



Policy Brief - Forum against Gender-based Violence



IMPLEMENTING THE NATIONAL HUMAN RIGHTS ACTION PLAN – REDUCING VIOLENCE AGAINST WOMEN

“Rights of Women” is one of the eight thematic areas in the National Action Plan for the Protection and Promotion of Human Rights 2011-2016 (National Human Rights Action Plan/NHRAP). A key Focus Area/Goal under this thematic area is reducing violence against women, and a number of Activities are identified to achieve this goal along with Key Performance Indicators, Responsible Agencies and Timeframes. This policy brief aims to highlight some of the most urgent of these Activities. It also elaborates on these Activities and attempts to focus them more sharply on the most important changes required to make a practical difference in the lives of women suffering violence. The policy brief links the relevant NHRAP Activities to the corresponding recommendations in the CEDAW Committee’s latest Concluding Observations on Sri Lanka (2011).

1 Strengthening Police Women and Children’s Desks (Section 4.1.a, NHRAP chapter on Rights of Women)

Police Women and Children’s Desks (WCDs) operate around the country, under the supervision of the ASPs of each District. The establishment of these Desks within the purview of the Police Bureau for the Prevention of Abuse of Women and Children, recognises that women subject to violence require specialist attention. There are 430 police stations across the country, with 43 WCDs functioning as coordinating offices, bringing together the data on incidents of violence against women and children, and feeding this to the central Bureau. The NHRAP Activities and Performance Indicators bring out particular areas where the functioning of WCDs needs to be improved.

With greater awareness and mobility there are indications that more women may be seeking the help of the police. A recent study of domestic violence survivors published by Women in Need (WIN) (*Voices of Survivors*) in areas in which WIN works, showed that 70% had gone to the police. In 6% of the incidents the police had filed a legal case against the perpetrator and in 64% of the incidents the police had referred the victim to an institution or individual providing support. In contrast a recent study conducted by Oxfam GB (*Findings of a GBV survey in Oxfam working areas in the East – to be published*) found that only 10% of victims approached the police while 67% remained silent and. The majority of victims who approached the police said that the police had recorded their complaint, advised the perpetrator to stop the behaviour and advised the woman to live peacefully with the



perpetrator. In 29% of the cases the police took legal action against the perpetrator and referred the women to the hospital.

The NHRAP identifies the following Activities to enhance protection for women through WCDs.

1.1 NHRAP Activity: “Upgrade the stature of Women and Children’s Desks to attract competent staff”

The Performance Indicator for this Activity is that the full cadre for Women and Children’s Desks be appointed. This shows that there are less officers assigned to these Desks than identified by the initial cadre assessment, and calls for this to be rectified.

1.2 NHRAP Activity: “Strengthen Women and Children’s Desks of the Police Department with adequate resources and trained staff to enhance performance”

This is a different point relating to the human and other resources provided to WCDs to carry out their work effectively. A frequent problem which is brought up is that of officers attached to the Women and Children’s Desks being used for other functions, so that they are not available for the functions for which they were recruited. There are reports of women having to wait a long time to register their complaint, and unavailability of resources (transport, usually threewheelers) to investigate complaints and arrest perpetrators.

Lack of fluency in the language of complainants is another resource-related problem facing the WCDs. Despite efforts to improve the situation there is a continuing dearth of Tamil-speaking officers at WCDs in predominantly Tamil-speaking as well as in multi-ethnic areas – Ampara, Jaffna, Moneragala, Nuwara Eliya.

Access to justice for women victims of violence is thus restricted on language grounds. Within the plantation sector there are informal barriers to people and especially women accessing police services. There are also instances where, even if the complaint is “taken” in the Tamil language, it is recorded/written down in Sinhala and the complainant asked to sign a document which she cannot read.

The police posts in hospitals are often a first point of contact with the legal system for victims of violence. However, strong coordination is required amongst the hospital police post, the WCD and the Judicial Medical Officer (JMO) to ensure the system works effectively. As the complaint provided to the hospital police is not relayed to the area police station, women frequently find that they have to report the incident twice, once to the police at the hospital and then to the police WCD/station, causing delays in transmitting JMO reports and other legal procedures.

Despite a commendable effort on the part of the Police Women and Children’ Bureau, the National Committee on Women and other agencies to carry out gender sensitivity and skills



training, insensitive handling of cases of violence against women on the part of the police, including the WCDs themselves, is a continuing problem.

1.3 NHRAP Activity: “Establish a coordination mechanism between MCDWA and WCDs, which includes outreach to community and focus on psychosocial support”

Inadequate coordination between the mandated agencies has been a key factor inhibiting the effective delivery of services to women who suffer violence. Stronger linkages between the Ministry of Child Development and Women’s Affairs (MCDWA) through the Women Development Officers (WDOs), and the Police WCDs will fill this gap to a great extent.

Currently the duty list of the WDOs (who come under the Women’s Bureau of the MCDWA) has more of an economic empowerment focus than a violence prevention/protection one. However there is increasing recognition by the Ministry that WDOs could play a catalytic role in reducing violence against women with their links to the community, both generally and through the Women’s Societies they establish at village and divisional level (Kantha Karya Samaja and Kantha Bala Mandala).

Action Points – *upgrading WCDs:*

- Appoint full cadre of officers for WCDs

Action Points – *resources and training:*

- Systematise and regularise training for WCD officers currently carried out by government and non-government agencies. This includes MCDWA ensuring that donor support to the Ministry is provided in a planned, coordinated and targeted manner to fill the existing gaps in technical and financial resources necessary for WCDs to deliver a quality service to victims of violence.
- Put in place a mechanism to deal with frequent transfers of trained officers.
- Have systematic training for police officers *other than the WCD officers* – so that there is a broader understanding and acceptance of the need for special assistance to women victims of violence across the police force. Currently there is ad hoc gender training for the police, mainly for police trainers of the Police Academy under different programmes (e.g. National STD-AIDS Control Programme), but we urge that this training be mainstreamed into regular police training, and that there be follow-up to the training of trainers to ensure the message is taken much wider than the Police Academy staff.
- Ensure the necessary minimum resources (threewheeler, separate space/desk) are allocated to all WCDs and these are used only for this purpose. Sensitise ASPs and ensure they monitor the proper use of these resources.
- Ensure officers attached to WCDs speak the local languages of the area where they are stationed, and when transferred they are always replaced by an officer with the same language ability.

Action Points – *coordination between WCDs and MCDWA:*



- Institutionalise regular meetings between the WDOs and WCD officers at sub-district level, to discuss caseloads and obtaining the support required for women suffering violence, including legal, psychosocial and livelihood support.
- MCDWA to work with Ministry of Social Services to standardise psychosocial and counselling services, through mapping of qualified service providers both government and non-government and formulating a referral system.
- MCDWA to formalise coordination mechanism including other relevant government agencies (Ministry of Social Services, Family Health Bureau, Hospital GBV Desks/Mithuru Piyasa, shelters) at Divisional, District and national level.

Related CEDAW Committee Concluding Observations:

Concluding Observation 25

(b) Carry out additional educational and awareness-raising trainings for the judiciary and public officials, in particular law enforcement officers, health service providers and social workers, community leaders and the general public so as to raise awareness and sensitization that all forms of violence against women constitute criminal offense;

(c) Take the necessary measures to provide support to victims of violence, including by improving women's access to justice, and implement its decision to establish State-sponsored shelters for victims of violence; ...

(e) Take measures to prevent violence against women, investigate occurrences, prosecute and punish perpetrators;

(f) Provide protection, relief and remedies, including appropriate compensation, to victims and their families;

2 Implementation of the Prevention of Domestic Violence Act (Section 4.1.a, NHRAP chapter on Rights of Women)

NHRAP Activity: "Implement the Plan of Action supporting the Prevention of Domestic Violence Act 2005 (PDVA)"

The Plan of Action for the PDVA was formulated in 2006 with the involvement of stakeholders including line ministries, the police and civil society. It is a comprehensive document covering the following aspects under the broad areas of prevention, protection and provision (services):

- i. Community education and awareness raising
- ii. Training and capacity building
- iii. Infrastructure and support services
- iv. Media
- v. Monitoring and implementation of the Act
- vi. Coordination and collaboration
- vii. Maintenance of records and research
- viii. Policy and policy makers

The National Committee on Women is envisaged as playing the lead role in coordination, advocacy and monitoring related to the Act.



The PDVA has been successful in bringing the issue of domestic violence out into the open. Protection Orders obtained under the Act have been a means of relief to many women suffering violence in the home. The MCDWA primarily through the NCW has done much, particularly with regard to the first two components – awareness raising and training. However there are some important areas in which more needs to be done to bring the benefit of the PDVA to more people who need it.

The following obstacles are encountered in implementing the Act – mostly identified by Ms Dhara Wijayatilake in another WIN study analysing cases under the PDVA: *Judicial process:*

- a) Courts sometimes ask for proof of violence even for an Interim Protection Order (IPO). The Act however permits an IPO to be issued on the evidence of the applicant alone, and does not preclude an IPO being granted even solely on the written application.
- b) Courts do not always hold the inquiry within the stipulated time limit of 14 days of receipt of the application under the Act.
- c) Inquiries are not concluded expeditiously.
- d) Notices are not served on respondents immediately upon issuing the IPO (the practical difficulties here need to be identified.)
- e) For the purpose of granting the Protection Order (PO) the court should focus on the need to restrain the respondent from committing (further) violence, and not on any other factors such the causes of the violence. Sometimes the courts take these into account. They should be dealt with under supplementary orders for counselling etc.
- f) The PDVA does not make provision regarding the settlement of the “dispute” between the parties. However this is sometimes resorted to, even before issuing the IPO. Courts must clearly reflect the distinction between the need to ensure immediate protection of the applicant from violence, and the continuation of the relationship between the applicant and the respondent – which could be assessed later based on the report of a counsellor for which there is provision in the Act. When deciding to issue or not issue an IPO or PO, the Act requires that the immediate prevention of (further) acts of violence must be prioritised over other factors.
- g) Court supervision of compliance with IPOs and POs is inadequate. If there is no effective supervision over the Order the “relief” obtained can be rendered meaningless.
- h) Courts do not make adequate use of the Prohibitions and Supplementary Orders provided for in the Act. A PO may prohibit the respondent from entering the residence of the applicant. A variety of Supplementary Orders could be made, for instance: placing the applicant in a shelter; or requiring a social worker, counsellor, family health worker or Probation Officer to monitor the observance of the PO and submit a three-monthly report to court.

Police:

- a) The police do not always prioritise the safety of the complainant. There is a tendency to trivialise or “settle” the matter between the parties, advising the complainant to go back to the perpetrator thus placing her at greater risk.



- b) The police do not make sufficient use of their legal standing specifically provided for in the Act to make applications on behalf of victims.

Support services:

- a) The role of the social worker or counsellor as envisaged in the Act has not been effective, mainly it seems due to the lack of proper skills/training and understanding of their role.

In view of these particular difficulties identified, this policy brief advocates that the following areas of the PDVA Action Plan be prioritised for immediate implementation:

- *Support services*
- *Coordination and collaboration* (amongst line ministries and amongst service providers both government and non-government)
- *Monitoring* implementation of the Act, incorporating maintenance of records and research

Action Points – extracted from the PDVA Action Plan:

- Improve domestic violence risk assessment and case-management processes aimed at early intervention as well as effective investigation and prosecution. (linked to NHRAP Activity in 1.1. above on strengthening Women and Children’s Desks.)
- Collaborative case management linked to one-stop crisis centres to be mainstreamed/replicated
- Divisional Secretariat through WDOs to connect DV-affected families with livelihood-focused CBOs and other organisations
- MCDWA to set up a Protection Order monitoring unit (this could be linked to the NCW complaints centre if the capacity exists). This unit could be charged with the important responsibility of identifying and addressing gaps in the Act’s implementation – many of which are highlighted above. Measures could include: judicial sensitisation and working with the Ministry of Justice/Judges Institute to incorporate PDVA into training curricula; streamlining ongoing police training and sensitisation programmes to make them more targeted/effective; linking with the Ministry of Social Services on enhancing the capacity of social workers, counsellors etc.
- Develop consistent reporting tools to gather standardised data on DV cases – from police, hospitals, counselling centres etc.

Related CEDAW Committee Concluding Observations:

Concluding Observation 25 (b), (c), (e) and (f) – see above

**3 Preventing sexual harassment in the workplace
(Section 4.1.a, NHRAP chapter on Rights of Women)**

3.1 NHRAP Activity: “Review and implement an Anti-Sexual Harassment Policy in government sector institutions”



With amendments being introduced to the Penal Code to specifically criminalise sexual harassment some years ago, there was interest in adopting anti-sexual harassment policies within institutions, but this momentum did not appear to be sustained. By including this in the NHRAP, the government recognises that sexual harassment in employment is still very much a problem which needs to be promptly addressed.

3.2 NHRAP Activity:

“Formulate and implement an effective Anti-Sexual Harassment Policy, including a grievance mechanism, in the private sector” and

“Monitor the implementation of the Anti-Sexual Harassment Policy in the private sector”

The NHRAP rarely touches upon the human rights obligations of the private sector, but this is one area where it acknowledges the responsibility of government to safeguard rights through its regulation of the private sector. Some large private sector enterprises (particularly in the garment industry) have adopted anti-sexual harassment policies and are bringing in gender experts to assist in rolling out the policy.

Action points:

- MCDWA to carry out a mapping of which government institutions have policies
- Employers Federation of Ceylon to carry out a mapping of which companies have policies
- Where policies exist these should be reviewed and used as a base to develop policies for institutions that do not have them. In some cases they may simply be adopted by the other institutions.
- MCDWA together with Employers Federation and Chambers of Commerce to take stock of the current status of implementation/roll-out of policies in the private sector and apply that learning to other institutions.

Related CEDAW Committee Concluding Observations:

Concluding Observation 35

(c) Include in its next periodic report legislative and other measures taken to protect women from sexual harassment in the workplace.

4 Reviewing the Vagrants Ordinance (Section 6.1.c, NHRAP chapter on Rights of Women)

NHRAP Activity: “Explore the updating of the Vagrants Ordinance”

(read with Key Performance Indicator: “Ordinance amended to address discriminatory provisions/treatment”)

The Vagrants Ordinance of 1842 is a clearly outdated and archaic piece of legislation. Read together with the equally outdated Houses of Detention Ordinance 1907, it is applied in a manner which discriminates and harasses women. The discriminatory treatment arises partly



from the provisions of the law itself, and partly from the wrong application of the law. Its repeal/amendment has been proposed with increasing frequency over the past few years. A clear analysis of the legal and administrative situation, with cogent and practical recommendations, is found in a report of the Human Rights Commission on the Methsevana State House of Detention (2004).

Reforms needing legal amendment:

- The laws permit the detention of persons for non-criminal behaviour including begging, not being able to earn his or her own livelihood etc., due to the inconsistency between the definitions of vagrant in the two Ordinances. This has resulted in women being placed in the Home for a diverse range of reasons such as mental illness, poverty and soliciting.

Reforms not necessarily needing legal amendment:

- Women are detained without a release date being specified by the Magistrate's Court.
- Women are detained beyond the release date specified in the court order.
- Women are denied release from detention unless they have a guardian who can take care of them.

Although these changes can be made within the law as it currently stands, in the long term it may be wise to amend the law to ensure absolute clarity

We strongly urge the immediate implementation of the following recommendations in the HRC report summarised/recast below:

Action points:

- Amend the Vagrants Ordinance and Houses of Detention Ordinance to make clear that non-criminal behaviour will not justify detention; and to specifically state that no adult detainee will require a guardian in order to be released.
- Arrange a meeting between Ministry of Social Services, Ministry of Justice and magistrates to
 - o Formalise a uniform sentencing procedure requiring judges and magistrates to specify a release date when sentencing
 - o Prohibit a house of detention from refusing to release adult women for the reason that they have no guardian
- Strengthen the rehabilitation focus of Methsevana by
 - o Providing vocational training and livelihood support for women
 - o Encouraging communication with families and supporting reintegration into the community
- Refer women with mental illnesses to mental hospitals or other relevant institutions and convert the current psychiatric ward into expanded housing for detainees.
- Ensure healthy, safe and sanitary conditions, including avoiding overcrowding and better use of the buildings and space available.



Related CEDAW Committee Concluding Observations:

Concluding Observation 29

The Committee urges the State party to ensure that the police refrain from applying the provisions of the Vagrancy Ordinance to arrest sex workers on the street.

**5 Protection for women affected by conflict
(Section 7.2.a, NHRAP chapter on Rights of Women)**

NHRAP Activity: “Formulation of a policy on war widows in all parts of the country which includes

- 1) Identification/mapping on an area basis
- 2) Needs assessment including employment needs and livelihood development options”

We believe that the problems of violence faced by women affected by the conflict require special attention due to the increased vulnerability of these women created by the war and post-war social and economic conditions. In identifying the corresponding “Issue” to this Activity the NHRAP refers to economic issues, land and housing rights, *and vulnerability to exploitation*”. It should be acknowledged that the situation of women in conflict-affected areas has gradually improved. Ground information nevertheless points to some current priorities, including establishing and increasing women’s access to government services such as GBV hospital desks, Police Women and Children’s Desks and reproductive health services.

This policy brief strongly argues for the inclusion of protection needs along with other needs, in any assessment or intervention relating to war widows. While the government has initiated some welcome measures for livelihood and income generation support, these need to be expanded for more comprehensive coverage and incorporate protection concerns.

Action Points:

- Obtain accurate data on war widows – numbers, locations
- Conduct comprehensive needs assessment across all support sectors – economic/livelihoods/vocational training; land, housing and property entitlements and access to civil documentation; security and protection; psychosocial and counselling; reproductive health information and services

Related CEDAW Committee Concluding Observations:

Concluding Observation 41

(a) Protect the women affected by the prolonged conflict, particularly the Tamil minority group, including internally displaced women and female ex-combatants from any form of human rights violations;

(b) Promptly investigate, prosecute and punish all acts of violence including acts of sexual violence perpetrated by private actors as well as by the armed forces, the Police and militant groups;

(c) Establish counseling centres for women to address the traumatic experiences, specifically with regard to sexual violence;