, and that involve women in all of the implementation mechanisms of the peace agreements;
\item Measures that ensure the protection of and respect for human rights of women and girls, particularly as they relate to the constitution, the electoral system, the police and the judiciary;
\end{enumerate}
\end{quote}

Sri Lanka is not in war, nor does it have peace. The peace talks were abandoned in April of 2003.\textsuperscript{102} In 2006 talks between the conflicting parties resumed and although the talks were not on the Peace Process itself but on the Cease Fire agreements, it was the first time since 2003 that the two sides held official talks. Out of the 31 people attending the talks only three were women, one of them was the spokesperson of the Sri Lanka Monitoring Mission (SLMM).\textsuperscript{103} This leads to the conclusion that women’s participation in the peace process is not something that the Sri Lankan Government or the LTTE take seriously. They should consider, as the Committee on CEDAW points out, that:

\begin{quote}
The inclusion of a critical mass of women in international negotiations, peacekeeping activities, all levels of preventive diplomacy, mediation, humanitarian assistance, social reconciliation, peace negotiations and the international criminal justice system will make a difference.\textsuperscript{104}
\end{quote}

The United Nations Development Found for Women (UNIFEM) presented a report in 2004 on Gender and Disarmament, Demobilization and Reintegration in which the implementation

\begin{flushleft}
\textsuperscript{100} S/RES/1325 (2000), preamble.
\textsuperscript{101} Ibid. article 1.
\textsuperscript{104} Committee on CEDAW – General recommendation No. 23, para. 40.
\end{flushleft}
of UNSC Resolution 1325 is discussed.\(^{105}\) The report was intended to be a handbook with practical guidance. If followed the policy makers and practitioners will live up to the standards set by the UNSC Resolution 1325.\(^{106}\) The report shows that the lessons learned on participation and Disarmament, Demobilization and Reintegration (DDR) are that the relevance of women’s participation in peace and security issues in general is underestimated. This has led to “vital opportunities to develop more accurate gender- and age-disaggregated pictures of conflict and postconflict zones have been lost”\(^{107}\). One of the recommendations that are offered is the following:

The participation of women leaders must be facilitated when peace negotiations begin. International and regional organizations and all participating parties involved in peace processes should advocate for gender parity, maintaining a 30 per cent representation of women in peace negotiations, and ensure that women’s needs in the DDR process are taken into consideration and specifically addressed in all such agreements. In addition, women should be appointed to the National DDR Commissions when they are formed.\(^{108}\)

The UNIFEM report recommends quotas for women to ensure an equal representation in peace negotiations. Quotas as a form to diminish discrimination against women is allowed under article 4 of CEDAW. It might be a good solution for Sri Lanka where women’s participation is not being guaranteed at the moment. The peace talks that were held after the Cease Fire Agreement was after the UNSC Resolution 1325 was passed, and did not seem to have an effect on the actual peace negotiations because only one woman was present.

In the Secretary General’s follow-up report on the full implementation of resolution 1325 he states that women’s contribution to informal peace process is well known. However, obstacles to their incorporation in the official peace process still remain.\(^{109}\)

**6. Obstacles towards the Implementation of Women’s Human Rights**

The two main obstacles for the implementation of women’s rights in Sri Lanka are the general lack of implementation internationally of women’s human rights and the unresolved conflict.

There has always been politics behind the formulation and application of human rights, which “in their very expression, reflect a power relationship”,\(^{110}\) something that in the last decade has led to a discussion focusing on culture and with that there has been calls for “greater sensitivity towards differences between cultural groups within countries (and to increase respect for societies elsewhere).”\(^{111}\) Countries criticize human rights, and specially women’s human rights, on the basis of what they call “cultural integrity” of their nations.\(^{112}\)

\(^{105}\) *Getting it Right, Doing it Right: Gender and Disarmament, Demobilization and Reintegration*, United Nations Development Found for Women 2004

\(^{106}\) Ibid. p.1.

\(^{107}\) Ibid. 4.

\(^{108}\) Ibid. p.5.


\(^{110}\) A/CONF.157/22.


\(^{112}\) Rao, p.167-168.
The second reason for the lack of women’s rights in Sri Lanka is the conflict. In war women and men share many of the same difficulties; they are targeted by the same weapons, suffer from shortage of food and medicine. Nevertheless, women experience conflict different from men: “[t]his distinctive experience, although its effects differ from widely across cultures depending upon positions of women in particular societies, is related to the vulnerability of women when armed conflict breaks out.”

Violence against women in armed conflicts is a manifestation of the universal, unequal, power relations between men and women. Such violence crosses all cultural boundaries and has been consistently underreported and unrecorded, although it has resulted in death and suffering for countless women over the years.

The unequal power relations between men and women exist prior to war and remain during and after war, unless active measures to change it are taken.

6.1 Asian Values?
There is an ongoing debate about the universalism of human rights, those who are Universalists believe human rights to be universal and applicable to all human beings everywhere in the world, and Cultural relativists on the other hand differ. Cultural relativists claim that different cultures have different understandings of human rights. Therefore, trying to improve one view is regarded as a kind of imperialism; a cultural relativist may claim that practices by universalists might be seen as contrary to human rights, and universalists wish to eradicate certain cultural practices which are of great importance for their way of life and therefore their right to keep.

After the adaptation of CERD, ICCPR and ICESCR the First World Conference on Human Rights was held in Teheran in 1968. At the conference there was a division between east and west on different issues, amongst them the implementation of the adopted documents.

The Second World Conference on Human Rights was held in Vienna in 1993 and was organized to see what progress had been made since the Universal Declaration in 1948, and what problems still remained and how to overcome them. The final document from the conference, The Vienna Programme was noncommittal although it was the first human rights document which addressed all human rights and group specific rights. An issue that was heavily debated was the universality of Human Rights. The main controversy seemed to be between the West and Asia which led to question the universality of Human Rights.

Prior to the conference, regional meetings were held to prepare for the Vienna Conference, and to discuss issues of importance to each region. The regional groups which were defined by the UN were: Africa, Asia, Latin America, Eastern Europe, Western Europe and other

114 Ibid. p.7.
115 Rao, p.168.
117 Kouvo, p.111.
118 A/CONF.157/22
120 Kouvo, p.112.
121 Ibid. p.112-114.
The result from the Asian regional meeting is presented in the Bangkok Declaration; where the parties to the declaration stress the importance of sovereignty, and do not refer from imposing values on other states.\footnote{Kouvo, p.113.}

Reaffirming the principles of respect for national sovereignty, territorial integrity and non-interference in the internal affairs of States,

Recognizing that the promotion of human rights should be encouraged by cooperation and consensus, and not through confrontation and the imposition of incompatible values,

5. Emphasize the principles of respect for national sovereignty and territorial integrity as well as non-interference in the internal affairs of States, and the non-use of human rights as an instrument of political pressure;

6. Reiterate that all countries, large and small, have the right to determine their political systems, control and freely utilize their resources, and freely pursue their economic, social and cultural development;

In the Declaration there is emphasis on the importance of compliance with human rights and that derogation from those principles are not justifiable:

7. Stress the universality, objectivity and non-selectivity of all human rights and the need to avoid the application of double standards in the implementation of human rights and its politicization, and that no violation of human rights can be justified;

There is even recognition that human rights are universal but is stressed that national and regional cultural backgrounds should be recognized.

8. Recognize that while human rights are universal in nature, they must be considered in the context of a dynamic and evolving process of international norm-setting, bearing in mind the significance of national and regional particularities and various historical, cultural and religious backgrounds;

The universality of human rights is in some ways difficult to argue since the United Nations Charter from 1945 states that the United Nations shall promote “universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion”.\footnote{United Nations Charter 1945, chapter IX, article 55 (c).} Cultural differences are recognized but not seen as a legitimate reason deviate from human rights as seen in the Vienna Declaration, and in the General Secretary’s statement:

All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms.\footnote{Vienna Declaration and Programme of Action 1993. Kouvo p. 114.}
To be sure, human rights are a product of history. As such, they should be in accordance with history, should evolve simultaneously with history and should give the various peoples and nations a reflection of themselves that they recognize as their own. Yet, the fact that human rights keep pace with the course of history should not change what constitutes their very essence, namely their universality.\(^{126}\)

In the Bangkok declaration the main objection seems to be the division in the perception of which human rights are of greater importance; civil and political right in the ICCPR or the economic, social and cultural rights that are expressed in the ICESCR. It was a discussion that characterized the entire Vienna Conference.\(^ {127} \)

Reiterating the interdependence and indivisibility of economic, social, cultural, civil and political rights, and the inherent interrelationship between development, democracy, universal enjoyment of all human rights, and social justice, which must be addressed in an integrated and balanced manner,\(^ {128} \)

The ICCPR and the ICESCR are sometimes claimed to represent different generations of rights. The developing countries feel that the civil and political rights are given too much emphasis on the expense of the economic, social and cultural rights which more accurately express their needs as developing nations.

The Secretary General of the United Nations commented the regional reports in his opening address at the Vienna Conference:

> While human rights are common to all members of the international community, and each member of that community recognizes himself in them, each cultural epoch has its own special way of helping to implement them. In this connection, a debt of thanks is owed to Member States which, at the regional level, have reminded others of this reality. Yet this reminder must be a source of positive reflection, not of sterile misunderstanding.\(^ {129} \)

It could be claimed that the “Asian” values existed in the West and disappeared with industrialization and economic development but still exists amongst conservatives. “Thus, the debate may be miscast; it is not Asia versus Western values, but rather traditional versus modernity.”\(^ {130} \)

It is important to keep in mind that Asia is a vast region, composed of such diverse countries as; China, India, Thailand, Iran, Japan and Sri Lanka. These are countries with very different economic and democratic development; it is difficult to talk about a homogeneous culture.\(^ {131} \)

---


\(^ {128} \) Ibid.

\(^ {129} \) A/CONF.157/22, 12 July 1993.


\(^ {131} \) During the Asian Regional meeting in preparation for the Vienna Conference these diverse nations participated: Bahrain, Bangladesh, Bhutan, Brunei Darussalam, China, Cyprus, Democratic People’s Republic of Korea, Fiji, India, Indonesia, Iran (Islamic Republic of), Iraq, Japan, Kiribati, Kuwait, Lao People’s Democratic Republic, Malaysia, Maldives, Mongolia, Myanmar, Nepal, Oman, Pakistan, Papua New Guinea, Philippines, Republic of Korea, Samoa, Singapore, Solomon Islands, Sri Lanka, Syrian Arab Republic, Thailand, United Arab Emirates, Vietnam.
Much of the criticisms towards human rights and the claim that they are a western and inappropriate for Asia, has come from leaders in somewhat authoritarian regimes that are pressured both internally from their own citizens and externally by foreign leaders for political liberation. There are Human Rights NGO’s and activists in Asia that claim that the denial of Human Rights is nothing more than a way for leaders to stay in power.\footnote{Christie and Roy, p. 5-6.}

6.2 Universalism versus Culture Relativism – From a Women’s Human Rights Perspective

As the discussion of human rights’ universalism or not goes on peoples’ human rights are being violated every day, and women are deeply affected. Women are not only affected by the actual abuses but also from the discussion about the legitimacy of these rights. Women’s human rights are often questioned and not fully accepted in the name of culture, “[n]o social group has suffered greater violations of its human rights in the name of culture than women.”\footnote{Rao, p.169.}

Women have been, and still are, dependent of their rights to such opportunities as work and education sometimes based upon the pretext of tradition and cultural classifications that would be the bases of rights, not the grounds to deny rights. Thus, the right to culture has often been applied as the right of men to continue their traditional practice or custom of subordinating women.\footnote{Hernández-Truyol, p.28.}

In the reservations made to CEDAW many states claim that they do not see themselves bound by the Convention where it collides with their religious laws, or its constitution, even where the laws under the convention are deemed discriminatory. One of the most reserved against articles is article 2, which defines discrimination against women and the actions states should take to eliminate such discrimination.\footnote{List over countries reservations to the CEDAW: http://www.un.org/womenwatch/daw/cedaw/reservations-country.htm (February 9, 2006).} CEDAW states that customs that are discriminatory against women should be eradicated. To eliminate discrimination against women states undertake:

To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women.\footnote{CEDAW art. 2 (f).}

Women’s rights are sometimes perceived in the same way other human rights are; as a construction from the West that is being forced upon other cultures.\footnote{Mayer, Ann Elizabeth, Cultural Particularism as a Bar to Women’s Rights: Reflections on the Middle Eastern Experience, in WOMEN’S RIGHTS HUMAN RIGHTS – INTERNATIONAL FEMINIST PERSPECTIVES, eds. Peters, Julie and Wolper, Andrea, Routledge, 1995 p.176.} The condemnation of discrimination against women is not merely a western phenomenon and claiming so is to belittle women’s rights activist in other parts of the world. Uma Narayan, a feminist from India claims that “[...] Indian feminism is clearly a response to issues confronting Indian women” and takes the example of dowry death as an issue that Indian feminists work with;

If there seems to be a resemblance between the issues addressed by Third World feminists and those addressed by Western feminist, it is a result […] of the fact that women’s inequality and mistreatment are, unfortunately ubiquitous features of many ‘Western’ and ‘Nonwestern’ cultural contexts […]

In Colombo I had the privilege to attend the final part of the International Consultation on Women Human Rights Defenders, where several women spoke about their work.140 Women testified to the abuse they encounter, that sometimes is committed by their states but in most cases it is a result of the states not acting and protecting them or denying them rights. It was evident that states refusal to comply with women’s human rights has devastating effects.

6.3 The Sri Lankan Context
Buddhism has a central role in Sri Lanka; therefore it is interesting to reflect upon its attitude towards women. According to the Constitution of Sri Lanka:

The Republic of Sri Lanka shall give to Buddhism the foremost place and accordingly it shall be the duty of the State to protect and foster the Buddha Sasana, while assuring to all religions the rights granted by Articles 10 and 14(1)(e).

Every person is entitled to freedom of thought, conscience and religion, including the freedom to have or to adopt a religion or belief of his choice.

In Sri Lanka 69% of the population are Buddhists and are therefore the largest religious group.143 Prior to the introduction of Buddhism to Sri Lanka the Brahmin social system was dominant, it was “cast-based and strongly patriarchal” and “denied to women any other role than the domestic”.144

Buddhism has been considered to have opened up the social sphere for women as it amongst other things admitted women in the ranks of its clergy. Women now “had a culturally approved alternative style of life, the control of males over their social life and sexuality was diminished.”145 The nuns were still in a controlled environment even though they in their initial organization had substantial autonomy, they were subordinated the monks: “all nuns, however senior, should bow before any monk, however junior”.146

Despite the early establishment of an order of nuns after the introduction to Buddhism in Sri Lanka, the country remained a patriarchy where women had a subordinated role.147 Within Sri Lankan Buddhism, being born as women has been seen as a consequence of sins in a previous lifetime. Because only men can become a Buddha “a common aspiration among

139 Narayan, p.401.
142 Ibid. 10.
145 Ibid. p.111.
147 Jayawardena, p. 113.
women was to be a man in a future birth.”  

Some claim that “[m]any of the proverbs that devalue women’s intellectual and other abilities can ultimately be traced to […] Buddhist positions.”

Religion is an important part of the life in Sri Lanka and affects the country as does the current politics. The last presidential election in Sri Lanka, 2005, was won by Mahinda Rajapakse that was perceived as the candidate that would take a harder stand against the LTTE and wanted less foreign interference.

Due to the widespread poverty in many Asian countries, economic development has been a priority and it has in many cases been believed that sacrifices must be made in order to achieve prosperity which why the ICESCR is favoured.

This opens the door for the controversial argument, put forward by many Asian government officials that some civil and political liberties must be given up to achieve prosperity.

As Basil Fernando from the Asian Human Rights Commission points out; it takes more than the adaptation of laws to realize them. What needs to be solved is the gap between law and implementation; something that requires a social transformation and that must take place “within a living cultural context”. For that reason it is important to understand the “indignities” that matter to the people of that society, “and the cultural forms by which such indignations are constantly reinforced”.

Fernando discusses the enticement of an authoritarian regime in times of difficulties such as the ethnic conflict in Sri Lanka. In Sri Lanka there are some parties that would prefer a strong Head of State which they believe would be able to settle the ethnic conflict faster, or more efficient than a democratic government that is perceived as weak.

Something which could explain the outcome of the presidential election.

6.4 How Women in Sri Lanka Have Been Affected by the War

In a report from 2003 from the UN Special Rapporteur on violence against women, Rhadika Coomaraswamy, herself from Sri Lanka, writes:

Nearly two decades of armed conflict in Sri Lanka resulted in many violations of women’s human rights including rape in custody, rape, sexual harassment at checkpoints, and other violations due to the number of internally displaced persons and refugees.

---

149 Perera, p.162.
150 Christie and Roy, p. 5.
152 Fernando, p.170.
In Sri Lanka a great number of women have become widows, something that creates great problems in a society where widows are viewed as having lesser value and even to be a bad omen, in such context widows are often discriminated against.

Widows were marginalised by their communities, orphaned girls were deprived of basic education, and thousands of female-headed families struggling to survive are still waiting to be counted in official statistics so that they can receive aid.\textsuperscript{154}

Further, there is mounting evidence that rates of domestic violence increasing significantly in war zones, as well as in societies recovering from armed conflict.\textsuperscript{155}

A woman that was interviewed works with battered women in Colombo, Sri Lanka, explained that there was a higher frequency of spousal abuse in their Jaffna office, something that she attributed to the violence in the area; violence had become a part of their daily lives. The situation made it more uncertain for women since they were not safe anywhere.

Sri Lanka has an estimated 350,000 internally displaced people.\textsuperscript{156} These are either relocated or living in refugee camps. One woman that was interviewed had visited refugee camps in Sri Lanka and shared what she had encountered. She had spoken with women about their issues of concerns; one of them was the absence of sanitary napkins. Another concern was that there was the lack of doors in the toilet facilities. When she approached those in charge of the camp, whom were men, and asked for cloth that was not white, and about the doors, they did not understand why the women would need cloth or about the complaints with the doors, no men had made such complaints.

Women are not only victims, in Sri Lanka women are combatants in the LTTE; they are fighting in the front line against the government army that consist solely of men and act as suicide bombers.\textsuperscript{157}

\textbf{6.5 Possibilities within War: Changing Gender Roles}

It is estimated that women consist one-sixth of the armed forces of the LTTE. Having women in the armed forces does not automatically mean that they will be included in the peace process, or that their roles in society change once the war is over.\textsuperscript{158} Studies of the female suicide squad of the LTTE shows that women’s involvement is liberating at first; they can break free from the constraints of society such as marriage, and they enter a male dominated sphere. The organization they have joined is highly hierarchal and the power relations between the sexes is unequal and therefore women remain on unequal terms and are not a part of high level political decisions.\textsuperscript{159}

\textsuperscript{154} International Committee of the Red Cross 080305, Stories from the field – A voice for Sri Lanka’s war: http://www.icrc.org/Web/Eng/siteeng0.nsf/htmlall/6AAHXK?OpenDocument\&style=custom颢_print, widows (May 8, 2006).


\textsuperscript{156} UNHCR estimate from January of 2005, Country Info on Sri Lanka: http://www.unhcr.org/cgi-bin/texis/vtx/country?iso=lka (May 9, 2006).


\textsuperscript{158} Bunch, 2004, p.47.

In Sri Lanka the gender roles seem to be quite fixed for women. This means a gender role centred on the role of mother and wife, and their statuses has been dependent of their fathers, husbands, sons and brothers. Due to the armed conflict women’s gender roles in Sri Lanka have been changing. There are an increasing number of women headed households and women as primary bread winners, women work on the plantations and as migrant workers. Despite these changes it has not contributed to a profound change for Sri Lanka women whom are still valued by society through their martial status; “married women over a single and a wife over a widow”.  

After the death of a male provider the widow assumes a new role as the family provider. In many developing countries there exists a strict division of labour. In such patriarchal societies when loss of men is great and men have been the providers of their families and make up the workforce; the care of elders and children fall upon families that have then fewer workers providers than usual. The circumstances lead to increased poverty which is accompanied by increased violence against women.  

After a war, women make up the majority of the population. Women whom become providers and head of households assume a new role locally, as they do work previously done by men they gain the prestige associated with such a role. However, once the war is over it is common that the any gain that has been made is lost. 

As the next generation matures with its normal numbers of males, decisions concerning whom to educate and whom to advance at the cost of family wealth and labourers are often made on the basis of old traditions: The eldest son is selected to receive the benefits of the family’s sacrifice; the new prestige earned by women disappears.  

Women’s roles in Sri Lanka have changed due to the conflict and in the peace building process taking place there is a possibility to maintain the positive changes which could lead to greater possibilities for women.  

Despite having a female president, Chandrika Kumaratunga, from 1994 to November 2005 women have not been present at the highest levels of decision making. As the special raporteur of violence against women put it:  

There is an ongoing peace process but the involvement of women in the official proceedings is minimal.  

\[160\] Samuel, p.184.  
\[162\] Gardam, Jarvis, p.40.  
\[163\] Haas, p. 87. Gardam, Jarvis, p.41, 51.  
\[164\] Samuel, p.185-187.  
7.1 Gender Sub Committee

During the third session of negotiations in Oslo, Norway, in December 2002 the Sri Lankan Government and the LTTE agreed to set up a Committee to ensure women’s participation and include gender issues in the peace process; The Sub-Committee on Gender Issues (SGI).166

SGI held its first meeting in March of 2003. It was to;

- report directly to the plenary session of the peace talks and work closely with the other Sub-Committees and other mechanisms associated with the peace process. It will identify issues of concern to women that need to be addressed and bring those concerns into the agenda of the peace process.167

The Committee was composed of 10 members; 5 from the Sri Lankan Government and 5 from the LTTE. A mediator was, by the request of the parties, elected by the Norwegian facilitators.168

Behind the installation of the Committee was intense lobbying from several women’s organizations. Once the cease fire agreement was signed in 2002 the implementation of the agreement and that it would be “based on the principles of human and democratic rights” was a central question.169 Another important demand that was raised was “the inclusion of women and gender concerns in the process, including at peace talks that would follow”.170

Even though there seemed to have been an agreement in principle to include women in the peace process only one woman was represented at the peace talks, a representative from the LTTE; the wife of the LTTE’s political strategist and chief negotiator.171

For the Gender Sub-Committee the LTTE appointed five high level cadres and the Sri Lankan Government appointed five women from NGO’s, not belonging to any party. The Committee met twice before the peace talks were suspended in 2003.172

In the Secretary General’s follow up report to the UNSC Resolution 1325 the Secretary General mentions Sri Lanka’s gender subcommittee as an example on what countries have done in order to implement the resolution.173

---

170 Ibid.
7.2 Why Are Women Not Involved?

“South Asia has the greatest concentration of women head of states” and they are accepted.\(^\text{174}\) The acceptance is due to the fact that they are related to a successful male politician. Sri Lanka’s former president; Chandrika Bandaranaike Kumaratunga’s father, mother and husband were all in politics. Her father and husband were assassinated, after her father’s assassination her mother became the first female Prime minister in the world. Kumaratunga herself won the elections short after her husband was killed.\(^\text{175}\)

Despite having had a female president women’s representation in the government has never been higher than 6%\(^\text{176}\), in 2005 the number was 4.9%.\(^\text{177}\) There are several reasons for women not being active in politics, one of them is the risked entailed. Politicians in Sri Lanka have during the decades of violence been assassinated; which means that being a politician includes being a target.\(^\text{178}\) The danger is not specific for female politicians and does thus not explain why specifically women’s representation is low. Kumari Jayawardena, Secretary of the Social Scientists Association in Sri Lanka claims that the low representation of women is due to the patriarchal society.

Sri Lanka is a paradox of female leadership at the top and very high social indicators for women, but very little presence of women in our legislatures and local bodies. When it comes to political power, the boys start jostling and pushing! Even in positions where women are nominated... where you don’t have to contest... there have been cases where a woman is on the list of something and she moves out to give her husband a place! Such a phenomenon exists as does that of political families.\(^\text{179}\)

Swarna Jayaweera one of the founders of the Centre for Women's Research (CENWOR) in Sri Lanka discusses a “glass ceiling” as a reason for women’s exclusion:

...multiple roles and time constraints of women, socio-cultural norms of male leadership and the prevailing climate of violence limit the number of women who come forward to be candidates for election. [...]The "glass ceiling" operates effectively in the public and private sectors. There is only one women Secretary in a Cabinet Ministry - the Ministry of Women's Affairs. A few women hold key positions but the majority are concentrated at the "additional", "deputy" and "assistant" levels."\(^\text{180}\)

A woman that was interviewed claimed that women were not seen as equal to men, they were not seen as being as intelligent as men and were therefore not wanted in politics. As a reason that was offered for women not being involved in peace talks is the fact that there are few women represented in the Government and Parliament and those involved in the peace talks are all politicians.

The main reason for the lack of women’s participation seems to be the perception of women, and the roles women are expected to fulfil which do not include being involved in politics.

---

\(^{174}\) Samuel, p. 198.
\(^{176}\) Gomez, Gomez, p.1.
\(^{178}\) From the interview with the Chairperson for the National Committee on Women.
This leads to few women being active in politics and are therefore not involved in decision making or peace negotiations.

7.3 The Roles of NGO’s as Advocacy Networks: Affecting International Law

NGO’s and grassroots movements have been crucial for the improvement and development of women’s human rights.\textsuperscript{181}

Women’s human rights activists have come to recognize the power of the international human rights framework, which lends legitimacy to political demands, since it is already accepted by most governments and brings with it established protocols.\textsuperscript{182}

NGO’s have focused on women’s rights and made studies, reports and recommendations on the topic available; they have brought women’s human rights to the UN human rights agenda.\textsuperscript{183}

The social construction story of networks is a concrete and active story about groups who strive to re-create their world.\textsuperscript{184}

It is often forgotten as well that whether soft law and policy obligations are upheld is largely dependent on the engagement of governmental and non-governmental organizations and on the good will of states.\textsuperscript{185}

“[I]nternational norms and law depend primarily upon social sanctions rather than punishment,”\textsuperscript{186} the social sanctions being emulation, praise and ridicule.\textsuperscript{187} The methods of NGO’s to confront states for their actions that go against human rights can be seen as part of a socialization process that contributes to states compliance with international law.\textsuperscript{188} NGO’s use public ridicule such as shaming states that have breached international law which is done by making public the violations they have committed.

NGO’s make an important contribution to the compliance of international law by creating publicity and documenting violations.\textsuperscript{189} Conventions such as the CEDAW commits member states to turn in reports every fourth year about how they are complying with the convention. NGO’s can submit so called shadow reports that supply the committee with information that the state does not include in its official report, the committee can then comment on it.

[T]he ultimate test of such conventions will be the ability of grassroots women’s groups to use these instruments to bring about change. The most important measure of their success should be the extent to which they enable women to interpret, apply, and

\textsuperscript{181} Gesek, Mary and Bourque, Susan C., Grassroots Organizations and Women’s Human Rights – Meeting the Challenge of the Local-Global Link, in WOMEN, GENDER, AND HUMAN RIGHTS: A GLOBAL PERSPECTIVE, ed. Agosin, Marjorie, Rawat, 2003, p.247.

\textsuperscript{182} Friedman, p.19.

\textsuperscript{183} Gardam, Jarvis, p.14.


\textsuperscript{185} Kouvo, p.32.

\textsuperscript{186} Sikkink p.41.

\textsuperscript{187} Ibid. p.50.

\textsuperscript{188} Ibid. p.49-50.

\textsuperscript{189} Ibid. p.52.
enforce laws of their own making, incorporating their own voices, values and concerns.\textsuperscript{190}

In the Beijing Platform for Action it was stated that because women have limited access to traditional power structures such as political parties women have gained access through NGO’s. With these organizations “women have been able to articulate their interests and concerns and have placed women's issues on the national, regional and international agendas.”\textsuperscript{191}

The role of NGO’s is recognized and taken seriously by the international community. A sign of this is a new step by the Security Council. The Security Council has a measure, The Aria formula, which allows their members to hear NGO’s and women’s rights activists from areas of conflict and listen to their concerns, outside of the official meetings.\textsuperscript{192} This means that women’s rights NGO’s can make their voices heard and impact the development of women’s human rights.

There are certain difficulties attached with the power that NGO’s posses. They promote democracy but who sees to their organizational democracy and who do they answer to?\textsuperscript{193}

NGO’s may exclude certain groups with their rhetoric’s. Since certain NGO’s are more familiar with legal language they run the risk of taking over certain issues, and excluding many grassroots organizations.\textsuperscript{194}

Another issue of concern is the funding of the NGO’s. Most NGO’s are based in the developed world. NGO’s in developing countries receive much funding from the developed world which may raise issues such as motives behind the founding and it may be considered to be a sort of cultural imperialism.\textsuperscript{195}

All the NGO’s that were interviewed for the thesis mentioned funding as one of their greatest problems. An organization which works with peace issues explained that they are accused by the media and influential people for being part of a Christian conspiracy to undermine Buddhism because their founding comes from western Christian countries and organizations. The organization also explained that they have no other way of being funded since there are not resources in the country to fund them and their work is needed.

\textbf{7.4 Women’s Advocates in Sri Lanka; Issues of Concern and Obstacles}

The women that were interviewed for the thesis worked with different issues concerning women and women’s rights. They shared similar issues of concerns when working with women’s issues. From the interviews a few areas of concern have been identified: politics, lack of awareness, resources and a lack of a women’s movement.

\textsuperscript{191} Beijing Platform for Action.
\textsuperscript{193} Sikkinki, p.55.
\textsuperscript{194} Ibid. p. 48-49.
\textsuperscript{195} Ibid. p.55.
Proactive peaceful protests are not without consequences, some of which are personally costly and violent to those seeking peaceful reform. Activism for peace tends to be a choice made by older, more educated and more reflective women.\textsuperscript{196}

There does not seem to be a political will to implement women’s rights. Politicians claim to want to improve women’s situation but it seems to be empty words. Women are not in the decision making level and do therefore not participate in a peace process.

The existing laws are not known to people and therefore not used, as with the new Domestic Violence Act. The awareness is not only limited amongst the population, politicians did not seem to have knowledge about international conventions, or resolutions concerning women; such as The Security Council Resolution 1325.

One of the main concerns and obstacles for many NGO’s is the lack of resources and funding. Much time is spent to get financial support; something that is necessary if they are to continue with their activities.

A noteworthy feature in recent years has been the increased activity of women's organizations at all levels after the stimulus of the Beijing Conference. They have become in particular an articulate lobby for action to eliminate violence against women. Regrettably, these organisations tend to cooperate outside mainstream programmes and their activities are bedevilled by lack of adequate resources.\textsuperscript{197}

Even though women have been organized in different ways for a long time in Sri Lanka there does not seem to be a specific women’s movement. The Asian development bank states in their report about Sri Lanka that:

In fact, the most visible development since the Beijing Conference has been the organization of women at all levels, from the grass roots upwards in groups, although there is no strong women’s movement in Sri Lanka.\textsuperscript{198}

One woman that was interviewed said that there are active women and individuals that make a difference but a movement does not exist. These active individuals have been successful, they have contributed to great changes with their lobbying but still women have no political influence.

7.5 Possible solutions

Women in Sri Lanka are underrepresented in the government due to the patriarchal society that creates a glass-ceiling.

Several of the women interviewed for the thesis claimed that women in Sri Lanka were second class citizens; not considered equal to men. In some cases women might even be considered to be less intelligent and therefore not capable of political work, despite having a female president.

In the Beijing Platform for Action the unequal division of labour and responsibilities within households being placed on women is seen as something that limits women’s opportunities to

\textsuperscript{196} Haas, p.90.
find time and develop skills that are required for participation in decision making. A more
equal sharing of responsibilities is seen as being able to enhance women’s quality of life and
enhance their opportunities to participate in public life.\textsuperscript{199} Further more, the Beijing Platform
for Action establishes that “[e]quality in decision-making is essential to the empowerment of
women” and that affirmative action has led to larger representation of women in Governments.\textsuperscript{200}

As established previously women have a right, according to international human rights
treaties such as CEDAW, to be part in the political life and in the peace process. CEDAW
article 7 requests Member States to take all appropriate measures to eliminate discrimination
against women. The UNSC Resolution 1325 article 8 calls all actors involved, when
negotiating and implementing peace agreements, to adopt a gender perspective and to involve
women in all of the implementation mechanisms of the peace agreements. The problems are
not the laws but the lack of implementation of them.

In a patriarchal society with strict gender roles some special measure might be necessary in
order to achieve changes; in this case the participation of women in Sri Lankan politics and
specifically with the peace process. Article 4.1 of CEDAW deals with temporary special
measures:

\begin{quote}
Adoption by States Parties of temporary special measures aimed at accelerating de
facto equality between men and women shall not be considered discrimination as
defined in the present Convention, but shall in no way entail as a consequence the
maintenance of unequal or separate standards; these measures shall be discontinued
when the objectives of equality of opportunity and treatment have been achieved.
\end{quote}

Temporary special measures could be quotas, affirmative action, to achieve more women in
parliament.

In the CEDAW Committee’s recommendation for the implementation of article 7 and 8 of
the Convention, dealing with women in political and public life, they write that;

\begin{quote}
While removal of de jure barriers is necessary, it is not sufficient. Failure to achieve
full and equal participation of women can be unintentional and the result of outmoded
practices and procedures which inadvertently promote men. Under article 4, the
Convention encourages the use of temporary special measures in order to give full
effect to articles 7 and 8.\textsuperscript{201}
\end{quote}

The Beijing Platform for Action recommended actions to be taken by Governments under the
section on Women in Power and Decision-making include affirmative action:

\begin{quote}
setting specific targets and implementing measures to substantially increase the number
of women with a view to achieving equal representation of women and men, if
necessary through positive action, in all governmental and public administration
positions.\textsuperscript{202}
\end{quote}

The CEDAW Committee and The Beijing Platform recognize the importance of women’s
full participation in politics and peace building, and therefore recommend temporary

\textsuperscript{199} Beijing Platform for Action, para.187.
\textsuperscript{200} Beijing Platform for Action, para. 189.
\textsuperscript{201} Committee on CEDAW – General recommendation No. 23 -- sixteenth session, 1997 women in political and
public life, para. 15.
\textsuperscript{202} Beijing Platform for Action, para. 190.
measures. Affirmative actions might be considered controversial; they would ensure women a specific amount of seats in Government and Parliament which would entail an intrusion in the current order, even if temporary. It would lead to men losing their positions and a shift in power. For a society with fixed gender roles such a change could seem drastic. If it was not controversial, and there existed a consensus and understanding for the temporary measures; countries would be enforcing them.

However, affirmative actions will not change the root of the problem; the main reason for women’s exclusion seems to be the perception of women and their perceived roles in society. It is a deeper issue which will take time to change. None the less, affirmative action could be a help on the way. Not only does it have the immediate effect of including women, it also has the possibility of changing attitudes towards women’s participation. Changed attitudes will secure women’s participation. Seeing women active will show how they can contribute, and that their participation is vital to achieve a lasting peace. In order to secure peace the participation of everyone in the society is required.

Perhaps a shift of focus would be constructive: to stop viewing affirmative action as a measure of including women and to start seeing it as a measure to end the discrimination of women. Affirmative action is a tool to ensure that women are not denied their human rights to participate in decisions that affect their lives and future.

8. Conclusions

The study of women’s human right’s and their implementation in Sri Lanka has demonstrated that there are primarily two issues that impede this process: the general lack of implementation internationally of human rights law concerning women’s rights, and the presence of conflict. This leads to the absence of women’s representation in peace negotiations.

Culture and religion may be a reason for women’s rights not being implemented in Sri Lanka but according to CEDAW article 2 (f); customs that are discriminatory against women should be abolished.

As has been established, women’s situation during armed conflict is a result of their unequal power relations that exist prior to war. During conflicts gender roles change and after war, in the re-building and peace building, there is an opportunity to secure advancements that may have been made by women. Sri Lanka is officially in a post war situation and will hopefully resume the peace talks in a near future. During these peace negotiations it is important to include women and not simply in an ad hoc Committee such as the Gender Sub Committee but in the official delegation.

Women are not included in the official delegation because of their absence from politics. Only 4.9 percent in the Sri Lankan Parliament are women. A possible solution could be to make use of article 4 in CEDAW that stipulates temporary special measures. Such a measure could be to reserve a certain percentage of seats in Parliament and, or Government for women, that is, affirmative action.
References

Literature


**Internet Sources**


http://www.un.org/womenwatch/daw/cedaw/history.htm - History of CEDAW.

http://www.un.org/womenwatch/daw/cedaw/ - Division for the Advancement of Women, Department of Economic and Social Affairs.


http://www.un.org/womenwatch/daw/cedaw/reservations-country.htm - List over countries reservations to the CEDAW.
Declarations, Conventions, Resolutions, Conferences and Reports


A/54/4 , 6 October 1999, Optional Protocol to the Convention on the Elimination of Discrimination against Women


CEDAW/C/LKA/3-4 – Sri Lanka’s third and fourth report submitted to the Commission on CEDAW.

Committee on CEDAW – General recommendation No. 23 -- sixteenth session, 1997 women in political and public life.


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

International Covenant on Civil and Political Rights - ICCPR

United Nations Charter 1945

Universal Declaration on Human Rights 1948

Vienna Declaration and Programme of Action 1993


The United Nations Fourth World Conference on Women Beijing, China - September 1995

Action for Equality, Development and Peace, Platform for Action


Prevention and Response to Sexual and Gender-Based Violence in Refugee Situations, Inter Agency Lessons learned Conference Proceedings 27-29 March 2001- Geneva, UNHCR


*Getting it Right, Doing it Right: Gender and Disarmament, Demobilization and Reintegration*, United Nations Development Found for Women 2004
Appendix


The Chairperson for the National Committee on Women, Colombo.

A lawyer working for Women In Need, Colombo.

Employee at the Head of Mission's Office, Sri Lanka Monitoring Mission (SLMM), Colombo.

A teacher at the Department of Law at the University of Colombo.

The Chairperson for Women’s International League for Peace and Freedom (WILPF) in Sri Lanka, she was also working for National Antiwar Front, Colombo.

The executive Director of the National Peace Council of Sri Lanka, Colombo.

The Gender coordinator at the National Peace Council of Sri Lanka, Colombo.

The Chairperson for the Center for Human Resource Development, Colombo.

Center for Policy Alternatives, Colombo.

The Chairperson for the Association of War Affected Women, Kandy.

Center for Development Alternatives, Kandy.