REMEMBERING SUNILA ABEYSEKERA

SEXUAL AND GENDER BASED VIOLENCE IN NORTHERN SRI LANKA

THE STATE'S POWER OF 'EMINENT DOMAIN' *VIS À VIS* VULNERABLE COMMUNITIES

LAW & SOCIETY TRUST

CONTENTS

Editor's Note... ... ...

The Concluding Double Issue of the *LST Review* for 2013 remembers the late Sunila Abeysekera, human rights activist and feminist. A series of tributes by friends and colleagues capture the multi-faceted aspects of a personality who moved in-between spheres of political activism, feminism and the arts with seemingly effortless ease.

At heart, Sunila was refreshingly non-establishment in the most fundamental sense of the term, defying government (all governments) as well as ordinary conventionalities that society thought fit to impose. Her empathy with victims was not a manufactured emotion; rather, she protested deeply and forcefully against injustice. Neither was she deterred by slander and calumny which would have cowed others of lesser mettle. And her uniqueness came perhaps most from her ability to engage not only with the city-based elite as it were but also the rural, reaching out with a singular grasp of language and acute political awareness which few could boast of in this country.

The reach of her advocacy was international as well as national. Among her many interventions, as Radhika Coomaraswamy reminds us, Sunila's indefatigable effort in setting into place definitive international standards on the prohibition of enforced disappearances was particularly relevant. LST publishes these tributes in poignant and heartfelt memory.

We also publish a contribution by independent researcher *Eva Sparks* which focuses on post-conflict sexual and gender based violence (SGBV) in northern Sri Lanka. She looks at the impact of gender roles in the militant struggle carried out by the Liberation Tigers of Tamil Eelam (LTTE) and observes as follows;

> *The relatively short military history of the LTTE meant the use of women was not challenging a long-standing masculine military tradition with established gender roles where men were violent and women were passive. This made it easier for women to occupy non-traditional roles. The militarised environment presented a new foundation on which gender roles could be built. It was not seen as a threat to tradition or a militarised masculine identity and by most accounts women were viewed as valuable and equal combatants.*

As she affirms, SGBV in the conflict and non-conflict environment in Sri Lanka is perpetrated by 'both domestic partners and authority figures.' Drawing a distinction between 'legitimated' violence and 'de-legitimated' violence, she contrasts the recordedly high prevalence of domestic violence in the former conflict affected areas with the low rate of violence by non-family members and marks this as different to other post-conflict environments which demonstrate high rates of both types of violence.

No doubt the argument that this contrast is primarily attributable to the impact of the significant role played by women in the LTTE's militant struggle may be contested but the discussion opens interesting questions as to gendered roles in post-conflict in the North and East. Her concluding observation that initiatives to address SGBV should address men as well as women is of undoubted value.

The last contribution to this Issue is by *Ashwita Ambast* who explores law and practice relating to the power of the State to acquire land in two neighbouring countries, India and Nepal in the context of similar discussions in Sri Lanka. As she demonstrates, inadequate legal provision and unsympathetic administrative practice which render rural communities and particularly women highly vulnerable, are common across the region. Provision for marginalized groups to lodge objections at the preliminary stages of such acquisition proceedings and to have those appeals taken into account is notably lacking. Uniform reforms in the laws of South Asian countries remain a priority in this regard.

Kishali Pinto-Jayawardena

"We were Feminist First" Sunila

Kumudini Samuel[*]

My work intertwined closely with some aspects of Sunila's work over the last thirty- five years - This was in the areas of feminist activism; human rights and women's rights activism and activism around the ethnic conflict and peace building in Sri Lanka. Sunila's contribution to all these arenas of work is of such magnitude that a short account as this cannot begin to do justice to any of it.

I therefore choose to write here only on Sunila's contribution to catalyzing the activism of the nascent feminist/women's movement of the early 1980s and the feminist theorizing she encouraged to underpin this activism. When I first met Sunila in 1979, her political persuasions were left leaning and she herself had just come out of a brief spell in the JVP. At the time, she together with a number of women in the different political formations of the left, particularly the New Left, were disillusioned by the marginalisation of women and women's concerns by these seemingly radical social movements. Sunila therefore began seeking alternate spaces for her social and political activism.

The social tumult of the 1970s and exposure to radical thought and new consciousness paved the way for an upsurge of feminist activity nationally, some of which was influenced by the resurgence of interest and commitment to feminism internationally. This influence was to find fertile ground in Sri Lanka, already steeped in a rich history of women's activism in class struggle, nationalist politics and liberal feminist struggles for equal rights in the pre Independence period and immediately after.

By the mid 70s many of the women associated with progressive organisations and movements went on to form feminist women's organisations. These included Kantha Handa (1976), Muslim Women's Research and Action Forum (MWRAF) and the Academy of Adult Education for Muslim Women (1976), Hatton Women's Committee (1976), followed by a spate of autonomous women's groups in the early 1980s – the Women's Education and Research Centre, the Women's Study Circle, Jaffna, the Centre for Women's Research, the Women's Liberation Movement, the Progressive Women's Front, the Women's Centre and so on. Sunila too went on to form the Women and Media Collective (WMC) in 1984.

In her search for alternative spaces in which to further her feminist persuasions, Sunila teamed up with Kumari Jayawardene to write a pamphlet titled *Kantha Handa: Mai Dina Kalamba 1*,(Voice of Women: May Day Issue No.1)[1]. on the myths about women, which they distributed at the joint May Day rally of the Left in 1975. Both authors recalled the activity in private conversation but neither had a copy of the document. I located it by chance in an old miscellaneous file at the WMC in June 2006 and both Kumari and Sunila subsequently corroborated its genealogy. This collaboration led to the next important piece of

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[*] Kumudini Samuel is a founder member and former director of the Women and Media Collective. She is a women's and human rights advocate

[1] This could be considered the first pamphlet/leaflet of the new wave of feminist activism in the 1970s in Sri Lanka.

work. This was the Marga publication in 1976 titled *Kanthava Samajaya Vimukthiya* (Women Society Liberation)in two volumes, which contained a series of articles translated, from English into Sinhala by Sunila. She noted that in the process of selection she and Kumari Jayawardena chose "everything linked to the struggle" and said: "It was totally in the socialist mode. What a party cadre would choose. Although I was not in a party and neither was Kumari."[2]

Indeed, the choice of articles is very interesting. It was virtually a feminist reader on the women's question for a Sinhala public. The first volume introduced feminism and liberalism. It carefully mixed Marxist pioneers with the radical thinkers of the Enlightenment and moved on to early liberal feminists – Mary Wollstonecroft, Sourjourner Truth, Virginia Woolf and Kate Millet. Also included was a piece by Ananda Coomaraswamy entitled "The Situation of Indian Women." Volume II, however, was truly a handbook for the Marxist. It made a case for socialism and feminism by including appropriate writings from across the spectrum of revolutionary founding fathers and those of the Second International who theorised on women and socialism. Included were Vladimir Lenin, Leon Trotsky, August Bebel, Mao Tse-tung and Fidel Castro. Also included were radical selections from Alexandra Kolontai, Sheila Rowbotham, Maria Mies and Maria Rosa Della Costa, which introduced a revolutionary perspective into a range of everyday women's concerns from labour to violence, abortion and housework. The volume employed the inspired strategy of presenting a range of experiences that spanned the world from China to India, and Iran to Vietnam.

Many women activists of the late 70s and early 80s claim these books as the first nurturers of their journey into socialist-feminist politics. While feminist discourse has moved beyond these authors today, Sunila noted:

> People read it – the JVP in prison, the campuses. Leena [Haputhanthri]. It was interesting, at that time there was no publicity, no one did reviews... but it came at a particular moment where anybody who was doing Left politics, was interested in the kanthaprashnaya or woman question.[3]

As she created this space in the ideological realm Sunila remained convinced, like some of us distancing ourselves from the institutionalized left, that we needed to keep our links to progressive social formations such as the nascent human rights movement, the trade-union movement and peasant or church-linked organisations of the day. These included the Civil Rights Movement (1971), the Centre for Society and Religion, the Devasarana Development Centre,the Satyodaya Centre for Social Encounter (1972), the Co-ordinating Secretariat for Plantation Areas (1974), the Movement for Inter-Racial Justice and Equality (1979), the Movement for the Defence of Democratic Rights (1980) and Church linked organisations such as the Centre for Society and Religion, the Socio-Economic Development Centre (SEDEC), the Student Christian Movement (SCM), and the Christian Workers Fellowship (CWF).

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[2] Sunila Abeysekera interview, 8 April 2006.
[3] Sunila Abeysekera interview, 8 April 2006.

Coming out of left party politics, Sunila quickly grasped the importance of building an alliance with the newly emerging feminist groups as a base from which to engage in the broader social movement politics of the day. This was the impetus that motivated her to begin the process that established the Women's Action Committee (WAC).

The women coming together to form the WAC were from the: Progressive Women's Front (1981)[4], Hatton Women's Committee (1976)[5], Women and Media Collective (1982 and formalized in 1984)[6], Kantha Handa (1976)[7], National Christian Council Women's Commission[8], Women's Liberation Movement (1981)[9], Malabe Community Education Centre (1982)[10], Negombo Women's Committee (1981)[11], Women's Centre (1982).[12] Also involved in this initiative was Pulsara Liyanage of the University of Kelaniya, then a member of the Movement for Inter-Racial Justice and Equality and the Vikalpa Kandayama(Alternative Group), who remained in the WAC as an independent member.[13]

Sunila recalled that a few women were meeting about mid-1982, wanting to do something but not having a public space and a public voice apart from their involvement in the *"panthi satana"* (class struggle)and the *"goviar ugalaya"* (peasant struggle).

> *I called a meeting at the Centre for Society and Religion because through the church circuit I knew Devasarana, the All-Lanka Peasant Congress, the Community Education Centre, Malabe and Anita (Fernando), Christian Workers Fellowship, Hatton, and Annathai Abeysekera and Audrey (Rebera) ... we had a casual discussion about what we could do around International Women's Day. Maybe we did a leaflet ... and quite soon afterwards there was the Polytex strike — the one that provided the space for us to come together. We also met at the SCM office.*[14]

Audrey Rebera, corroborating Sunila, recalls:

> *I vividly remember Sunila sitting at the SCM typewriter and typing several things about the WAC. Sunila was the person who got other people together to form the WAC... We were meeting before the Polytex strike. There was Sunila, Nimalka... SCM was a great influence...there were three*

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[4] Subsequently re-organsied as the Women's Development Foundation in 1994; Bandara Manike, Daya Ariyawathi, Hemamala Wijesinghe

[5] Subsequently re-organsied as Penn Wimochana Gnanodayam in the 1990s; Annathai Abeysekera

[6] WMC; Sunila Abeysekera, Sriyani Perera

[7] Kantha Handa; Kumari Jayawardena, Bernadeen Silva, Mala Dasanayake

[8] NCCWC; Audrey Rebera

[9] WLM; Kumudhini Rosa and Kumudini Samuel

[10] Malabe Community Education Centre; Anita Fernando and Rose Fernando

[11] NWC; Nimalka Fernando

[12] Kantha Handa, although a founder member of the WAC, moved out of a formal affiliation with it in 1984. However, it continued to support joint actions on selected issues as an independent entity. The Negombo Women's Committee ceased to exist as an autonomous organisation in 1985; Padmini Weerasooriya, Leela Ferdinandsz, Hema Matharage

[13] Geo Seneviratne interview, 6 August 2006. Space was also created subsequently to include Audrey Rebera as an independent member, once she concluded her tenure at the NCC Women's Commission.

[14] SunilaAbeysekera interview, 8 April 2006.

SCM General Secretaries on the podium of a WAC Women's Day meeting, I think 1984 or 1985. There was Nimalka, Kumudhini Rosa and Annathai.[15]

Sunila believed alliance building around national issues allowed for the recognition of difference while retaining a commitment to broader unity around commonalities and political practice. She also believed that social movements and social movement mobilizations emerged in times of political crisis or upheaval. They "are processes in constant change and transformation" which enable "the development of wide-ranging alliances that have led to tremendous social, political and economic change" (Abeysekera, 2003).[16]

And so Sunila propelled the WAC to social movement activism but at the same time was conscious that in some struggles, women's autonomous organizing was indispensable as women's issues were still a blind spot in the broader social movement. She noted years later that when the WAC met "…we were talking about the *jala badu aragalaya*, (water tax struggle) the *seeni aragalaya*(sugar struggle), *Polytex aragalaya*(Polytex struggle) or the *Nirmala Nithiyanandan nidahas karanu aragalaya* (free Nirmala Nithiyanandan struggle),and so on. Some of these were common struggles. We continued to feel the need to be in the male-dominated, male-led mainstream social movements. But some, like the campaign against night work or the campaign to release Nirmala, were our own.[17]

Looking back on this work nearly 25 years later, Nimalka Fernando observed to me "… I learnt so much from the WAC experience – how to combine grassroots work with theory, how to work collectively and how to build alliances and network with the broader social movement… I think the WAC made a huge contribution to the women's movement in Sri Lanka. Even today, we women can work together despite our differences – you, I, many of us, in a way the men can't. This is true about the men who came out of a similar period, history and political tradition as us."[18]

Reminiscing on her journey into feminist politics Sunila once recalled her exposure to second wave feminist thinking and feminist liberation theology in the mid-1970s. She told me of the visit of Egyptian feminist Nawal el Sadaaviand her speeches at Ladies' College and the SLFP headquarters in Colombo in 1975. She also recalled the visit of Jane Cottingham and Krishna Patel from the anti-baby milk formula/pro-breast milk campaign, and Kamla Bhasin who represented the Asian Cultural Forum for Development (ACFOD) and the Pacific Asia Women's Forum (PAWF).[19]Later in the year, Sunila attended a Socialist Women's Conference in Trivandram, orgnised by the Communist Party of India (Marxist) with Kumari Jayawardena, Hema Goonetileke and Lalitha Gunawardena.

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[15] Audrey Rebera interview, 21 March 2006.
[16] See "Social Movements, Feminist Movements and the State: A Regional Perspective," in *Women in Action* available at http://www.isiswomen.org/pub/wia/wia2-04/sunila.htm, (no page numbers). It was originally published by Development Alternatives with Women for a New Era (DAWN).
[17] SunilaAbeysekerainterview, 8 April 2006.
[18] Nimalka Fernando interview, 5 May 2006.
[19] SunilaAbeysekera interview, 2 May 2006.

Soon after the WAC was formed Sunila initiated discussion on what the left termed 'the Woman Question' and on what our understanding of feminism could be. A small group of us – Padmini Palliyaguru of the Progressive Women's Front, Kurunegala and the Ceylon Teachers Union and Leena Irene Haputhanthri formerly of the JVP and then part of the WMC, Sunila and I wrote a note for discussion titled "The Nature of the Women's Question in Sri Lanka's Socio-Political Context." (*Sri Lankave Samaja Deshapalana Sandharbaya Thula Kantha Prashnaye Swabhawaya*). This was a discussion document used in the WAC and subsequently published in the *Jana Handa* newspaper of 24 August 1986 entitled *Sthreewadaya Handunaganeema Sanduha Praweshayak* (An Approach to Understanding Feminism).

Here we define feminism broadly as: An acceptance that women were subject to a specific form of oppression; an acceptance that patriarchy constitutes one of the bases of this oppression; and the need to organise autonomously to fight against it. We understood 'organising autonomously' to mean "being linked to the common struggle while preserving an independent identity." Our notion of autonomy was thus linked to the preservation of an independent identity within the broader political linkages we chose to make with social movements. We identified the following as the three main strands of feminism:

Liberal Feminism

That which accepts patriarchy as one of the bases of women's oppression, has no analysis of the capitalist system or capitalist oppression, and no perception of the need to change the system. Method of struggle: equal rights within existing social framework.

Radical Feminism

That which accepts patriarchy as the fundamental cause of all oppression and presents the main social contradictions as one between men and women. Method of struggle: anti-male and separatist.

Socialist Feminism

That which locates the roots of women's oppression within the capitalist social system as well as patriarchy, analyses the complex interrelationship between capitalism and patriarchy, and understands that both class struggle as well as the struggle against patriarchy is necessary for social change. Method of struggle: autonomous organisation around women's specific concerns, but women should be part of the common struggle.

Identifying Gaps in Marxist Analysis

For us, "feminism was a scientific method of analysis as well as a method that guided social change" (*ibid.*). We identified patriarchy as a system of social oppression within capitalism. And locating ourselves firmly within the tradition of socialist feminism or as socialists concerned with feminist issues, we felt that feminism served to fill this gap in Marxist analysis. By so doing, we contended that feminism

was able to use patriarchy in the analysis of both the oppressive social relations between men and women as well as the oppressive structures of capitalism. We presented women's oppression and exploitation within the Sri Lankan context by analysing "the nature of women's entry into and exploitation within the labour market; capitalist and patriarchal cultural domination and its exploitation of women's sexuality; and militarization of society and the increasing violence against women" (*ibid.*).

Patriarchy

This debate on feminism also noted that social change, which sought to build a new man and a new woman, must be based not only on the economic and political but also on the cultural re-visioning of society – on the transformation of culture and ideology. Therefore, we proposed that the "struggle for political and economic change has also to be linked to the struggle for cultural and ideological change." This link between culture, ideology and patriarchy was constantly made by Sunila. Within the scope of this analysis she introduced, in Sinhala, the term patriarchy – *'Purushaadipaththya'* – into the political lexicon, filling both an ideological and analytical gap in political discourse. By 1984 Sunila persuaded the WAC to host what we grandly termed 'National Conventions', for both theoretical and strategic discussions. Speaking of these experiences many years later, Sunila said "…in everything we did we were feminists first."[20]

Extending the Feminist Debate Beyond Socialism to Nationalism

In the late 1970s and early1980s feminist theorising in Sri Lanka was characterised mainly by the emphasis on sexual difference, sometimes intersected by class difference and women's oppression. The articulation of other forms of differences such as ethnicity surfaced in the context of ethnic identity-based grievances, and in the mid-1980s in response to the Tamil struggle for self-determination, and women located themselves in relation to other identities, namely ethnic, religious, regional, and so on, other than that of just being a woman. These were Tamil and Muslim women, women within liberation movements, women for whom religious identity was fundamental, women who identified with Sinhala or Tamil nationalisms, and so on. Within the WAC as well, there were regionally-based groups such as the Hatton Women's Committee, comprised exclusively of Tamil women from the plantation areas; and the Women's Study Circle, with which Sunila had close links, was made up of Tamil women resident in Jaffna.

For Sunila, alliance building around national issues allowed for the recognition of difference while retaining a commitment to broader unity around commonalities and political practice.

Therefore in the aftermath of the July 1983 pogrom against the Tamil people and the resurgence of Sinhala nationalism in the south, Sunila insisted that the WAC continued with its activism that demanded redress of minority grievances. It took up concerns of equal rights and opportunity, particularly for Tamils of the hill country; state sponsored colonisation in the Eastern Province; and language rights. It also continued to agitate for the repeal of the PTA and Emergency Regulations, and against the violations of the armed

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[20] SunilaAbeysekera interview, 2 May 2006.

forces and the police, supporting the work of Women for Peace and the Mothers Front in Jaffna. Thirdly it discussed at community level among its constituencies the emergence of Sinhala nationalism as well as the root causes of the ethnic conflict.

While Sunila's theorizing on feminism shifted beyond the narrow frame of socialist feminism over the years of her activism, her conviction in the importance of coalition and alliance building held firm. This is reflected in the many networks and coalitions she either helped to found or the many she worked with – from the WAC to 'Women for Peace' from the network Mothers and Daughters of Lanka to the Polonnaruwa District Committee from SANGAT to the International Coalition of Women Human Rights Defenders. Importantly in the 1980s from the experience and strength of activism that informed theory, and theory that informed activism, Sunila believed the women's movement should make strategic alliances with social movements while maintaining independent identities and autonomy, accepting and respecting difference.

Certainly her feminist theorizing moved rapidly beyond socialist feminism to encompass her human rights activism and steadfast belief in the indivisibility and inter dependence of rights to her growing conviction and identification with the new frontiers of sexuality politics. Fundamentally however Sunila's theorizing was always grounded in practice and practicality and so she believed firmly in building and strengthening organisations and working in alliance on a spectrum of issues. The organisations included the WMC, the Women's Support Group and INFORM at the national level; Suriya Women's Development Centre, Batticaloa, the Sunela Women's Foundation in Polonnaruwa and the PrajaDiviyaPadanama in Puttalam and alliances such as the Mothers and Daughters of Lanka, the Horowapathana Human Rights Network, the Polonnaruwa District Committee and the Alliance of Media Organisations… to name a few.

She was concerned with issues as wide ranging as disappearances to the safety of human rights defenders; the evictions of urban poor to the resettlement of the displaced; violence against women to police torture; the right to bodily integrity, autonomy and choice to self-determination; the negative representation of women to the control of sexuality and entrenched hetoronormitivity. And for the realization and protection of rights Sunila firmly believed that the work of solidarity, and coalition building was of paramount importance to resistance politics. These were her enduring legacies to us.

'Becoming a Feminist, with Sunila'

Sepali Kottegoda[*]

December 2013

When I first Sunila I had just entered Vidyalankara Campus, now Kelaniya University, as an undergraduate in the Department of English in the mid 1970s, delving immediately into discussions on social movements, politics and a whole gamut of new 'activities'. A small group of us were meeting regularly at the Centre for Society and Religion (CSR) which, under the patronage of Father Tissa Balasuriya, was at that time THE place for political discussions. Members of political parties and civil society groups met there to share, argue, debate possible scenario's of governance in the country. From the first time she joined our small group, she became 'one of us'. I had only heard of her before as the sister of Prasanna, who was a figure in his own right in the Metal music scene. Sunila's reputation as a 'wild' woman, outgoing, adventurous and bold preceded her, even at that time. Having met her in person, I was immediately charmed by her charismatic nature and her warmth in taking this young woman 'under her wing'. That was the beginning of a relationship that went onto span three decades and more.

Feminism was not a topic that was highlighted in many political discussions in Sri Lanka at that time. Political discourses of the Left focused on understanding, analyzing and debating class politics, the proletariat, class struggle and nationhood. We spent many hours discussing Marx's old concept of 'the Asiatic Mode of Production', on the 'Right to Self-Determination', on peasant movements, on the East Asian NICs (Newly Industrialising Countries). For me, this last was one of the most interesting aspects of those discussions.

It was post 1977 and Sri Lanka was just setting up of its first Free Trade Zones which was drawing in thousands of young women to be employed in industrialized garment production enterprises. Until then, it was the thousands of women living and working in the plantation sector who were situated within a formal economic and employment structure as 'organised' labour. Their lives were, and are, dominated by their identities as 'up country Tamils', as workers, wives, mothers and daughters. Now, we were seeing the growth of a new industrial sector where young, mostly Sinhalese unmarried women were finding employment in factories which followed 'the Fordish' model of production. Women were learning to operate modern technology, the juki machines, each one handling one small segment of the production process, where interaction between and among the workers was calculated in terms of minutes (or less) for each minute task, where they were required to repeat the same action for hours, with penalties imposed for any worker who was not able to produce the required number of 'pieces'. Young women were being turned into industrial machines themselves, where time taken for a visit to the toilet, the pain of a headache or menstruation cramps were seen as allowing for economic 'loss' in the enterprise.

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In discussing these attributes, Sunila brought me to an arena I had not realized was going to change the positioning of women as wage workers in this country. I learned about globalization, of theorizing 'nimble fingers', 'piece work'. Being introduced to feminism in those days was the most important factor in directing my own academic focus from English Literature into the disciplines of sociology, anthropology economics and political science under the rubric of Development Studies. We talked of what the implications were for these women's lives, and linked these to the debates, discussion, inquiry and research on Sri Lankan State's focus 'modernizing' economy as a political mission.

These were exciting times – a women's movement was coming together in Sri Lanka and Sunila brought into our lives feminist concepts in trying to understand the socio-economic and political changes that were sweeping across the country. She wove in her experiences and work on political rights, drawing on Kumari Jayawardena's work, into women's labour rights. Issues of equal pay for women workers in the plantation sector were being raised; women workers in the FTZs were being organized as a force for demanding their rights as workers; our friend Kumi Samuel was very much part of these endeavors. For me, discussions with Sunila on why this second wave of women as wage workers was so significant, were critical in contextualized women's positioning within the economy, within the family and in the political arena. I understood what was meant by 'Double day' when we looked at the lives of women; women work, whether in the labour market or within their homes, but housework still remains outside the value-added economy. Sunila encouraged Sriyani Perera to make the first slide show of WMC, on the 'Double Day'. We began exploring and understanding the concept of patriarchy, of sexuality. We were of course not alone in our journey. I realize that we have never been alone. Kamla Bhasin from India, Nighat Said Khan from Pakistan, Charlotte Bunch from the US, Kate Young from the UK were also on this journey of exploring feminism, theorizing, sharing and developing on key areas in realizing women's rights.

As I look back on the last 37 years, I realize how much she was present in my life at its most critical turning points. With the Women and Media Collective being formed in 1984, we were able to locate ourselves within a women's movement in the country, in South Asia and globally and we began to develop more structured processes in our interventions for gender equality, women's rights and feminist discourses.

I recall that she came over to my house, pregnant with Sanjaya, to type out my thesis for my B.A. I remember, when I was reading for my D.Phil at IDS, Sussex, quite enjoying myself with life there, she sent me a strongly worded letter telling me that if I was not serious about my studies, there is work to be done in Sri Lanka. I was distraught with that letter, but now I realize that that she knew exactly what she was doing – I 'got my act together' and finished up my studies and returned home faster!! I remember Subha's 4th birthday when Sunila told us Subha wanted a Red Riding Hood cake and dress – Kumi and I wracked our brains on how to get this done. I made a sort of Red Riding Hood cake and Kumi got a Red Riding Hood dress and, little Subha's dreams were fulfilled!

I remember hanging out with our group of friends, at the D.S. Jayasinghe hall and in many other places, waiting for Sunila to join us after finishing her session singing 'Vimukthi Gee' on JVP platforms in the

early 1980s. Then we would head out to Greenland café or some small place to have tea and talk about politics, books, films.

When we first met, most of us were not 'in a relationship', most of us had no children of our own. We went into feminist activism as 'single' women. As we began to head out exploring our own relationships, some of us adopted or looked after children of our sisters or decided to have children of our own, we explored our own sexualities. And, we have lived through and faced the very challenges that we had been talking about – social and ideological positioning of women as women, whether we are single, in heterosexual or in same sex relationships, whether we are in the paid economy or engaged in unpaid housework, whether we are single mothers. For me, Sunila is always present – doing what she always does, embracing me and giving me strength and courage to face each challenge wherever it may come from.

How Will We Manage Without Sunila?

*Radhika Coomaraswamy**

The halls of the human rights and women's rights bodies of international organisations will feel empty now without the presence of Sunila Abeysekera. She was a forceful figure who dominated the room when she gave her speeches in the name of justice and the empowerment of the vulnerable. She was a great lobbyist and her charm and sense of humour, combined with her commitment to causes, always created a impression on member states, UN officials and civil society organizations.

Some in the parochial Sri Lankan media had always focused on Sunila as a Sri Lankan and because of her strong commitment to justice and pluralism, often castigated her as pro-LTTE. She was anything but pro-LTTE. In international as well as local fora, she stood up for victims and principles and did not care whether the victims were from the LTTE or the government. In fact, she was a strident critic of both of them, highlighting their atrocities without fear.

However, the Sri Lankan issue was a minor part of Sunila's international influence. She was an important player with regard to a whole host of issues, helping to formulate international treaties, declarations, resolutions and programmes as well as strategies for implementation at the national level. My first real interaction with Sunila came when I was appointed Special Rapporteur on Violence Against Women for the UN Human Rights Council in 1994. Sunila was part of the international group led by people such as Charlotte Bunch and Roxanna Carrillo who had introduced the whole movement called "women's rights are human rights" at the World Conference on Human Rights in 1993. They were women from all over the world, a true alliance of North and South and East and West. They called for the creation of the post of Special Rapporteur on Violence Against Women (SRVAW).

In a recent review of UN procedures, the SRVAW has been singled out for praise. The main reason for its success was that there was a dedicated group of NGOs, academics and activists like Sunila who kept pushing the frontiers. One must remember that until 1990, violence against women was a taboo issue at the UN and in Copenhagen in the 1970s, delegates refused to even consider the problem at the Second World Conference on Women.

The creation of a Special Representative on Violence Against Women then allowed for many atrocities directed against women to reach international attention: domestic violence, sexual violence in peacetime and during war, sexual harassment, trafficking of women, violence against migrant workers, and abuse and exploitation of the labour of women. The mandate in its initial stages had to formulate a legal and policy framework for the understanding of these issues, to create norms, and standards as well as to suggest guidelines for their implementation. We managed to do that and people like Sunila were central to this process – their advice and counsel was invaluable.

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Though Sunila is best known for her work on women's rights, she was also active in other human rights spheres. The issue of disappearances was very important to her. In the days before human rights became so important, police and armed personnel would come in uniform and unnumbered vehicles and abduct 'enemies of the state.' As the human rights movement grew, governments would send para militaries as men in civies in unnumbered cars to do the abductions and the kidnapping. They would then deny any knowledge and insist arguing that this was a "private action" and therefore not a subject of human rights. The issue of disappearances came first to the fore in this form in Latin America in the 1970s. Since then authoritarian governments all over the world would use this ploy. The need of the hour was to make states accountable for this kind of violence to fight impunity to say that states have a due diligence duty to prevent, prosecute or punish perpetrators of this violence; that they cannot wash their hand off private violence. A famous Latin American case known as *Velasquez v. Honduras* spelled out the standards of state responsibility disappearances. The recent UN Declaration now makes it a standard for all member states and Sunila played an important role in pushing for its adoption.

The other cause that Sunila espoused both in her public and personal life was the right to sexual orientation and the right to adopt the sexual identity of one's choice. In doing that she was far ahead of her peers both at the national and international level. She was brave, open, transparent and honest and never compromised because of norms imposed by society.

Sunila was also someone who never saw human rights in a vacuum. She always insisted that they be understood in their social and economic context. When the Human Rights Commission was considering the title of the Special Rapporteur on Violence Against Women, Sunila lobbied the developing countries to insist that the words "including its causes and consequences" be added to the mandate title so that the context does not get lost. She had the extraordinary ability to fight against imperialist and neo-colonial strategies while being a firm believer in human rights and women's rights. She wanted the voices and aspirations of the poorest and most vulnerable in society to be heard at the international level.

Sunila also played an important role in the regional Asian movement for women's rights and empowerment. Besides heading the Asia Pacific Forum for Women, Law and Development for a short period she was very active in the South Asian women's movement uniting activists in the region on issues of peace and human rights. She along with Kamla Bhasin from India and Nighat Khan from Pakistan ran many training and awareness raising programmes for women over three decades in the region so as to create a next generation of women dedicated to these issues. In all her efforts both nationally and internationally her wonderful friends and colleagues in Sri Lanka, especially Kumudhini Samuel, and Sepali Kottegoda always supported her and were with her till the very end. That kind of love and friendship only comes to those who give wholly of themselves to others. Her family, especially her mother and children, often neglected because of her commitment to world causes, continue to show the world how proud they are of her and how her humanistic values dominate their lives.

Sunila's exceptional contribution was that besides being a political figure she was also a leading cultural figure. Endowed with a beautiful voice and an extraordinary aesthetic sense, learnt at the feet of towering personalities like her father and Regi Siriwardene. she read widely, especially novels, and wherever she

went she attended, plays, music festivals, movie theatres and art galleries. She was perfectly bilingual and therefore combined the best of the east and the west. This extraordinary sensibility made her a great communicator, a real humanist, though she may feel that the word is too liberal and sentimental, and someone who deeply understood and was empathetic to the suffering of people.

Sunila will be sorely missed – not only by those in the worldwide sisterhood that she helped create but because she was the perfect voice of our time. Coming from a history of struggle within her own country, she wanted to help forge a more sensitive international order where power gives way to justice. At a time when the world is polarized, where insane voices are being raised in Sri Lanka's north and the south, where barriers are being erected physically and mentally between communities and individuals, I often ask myself – how will we manage without Sunila?

Sinhala Cinema through a Feminist Lens

*Shermal Wijewardene**

Film criticism was often the occasion for Sunila Abeysekera to be exploratory with her feminist interventions. This capacity was consciously cultivated in over twenty years of developing her critiques of the representation of women in Sinhala cinema for journals such as *Asian Cinema, Cinemaya, Cinesith, 14,* and *Eya*. Sunila adapted this form of writing so that it could accommodate 'thinking aloud' on feminist issues. This aspect of Sunila's film criticism is perhaps little known and understood. It is true that she is regarded as an ideological critic of cinema, but it is not widely appreciated that her views were evolving in that respect. Yet Sunila formulated what she called 'hypotheses' and broached ideas in their early stages, proposing some views tentatively as much as she firmly asserted others.

In this essay, I try to capture some of those exploratory aspects that Sunila brought in as she 'thought aloud' about approaching Sinhala cinema through a feminist lens. In short, my task is to review the reviewer. My aim is to approach film criticism as the window to her feminist repertoire that it was to her— i.e. open, evolving, flexible, and exploratory. It is a form which allows us to 'see' Sunila testing out her feminist critiques and developing them.

Often, Sunila has tidily encapsulated the fact that a particular cinema critique of hers evolved through time, reflection, influence, debate and so on. Perhaps the best known of these is what she formulated on the basis of Laleen Jayamanne's thesis on the depiction of female sexuality in Sinhala cinema. This was the thesis that in Sinhala cinema, the fate of non-conforming female characters is sealed by three or four stock scenarios. Writing a review of 'Sulanga Enu Pinisa' in *Eya* in 2005, Sunila acknowledges Jayamanne's influence on the evolution of her own views.

> In my film criticism for Eya, I always maintain a special focus on the role of women characters in each film. It is truly a damning revelation about Sinhala cinema that I can base my analysis in 2005 on the topic explored by Laleen Jayamanne in 1976. Jayamanne examined Sinhala films that were screened from 1976-1978 and came to one conclusion, which is that, in Sinhala cinema, women who stand up for their own sexual desires and who break through social barriers to relationships face a fate that can be easily observed. Suicide, murder, or insanity are the avenues open to her.[1]

As this extract indicates, Sunila traced the contiguities between two distinct periods of feminist film criticism on Sinhala cinema to show this cinema's lack of evolution with respect to its representation of

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female sexuality. Thus, as she argues, the same critique holds because it is still relevant and necessary. In the case of this particular critique, Sunila continued to make a feminist intervention out of explaining why it did not evolve. She reiterated the same critique in 1999 and again ten years later in 2008, using almost the same language to emphasise that, apart from the fact that nothing had changed in 2005 to prompt her to take a different analysis from Jayamanne's, nothing had changed through thirty years of her own reviewing of Sinhala cinema. In 1999 she wrote,

> *I have recently been working on the issue of the reflection of female sexuality in the Sinhala cinema. I am developing the thesis that in this cinematic genre, there are only four alternatives open to a woman who dares to transgress the boundaries of community taboos about sex: She can go mad, she can commit suicide, she can be killed, or she can join religious orders.*[2]

This analysis is echoed almost word for word in 2008.

> [In this essay I] develop the hypothesis that I have been working on over the past 30 years: that for female characters in the Sinhala cinema who dare to tread outside the norms, there are few options: you get killed; you kill yourself; or you join religious orders.[3]

As Sunila claims to be iterating the same feminist hypothesis in 2008 in tandem with Jayamanne's analysis of cinema from 1976, the first impression that forms is of a cinema that is stagnant in its capacity to imagine how to represent female sexuality. With this reiteration and emphasis on a Sinhala cinema standing still in time, such representations come to reflect a poverty of the imagination in filmmaking. This is a powerful feminist intervention because it has the power to embarrass with suggestions of datedness, backwardness, and laziness in critical thinking, on the grounds of this lack in representing female sexuality.

While Sunila held Sinhala cinema accountable for not moving quickly on the issue of representing female sexuality, this was more an ideological point, although it did have methodological importance. In her own reviewing of Sinhala cinema, she placed value on what I call 'pausing to feel'. She took time to articulate what she felt when she reviewed the depiction of women, not only what she thought. For example, she often wrote of feeling tired or oppressed or weighed down after watching films that trivialize women or projected imagery of violence against women, and mentally refreshed when there was an exception to it. She wrote of their effect on her subconscious, as in the case of her review of 'Yasoma', where she said, "In the past while, as I was watching other films, I could still see Yasoma running through the forest and dying". She wrote of feeling some inner opposition to seriously reviewing films that sexually objectify women.

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[2] Abeysekera, Sunila. 1999. Sexuality: A Feminist Issue? *Women in Action 1.* Available at http://www.isiswomen.org. Accessed 1 December 2013, p. 1, np.

[3] _____. 2008. Reflections on Sexuality in the Modern Sinhala Cinema". *Asian Cinema, 19:* 2, p. 62.

These expressions of the reviewer's affect—the felt response—bring the immediacy of such images to us in the way that well thought out phrases do not. They are inchoate, not as fully realized as the cognitive formulations of the authoritative film critic, and therefore suggest the fragility of the person sitting in a darkened cinema and being susceptible to what she sees. The reviewer closes her eyes but the images do not go away—they are imprinted on her subconscious. We are redirected back and forth from her gaze to the volatile domain of her subconscious, and reminded of the toll it takes on her to fulfil this role.

This aspect of Sunila's feminist reviewing and intervention to do with affect was clearly exploratory. It dealt with her evolving awareness of what it was to be viscerally affected by negative cinematic representations of women, and how to frame it as a feminist point. She kept it as an open topic through frequent questioning and invitations to film audiences to acknowledge those feelings as well. Writing about this in her review of 'Yasoma', Sunila said,

> Recently, I was very saddened by seeing how violent were the images appearing in films that revolve around a female character. Images abound of women being assaulted cruelly by their fathers, brothers, lovers, and strangers and being tortured. Combining frames and sound, these images flow towards us from the screen as if they are live. It is as if every blow she feels is aimed at us. But why does the audience watch this violence? Why do they not oppose it? Why do they not reject violence? The reason could be because our society has become very violent. But is it not a divesting of responsibility for a filmmaker to represent such violent behaviour as it is and to normalise it?

Here, Sunila suggests that such images are in actual fact toxic for the wellbeing of the audience, and that audiences have a right (and a responsibility) to object to being shown them. It is turned into an occasion for her to speculate on a number of issues. She asks whether audiences are aware that they can exercise their right not to put up with emotionally manipulative filmmaking, and if their quiescence reflects their socialisation in a brutalized society. And if showing violence against women is no more than a cinematic mirroring of grim social realities, Sunila asks whether that desire is a smug (and perhaps voyeuristic) end unto itself or is at all subject to the dictates of responsible filmmaking.

Through exploring these links between cinematic violence and affect, Sunila implicitly laid down important conditions about the responsibility of audiences and filmmakers towards consenting to make films and watch films about women and violence. From the audience's perspective, she claimed that it was unnatural for no opposition to emerge because cinematic violence against women was both deeply unsettling for the audience's psyche and had a deadening effect on individual and societal sensitivity to the problem. From the reviewer's point of view, she wrote of her resistance and of an emotional toll akin to trauma from having to closely watch and write about film after film showing the most extreme forms of violence against women. And addressing filmmakers, she issued the challenge that social reality was still a matter of depiction when it was the content of films. This meant that if filmmakers did show violence against women, they had to show it subject to the norms of responsible filmmaking, which was that it should not either titillate viewers or objectify female characters or routinize for passive consumption.

Sunila's film reviewing was deliberately exploratory in a third area, and this was her developing views on cinema's social obligations. She held two divergent views on the subject: on the one hand, that it is right that cinema should take its cues from the 'real world'; and on the other, that the role of the artist (in this case, the filmmaker) is not to just mirror 'real life' but to actively create a version of it. These positions may seem logically contradictory, but covering them both was important for her feminist interventions. Pragmatically, it was important to be au fait with the first position because many films were made with this thinking. At the same time, Sunila also believed that if cinema was seen to be close to 'real life' it could spark difficult discussions about women's place in society. Thus, it was important to give credibility to the view that 'real' social issues like sexual violence had to be portrayed in film. Yet, Sunila was frequently made uneasy by how filmmakers portrayed onscreen violence, and thus she was also often ambivalent about affirming what she herself saw as one of cinema's social obligations. It was in this context that she frequently asserted the need to remember that cinema was a craft and would be judged as a craft, and was thus obliged to create an interpretation of reality. Sunila's reviewing was instructive in this regard. Using some of Sunila's language in combination with mine, I have framed, formulated, and listed some suggestions which seem particularly important.

1. Filmmakers should examine their own unconscious misogyny and traditional/conservative views about gender that seep into their films;

2. Cinema should give a discursive portrayal of women's victimization so that it is not essentialised, rationalised, and exploitative. If cinema depicts rape or women's sexual degradation, it should give enough information on the socio-economic factors that contribute to it. This presents the violence as a social phenomenon. Otherwise it appears to be an isolated incident—a sad story—without a social meaning such as inequality, or an essential aspect of being a woman, or a harsh but inevitable fate socially assigned to women. It should present the specificity of the character, because audiences need to know the choices that women make and the reasons for them.

3. Cinema should portray the strength and courage of women. Too often women are insubstantial characters swayed by men's needs.

4. Cinema should avoid exploitative representations of violence.

5. Cinema should be vigilant of adopting into its grammar what is proverbially misogynist about women in wider society.

6. Cinema should attempt to be nuanced in its representation of gender, i.e. avoid superficial depictions or negative stereotypes of both men and women.

Vaasam....... remembering you

Suriya Women's Development Centre - Batticaloa[*]

This is a collective effort to remember Sunila. This article is a compilation of informal discussions among women who have been part of Suriya and Poorani Women's Centres since 1991. We talked about her support for human rights work, peace work, women's rights work, capacity building of women activists, fund raising for local women's groups, her love, her strength and her warmth.

Sunila's involvement with the Poorani women....

Sunila used to come to Jaffna in the early 1980s, she used to come with Charles Abeysekera, her father, and the Movement for Interracial Justice and Equality. Sunila also came for the funeral of Rajani Thiranagama. She came with her son, Sanjaya, in 1989.

At that time the women who were involved in the Poorani Centre got to know Sunila. Poorani was a safe space and training centre for women who were affected by the war. In 1991, Poorani was taken over by the LTTE. The LTTE women were pressuring them to give the Poorani funds for their work. The Poorani women decided to return the money to the donors, so they closed the centre and moved to Colombo.

As one former member of Suriya noted when she spoke at an event organised in Canada this year "During the 1990s, I was forced to leave Jaffna because of the unsafe situation there. Registration with the police was difficult in Colombo. Sunila would come with me to the police station and it would make things much easier for me. At this time, large numbers of Tamils and Muslims were displaced from the North-East of Sri Lanka to Colombo. I remember the time I was arrested in 1992 and she came to the police station to help get my release. These things happened often in Colombo and Sunila was always there to help us".

Others also recalled this time – "during this time four Poorani women and some of their family members were arrested by the Dehiwala Police and kept in jail for 3 weeks. We were trying to set up a group of people to organize food. We organized a mixed group – foreigners, Muslims, Tamils, Sinhalese men and women. So the police were aware that many people knew about this case and were interested in what was happening to them. We had heard that women were raped in the Police stations and were very worried for the protection of these women. Sunila was very active in getting these women released".

There were many discussions among women activists who had been displaced from the North and activists based in Colombo like Sunila. As one founder member of Suriya recalled "we took an auto and went around to various camps where displaced people from the North and East stayed. We had long discussions

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about what we could do. At that time EPDP was in charge of the camps. We started negotiating with them about food rations and other basic services for women. We didn't have an office. We got a small space at the back of the Women and Media Collective office where we started working".

Sunila's politics...

Sunila lived for what she stood for. Her life reflected her values of democracy. Her life was her message. Among Tamils and Muslims of this country she was never seen as an outsider. She had many friends among different communities. She made frequent visits to the North and East even during the hardest times for travel. She had traveled to the remote villages to collect stories of those affected. This gave a human dimension to her documentation of human rights violations. She maintained a view that the cause for ethnic conflict is the denial of equal rights and dignity to one ethnic group. She had dreamt about Sri Lanka as a country where rights of all citizens are respected and democratic practices are upheld. She had viewed the ethnic issue from a democratic perspective. She never accepted the concepts of majority, minority. For her, all individuals should have freedom and rights. In Sunila's politics she highlighted the rights abuses committed by the State under the Prevention of Terrorism Act and Emergency regulations. She also denounced violations by Tamil armed groups including the LTTE. Sunila had to pay the price for her unwavering defense for the rights of Tamils. She was branded as a traitor of the country and had to face threats to her life. She had always talked about a political solution to the ethnic issue. She denounced violence and militarism. She brought a feminist perspective into peace building.

Journeys - some glimpses of her human rights work...

She was involved in documenting disappearances in the East from 1987 onwards. She did not just come to the town areas. She made many visits into little villages in the East in internal areas. In 2008, when people were sent back to their villages after being displaced for many months, there were rumours about women being raped, especially women living alone. There were rumours of women being sexually harassed during round ups and house to house checks in the nights. Sunila visited during this time. She stood as the frontline voice and face and negotiated with the military to gain access to these areas in internal Batticaloa. She provided protection and cover for local women activists.

Another woman recalled "I remember her work post- tsunami. She was the one who pushed for citizens' committees for people to give testimonies after the tsunami disaster. She brought a rights-focus into post tsunami reconstruction. She would sit the whole day on people's tribunals listening to person after person, never stopping them until they finished what they had come to say."

In one of her last visits to Batticaloa in 2011, she wanted to visit the Kathiraveli school where displaced families had stayed and was damaged by shelling in 2006. She was ill by this time. But still she travelled.

She always took care of people...

When someone was sick she bought them food and kept them in her house. It wasn't just work for her, she embodied those things she wrote and talked about. She really lived it. She gave her time and had very strong personal connections and gave personal care. When some of the women from Suriya went to international forums for the first time, she always took care of them. Discussed their presentations and gave guidance on how to be careful and what issues to raise. She always gave confidence for local women to speak at international events. She took women shopping, to the night markets, site seeing, to experience new food.

From bus stops to police stations... she was the one to call...

Once when the cultural group went to Colombo for a performance at the SLFI (Sri Lanka Foundation Institute), the girls had gone outside for sightseeing and had taken some photographs of the public library. This was 1997. The police came and arrested the woman leader of the cultural group. Sunila immediately took steps to negotiate with the police and calm down the other members of the cultural group who had gone for the first time to Colombo to perform.

As another women activist recalled "I used to be a person who didn't travel much. In 1996 I just joined Suriya as a board member. I was invited to make a presentation on women's health in Induruwa. I was from Jaffna, living in Batticaloa. There were 13 checkpoints to pass to reach Colombo. Sunila promised to pick me up in Colombo. I arrived at 10.30 in the night. I was inside a small Tamil tea shop in Petta. I was waiting for her. I had a cup of tea. I was really panicking. Then suddenly she arrived in a van full of women. She had already picked up many other women. She was leaning out of the window asking if there is a Tamil woman waiting in the shop. Her voice when I heard it gave me confidence. The shop people didn't want to let me go with a bunch of women, without a man! She got down from the van and talked with them. She taught me how to break barriers within myself – about the fear of darkness, and about fear of mobility.

Mentoring women and local women's organisations...

She always gave new ideas. Even when she was quite seriously ill she sent her comments for the Suriya AGM or wanted to skype in. She was actively involved in whatever way she could. She brought international debates and feminist ideas into our discussions, so we could guide our own work with what was happening internationally. She also pushed women to participate and speak at international forums. She always found a way to bring together people with different perspectives and different backgrounds. Sunila has trained many generations of women at Suriya and in the East through the SANGAT South Asian Gender Training Programme. She has also supported local women's organisations through fund raising and endorsing for proposals. For example. when the women's crisis centre in Batticaloa, had run out of funds and was desperately looking for funds to not close down, Sunila mobilised international funds and recommended the centre to be supported.

For all these memories, and many untold ones, we dedicate this poem to Sunila and to deep friendship...

"It was a sharing

Wholesome and truthful

Being you and I,

under the glassy sky...............

You laughed

recalling the magical moment

when your nest was brimful

spilling with honey......

As we drink endlessly

the night

thirsty of the two

drifts away

having tasted

the unsurpassed wonder.

Then, you and I

under the endless glassy sky.

Anar, "Two Women", Let the Poems Speak, SWDC 2010

Understanding post-conflict sexual and gender based violence in northern Sri Lanka

Eva Sparks[*]

Introduction

Violent masculinity is a particular expression of the male identity that equates aggression, dominance and violence with manliness. It is a common outcome of a conflict or militarised environment.

There are many implications of the normalisation of this concept of masculine identity. One of these is Sexual and Gender Based Violence (SGBV). SGBV has become an increasingly recognised product of war which carries over into the post-conflict environment. Male demobilised soldiers who have been in a violent, militarised culture may not have been in an environment that encourages equitable gender relations. As a result their violent behaviour, which has been legitimised by the military environment, can become part of their civilian life.[1] Considering the variables in militarised culture and how this impacts gender relations, both during conflict and post-conflict, becomes an important for understanding the nature of SGBV and how to address it.

The Liberation Tigers of Tamil Eelam (LTTE) provides a useful case study of how high numbers of women in combative positions influence the development of masculine indentity. A feature of the LTTE that has attracted widespread attention has been the role women played in the conflict. It is estimated that the LTTE was made up of between 30 and 43 percent women[2] who were both voluntary and forced recruits. These women were used in combative roles and underwent vigorous military training. While women are used in combative roles in other areas around the globe, the proportion of women and their contribution to the violence and brutality of the conflict warrants further investigation into how this has impacted gender relations in the post-conflict context.

Amongst a number of outcomes, the high numbers of LTTE fighters can be used to analyse the causes of SGBV. Conflict-affected parts of Sri Lanka have high rates of SGBV, particularly in the form of domestic

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[1] Zuckerman, E. and Greenberg, M. 2004. The Gender Dimension of Post-Conflict Reconstruction: An analytical framework for policymakers. *Gender and Development*, 12 (3), p. 72.

[2] International Alert. 2009. *Global Monitoring Checklist on Women, Peace and Security*. [report] GAPS-UK. p. 121.

violence.[3] It is the objective of this study to examine the prevalence of violent masculinity in former members of the LTTE. This information can then be used to understand the different types of SGBV in post-conflict situations and the root causes. Providing answers to such questions as whether SGBV exists because of a pervading culture of violent masculinity that legitimises male expressions of violence, or rather a symptom of PTSD due to high levels of war experiences. It is necessary to note that in any post-conflict situation there will be a variety of complex circumstances, so any dichotomy should be held loosely as an indication of trends.

It is vitally important that SGBV is understood particularly from the view of its perpetrators. Too often the focus of SGBV programs are limited to targeting and supporting women. While this is a necessary and important feature of post-conflict reconstruction, work that neglects men runs the risk of demonising the male perpetrators without understanding their needs and working with them to implement preventative measures. A lasting solution will come by an integrated approach that addresses the needs of men and women concurrently.

While research on the role of women in the LTTE has been given widespread attention, there has been not been a focus on how this has influenced masculine identity in northern and eastern Sri Lanka. There is a significant knowledge gap regarding the masculine identity construction in Sri Lanka and how this contributes to SGBV. The topic would also benefit from future comparative studies in different post-conflict situations. This research has further relevance for addressing the problem of violent masculinity in armed forces in other contexts. Where armed forces institutionalise gender stereotypes by prescribing certain roles for both sexes, e.g. front line roles are for men, nursing roles are for women, they legitimise the gender dichotomy that says men are violent and women are passive. This sets a dangerous precedent for women as it eliminates the expectation that they have agency over their own bodies and the right to refuse men.

The growing body of research on masculine identity in different contexts around the globe is making important contributions to improving gender equality. Limiting focus to the feminine side only offers half the story and promotes the idea that masculinity is the norm rather than a cultural construct that requires analysis in its own right. This research in Sri Lanka aims to contribute to challenging this norm in the wider context of gender relations and help direct support towards understanding the experience of men as they are defined by the culture in a post-conflict environment.

Literature Review

This paper uses the example of Sri Lanka to demonstrate how gender roles in armed forces influence SGBV in post-conflict contexts. It will apply theories of gender identities, particularly post-conflict, to the context of Sri Lanka.

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[3] International Crisis Group. 2011. *Sri Lanka: Women's Insecurity in North and East*. Asia Report Number 217. [report] International Crisis Group, p. 29.

Violent Masculinity

A review of the literature on the topic of violent masculinities shows a wide variety of circumstances and cultures within which a violent concept of masculinity can be manifested. The concept of gender identities, and more specifically masculinity refers to the 'configuration of practices within a system of gender relations'.[4] The term gender can also be understood as behaviour that one *does*, *should* or is *expected* to engage in by justification of their maleness or femaleness. John Beynon writes that if 'maleness' is biological, then masculinity is cultural.[5] All discussion of masculine behaviour here is referring to culturally enforced behaviours.

Every cultural, historical and geographical context will have its own interpretation of masculinity.[6] Theidon implores that the practice of masculinity should be understood within the cultural repertoire of masculine behaviour influenced by class, ethnic, racial, religious and other identities.[7] The framework of masculinity is also the understanding that masculinity does not imply uniformity, rather there are a range of masculinities that can be subscribed to.[8] Violence becomes gendered when violent behaviour equates manliness with the 'sanctioned use of aggression, force and violence'.[9] This is a cultural norm that influences males from a young age-

> *Turning the other cheek is less expected than fighting one's way out of a difficult situation, especially if bullied. Media reinforce these images by aiming stories at youngsters that glorify violence and revenge in the name of a good cause* [10]

It is important to note that violence is not limited to physical aggression, as Myttinen writes, 'violence can be direct or indirect, verbal or physical, structural or cultural'.[11]

The implications of violent forms of masculinity have consequences within society. Katz's work focuses on the construction of violent forms of masculinity in a western context, making the point that in the United States, violence is to a large extent gendered with over 85 percent of violent crimes being committed by males.[12] There are similar trends across the globe with a study by the International Criminal Police Organisation of 62 countries demonstrating that 90 percent of perpetrators of serious assault are

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[4] Connell, R. 2005. *Masculinities*. Cambridge: Polity Press, p.84.
[5] Beynon, J. 2002. *Masculinities and Culture*. Philadelphia, Pa.: Open University, p.2.
[6] *Ibid*, p.1.
[7] Theidon, K. 2009. Reconstructing Masculinities: The disarmament, demobilisation and reintegration of former combatants in Colombia. *Human Rights Quarterly*. (31), p.5.
[8] Beynon, J. 2002. *Masculinities and Culture*. Philadelphia, Pa.. Open University, p.2.
[9] Bryson, L. 1987. Sport and the Maintenance of Masculine Hegemony. *Women's Studies International Forum*, 10 (4), p.1.
[10] Lindsey, L. and Christy, S. 1990. *Gender Roles*. Englewood Cliffs, N.J.: Prentice Hall, p.249.
[11] Myrttinen, H. 2004. Pack Your Heat and Work The Streets: Weapons and the active construction of violent masculinities. *Women and Language*. 27 (2), p. 29.
[12] Katz, J. 2003. Advertising and the Construction of Violent Masculinity: From Eminem to Clinique for Men. In: Dines, G. and Humez, J. eds. 2003. *Gender, Race and Class in the Media*. 2nd ed. Sage Publications, p. 349.

male.[13] Such figures exhibit a link between gender and violent behaviour. Katz then uses this to advocate for the examination of cultural definitions of masculinity and femininity to understand this phenomenon since while not all men are violent, ruling out biology as the cause, violence is considered masculine behaviour.[14]

Katz discusses the notion of images of violent masculinity in the context of the United States and how this is represented through the media. Every day life is filled with images that shape ideas of masculinity, including violent masculinities that encourage violence as an acceptable and laudable feature of being a man. In his article, 'Advertising and the Construction of Violent Masculinity: From Eminem to Clinque for Men' Katz discusses the ways in which the hegemonic construction of masculinity in the media normalises male violence. He uses the example of Hollywood films as a key source of the construction of the dominant masculinity through the male icons such as Arnold Schwarzenegger, Sylvester Stallone and Bruce Willis or rap artist Eminem who is marketed towards young men and is always photographed with a scowl on his face and writes violent, misogynistic lyrics.[15] The popularity of these figures is demonstrative of the marketing power of a violent male. It is not only acceptable, but also admirable.

To recap on this discussion of violent masculinity, there are two pivotal points to consider when analysing its role- the cultural constructs that prescribe masculinities; and the outcome of these influences. On a broader scope this paper has presented the argument of academics that violent masculinities are cultural constructs encouraged on a micro level through behaviour encountered in immediate surroundings, as well as a macro level through the media where admirable men are presented as being strong and violent. The evidence of the successful socialisation of men into violent masculinity is demonstrated through the gendered trend towards males engaging in violent behaviour

While violent forms of masculinity are present in civilian life, the military is a pivotal environment where the concept of masculinity is developed and, due to the nature of the military, particularly violent forms masculinity. Enloe identifies masculinity as being a central feature of militarisation across the globe-

> *Feminists from India, Zimbabwe, and Japan to Britain, the United States, Serbia, Chile, South Korea, Palestine, Israel, and Algeria all have found that when they have followed the bread crumbs of privileged masculinity, they have been led time and again not just to the doorstep of the military, but to the threshold of all those social institutions that promote militarisation.*[16]

The link between masculinity and the military environment arrives hand in hand with the link between violence and masculinity. In civilian life there are sometimes legal consequences for assault, rape, murder and other acts of violence but a militarised environment is a different cultural context where aggression

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[13] Jacobsen. J. 2006. Men's Issues in Development. In Bannon, I. and Correia. M. eds. 2006. *The Other Side of Gender.* 1st ed. Washington D.C.: The World Bank. p. 11.

[14] Katz, J. 2003. Advertising and the Construction of Violent Masculinity: From Eminem to Clinique for Men. In: Dines, G. and Humez, J. eds. 2003. *Gender. Race and Class in the Media.* 2nd ed. Sage Publications, p. 350.

[15] *Ibid*, p. 351.

[16] Enloe, C. 2000. *Manoeuvres.* Kindle ed. Berkeley, Calif.: University of California Press.

and violence thrive as being a functional feature of a soldier's life.[17] Militarised masculinity is what Theidon calls the 'fusion of certain practices and images of maleness with the use of weapons, the exercise of violence, and the performance of an aggressive and frequently misogynist masculinity.[18] Lindsey also notes that this is combined with the anti-femininity norm where 'toughness, the repression of empathy, less remorse for 'accidental' violence, and less concern for moral issues are deemed essential for winning'.[19] The key points to be taken from the gender culture in the military are first the normalisation of violence, and secondly anti-femininity and misogyny.

Both these points are central to gender relations. The construct of violent masculinity becomes problematic for women who must take the subordinate position in the gender dichotomy leaving them susceptible to violence, and in particular, sexual violence. As Enloe identifies, the gender norm within the military is privileged masculinity which places the masculine identity in a superior position to the feminine.[20] Katz makes the observation that masculinity is defined in opposition to femininity which requires the constant reassertion of what is masculine and what is feminine. This is accomplished through the image system by equating masculinity with violence, power and control and femininity with passivity.[21] This subordinate position is dangerous for women as it leads to violence against women becoming acceptable and normalised.[22] Lindsey makes the point that the acceptance of traditional masculine gender roles in a patriarchal society is closely related to the escalating violence toward women since virtually all the masculine norms such as anti-femininity, toughness, self-reliance, aggression, and sexual conquest, reinforce violence.[23] In a conflict context this can be exacerbated even further as Myrttinen proposes, because conflict situations enforce the idea that 'men with weapons have the power' therefore men who fail to live up to this can be then led to expressing themselves against a weaker subject such as in the domestic environment.[24]

Enloe discusses the militarised manifestation of violence against women in her examination of the militarisation of rape. Enloe lists a variety of ways in which male soldiers rape women including rape of a woman a male soldier thinks of as a foreigner; rape by an individual soldier of a civilian woman of the same nationality while the soldier is 'off duty'; rape by a male soldier of a female soldier in the same army, perhaps because he resents her presence in a previously all-male unit; and rapes of women in wartime by civilian men of their own ethnic or national community who are acting out a misogyny nurtured and licensed by the militarised climate.[25] This is not the complete list supplied by Enloe, but what

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[17] Lindsey, L. and Christy, S. 1990. *Gender Roles*. Englewood Cliffs, N.J.: Prentice Hall, p. 249.

[18] Theidon, K. 2009. Reconstructing Masculinities: The disarmament, demobilisation and reintegration of former combatants in Colombia. *Human Rights Quarterly*, (31), p. 5.

[19] Lindsey, L. and Christy, S. 1990. *Gender Roles*. Englewood Cliffs, N.J.: Prentice Hall, p. 249.

[20] Enloe, C. 2000. *Manoeuvres*. Kindle ed. Berkeley. Calif.: University of California Press.

[21] Katz, J. 2003. Advertising and the Construction of Violent Masculinity: From Eminem to Clinique for Men. In: Dines, G. and Humez. J. eds. 2003. *Gender, Race and Class in the Media*. 2nd ed. Sage Publications, p. 352.

[22] Mitchell, R. 2013. Domestic Violence Prevention through Constructing Violence-Free Masculinities Programme: an experience from Peru. *Gender and Development*. 21 (1). p. 99.

[23] Lindsey, L. and Christy, S. 1990. *Gender Roles*. Englewood Cliffs, N.J.: Prentice Hall, p. 261.

[24] Myrttinen, H. 2003. Disarming Masculinities. *Women, Men, Peace and Security*, (4). p. 42.

[25] Enloe, C. 2000. *Manoeuvres*. Kindle ed. Berkeley. Calif.: University of California Press.

is most relevant to draw from this list is the common features that these militarised circumstances share giving the perpetrator a believed license to commit rape.[26]

Legitimated SGBV and Delegitimated SGBV

The above section discussed situations in a military environment that legitimise violence against women based on identity e.g. foreigner, comrade, enemy, that give a soldier a perception of entitlement. It is therefore important to examine what conditions in a military setting *delegitimise* violence against women. An important feature of this discussion on the construction of violent masculinity is looking at what happens when the gender dichotomy is disrupted by the institutionalisation of women engaging in violent activities combine with desexualising them.

A second valuable area that the literature does not differentiate between when discussing SGBV is the different core motivations for a man to engage in violence against women. The concept of violent masculinity describes a framework where SGBV is either culturally (e.g. through films and media images) or institutionally (e.g. a military setting) legitimised. However, SGBV may exist within a community where it is not legitimised when the perpetrator knows the violence to be wrong but acts against his personal judgement. This could be the result of Post-Traumatic Stress Disorder (PTSD) where physiological conditions increase an individual's propensity for violence. In these circumstances it can be said that violence against women is delegitimated as it is not a set of cultural norms and values that is causing the violence against women.

Post-Traumatic Stress Disorder and Domestic Violence

The influence of PTSD in post-conflict communities and former combatants needs to be taken into account when analysing the causes of SGBV. According to the 4th Edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM-IV), 'irritability and angry outbursts' are part of the criteria for PTSD.[27] Novaco & Chemtob demonstrate in their work that combat veterans with PTSD have higher levels of anger than those without[28] which Sherman et al. argue demonstrates that anger is linked to PTSD rather than combat experience alone.[29] The research of Riggs et al. shows that this hostility can take the form of domestic violence with 63 percent of former combatants seeking support for PTSD reporting they had been aggressive towards partners in the previous twelve months.[30] Savarese et al. write that the hyper-

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[26] *Ibid.*

[27] American Psychiatric Association. 2000. *Diagnostic and statistical manual of mental disorders: DSM-IV-TR.* 4th ed.

[28] Novaco, R. and Chemtob, C. 2002. Anger and Combat-Related Posttraumatic Stress Disorder. *Journal of Traumatic Stress,* 15, pp. 123 - 132.

[29] Sherman, M., Sautter, F., Jackson, M., Lyons, J. and Han, X. 2006. Domestic violence in veterans with Posttraumatic Stress Disorder who seek couples therapy. *Journal of Marital and Family Therapy,* 32 (4), p. 480.

[30] Riggs, D., Weathers, C. and Litz, B. 1995. "The Cycle of Trauma: Marital violence in Vietnam veterans with PTSD", paper presented at *Fourth International Family Violence Research Conference,* Durham, NH, July.

arousal cluster of PTSD symptoms (e.g. anger, irritability, violent outbursts) have been found to correlate significantly with the perpetration of domestic violence among Vietnam veterans.[31]

These points on PTSD contribute to this study as they demonstrate that while violent masculinity contributes to SGBV in a community, cultural constructs are not the only cause. Attention needs to be given to understanding the finer points between types of SGBV. Both violent masculinity and PTSD can be consequences of what occurs in military environment but rarely arise in the same discussion. Closer examination of the correlation between the two is warranted. This is a valuable distinction to make as the former cause of SGBV is addressed through cultural structures while the latter is about individual agency.

2. Female Gender Roles and Identities in Sri Lanka

Sri Lanka is seen by a number of measures as being a safer and more progressive place for woman than other countries in southern Asia.[32] However, particularly in rural areas, women are still denied access to the same degree of autonomy as men. Limited access to education and employment for women means they are dependent on men- either fathers, brothers or partners for survival.

Gender roles for women underwent change during the conflict from being perceived as victims to having to overcome traditional barriers to protect their families and communities as well as being emotionally and economically responsible for their families and dealing with political and military institutions.[33] This move from traditional roles into a more independent position challenges the gender power dynamic. This raises the question of if woman can provide for herself, what is the role of the man; and how does this affect his reintegration after the conflict. It is common in a post-conflict setting for returning males to assert their masculinity by demonstrating their control over women by appealing to cultural and religious customs to restrict women's mobility and visible participation in social and political structures.[34] This has been the case in northern and eastern Sri Lanka where, for example, women in Jaffna and Kilinochchi are instructed not to be outside their home after six in the evening because it is perceived as being too dangerous.

The Sri Lankan Concept of Masculinity

Studies on masculinity specific to Sri Lanka are a new but limited field. Bhasin offers a general overview of gender roles in South Asia saying, 'girls are generally disciplined into being modest, decorous, caring and obedient, while boys are raised to be strong, courageous, protective, rational and self-confident.[35] This generalisation correlates with a recent island-wide study from the international non-government

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[31] Savarese, V., Suvak, M., King, L. and King, D. 200?. Relationships among alcohol use, hyperarousal and marital abuse and violence in Vietnam veterans. *Journal of Traumatic Stress.* 14 p. 719.

[32] International Crisis Group. 2011. *Sri Lanka: Women's Insecurity in North and East.* Asia Report Number 217. [report] International Crisis Group, p.1.

[33] International Alert. 2009. *Global Monitoring Checklist on Women, Peace and Security.* [report] GAPS-UK, p. 121.

[34] Farr, V. 2002. A Gendered Analysis of International Agreements on Small Arms and Light Weapons. In: Farr, V. and Gebre-Wold, K. eds. 2002. *Gender Perspectives on Small Arms and Light Weapns: Regional and International Concerns. Brief 24.* 1st ed. Bonn: Bonn International Centre for Conversion, p. 2.

[35] Bhasin, K. 2000. *Understanding Gender.* New Delhi: Kali for Women, p.6.

organisation (INGO) Care which focused specifically on the concept of masculinity in four districts around the island. The study found that there are different contexts, drivers, and variables related to male perpetration of physical and sexual violence against women, as well as men and boys, many of which are based on cultural attitudes on masculinity.[36]

Studies on the cultural construct of masculinity and how this pertains to SGBV are limited. De Silva has contributed significantly to the field through the author's work on ethnic violence within the Sinhalese-Buddhist masculine identity. The author writes that in Sinhalese-Buddhist culture individuals are part of the collective where deference is viewed as a positive characteristic and self-assertion can be problematic. Within this context, the external pressure of shame affected externally by the collective (as opposed to European guilt, which is personal and internal) plays an important role in ensuring conformity.[37] Violence is a means by which personal autonomy is attained.[38] Jeganathan has also analysed the role of the Sinhalese-Buddhist masculine identity writing that shame is combated through fearlessness, therefore when boys are 'acting out', it is a demonstration of this fearlessness which is reflective of past humiliations.[39]

In a subsequent study from de Silva on Tamil identity under the LTTE, the author points out that the repertoire of gender-roles are shaped by Tamil convention instilled in childhood were extended through combat training[40] Mines has conducted work on the social relations within Tamil society which offers a contrasting position to that of the Buddhist-Sinhalese. Tamil society, Mines writes, views each member as having a complimentary role to one another with a stronger sense of individuality than the Sinhalese-Buddhists.[41] The influence of this on the Tamil concept of masculinity warrants further investigation as demonstrated by the role community induced shame plays in the Sinhalese-Buddhist identity and acts of violence.

These analyses are limited in their usefulness to this study by their contextual application. De Silva's study is aimed at explaining community violence, particularly the youth riots of the 1970s and 80s and therefore does not include dimensions that address gender relations, SGBV or are influenced by militarisation. They provide a useful explanation to the cultural structures that lead to violence, but as de Silva points out in response to Jeganathan's analysis, the fearlessness thesis does not address the role of social legitimacy.[42] Once again, identifying social legitimacy, if it is present, is a useful tool in understanding and addressing gendered violence. Jeganathan's failure to acknowledge the role of social legitimacy leaves a gap that provides relevant information regarding the nature of the violence. These studies also do not refer to

[36] De Mel, N., Peiris, P. and Gomez, S. 2013. *Broadening Gender: Why masculinities matter.* [report] Colombo, Sri Lanka: Care International Sri Lanka, p. 74.

[37] De Silva, J. 2005. *Globalization, Terror & the Shaming of the Nation.* Victoria, BC: Trafford, p. 57.

[38] *Ibid*, p. 71.

[39] Jeganathan. P. 1998. In the Shadow of Violence: Tamilness and the Anthropology of Identity in Southern Sri Lanka. In: Bartholomeusz, T. and De Silva, C. eds. 1998. *Buddhist Fundamentalist and Minority Identities in Sri Lanka.* 1st ed. Albany, New York: State University of New York Press, p. 94.

[40] De Silva, J. 2009. Researching Masculinity and Violence in Sri Lankan Politics: Subject construction as methodology. *IDS Bulletin.* 40 (3), p. 87.

[41] De Silva, J. 2005. *Globalization, Terror & the Shaming of the Nation.* Victoria, BC: Trafford, p. 59.

[42] De Silva, J. 2005. *Globalization, Terror & the Shaming of the Nation.* Victoria, BC: Trafford, p. 80.

SGBV, rather are focused on violence between groups of males showing that within the Sinhalese-Buddhist context, there is a culture of males acting together to perform acts of violence, indicative of violent masculinity, but gives no insight into the implications of this for females.

Large introduces the concept of 'multiple masculinities' which looks at the variety of interpretations of masculinity within different cultures.[43] This becomes relevant in line with the analysis from de Silva as it identifies a different structure from the Sinhalese-Buddhist masculine identity to the European and western concept focusing strongly on guilt as a means for social cooperation, rather than shame. This invites the question firstly of how does the violent masculinity take form in different cultures? And secondly, do militarised environments create a homogenised concept of violent masculinity due to the legitimised use of violence?

3. Gender Roles Under the LTTE

From the early days of the conflict both women and men were recruited for the LTTE. While this is not the only army to use females as combatants, the percentage of female combatants is significantly higher compared to other armed forces as well as the positions they filled. Women held combatant roles, acted as suicide bombers and intelligence officers and there was a wide incorporation of both sexes in military activities.

Sources that discuss the role of female cadres in the LTTE highlight the types of roles women occupied during the war and how this was received. The following quote from a Sinhalese newspaper was used by Adele Balasingham, an Australian former LTTE member, in her book 'Woman Fighters of Liberation Tigers'-

> In the field, Tiger fighters, especially the women cadres, display a fantastic degree of ferocity and motivation- so much so that they have won the respect of their foes.[44]

Balasingham further comments on how the use of women in military training programs challenged the traditional role of women-

> By embarking on the military training programme designed and based on the physical stature of men of a particular age, Tamil women have ruptured one of the most entrenched and flaring aspects of Tamil society- the sexual division of labour. Firstly, they have stormed into a previously all male activity and secondly the training programme by women has challenged the entire edifice

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[43] Large, J. 2010. The Reconstructing of Masculinities as a Dynamic in War and Peace. *South Asian Journal of Peacebuilding*, 3 (1), p. 4.
[44] Balasingham, A. 1993 *Women Fighters of Liberation Tigers*. London: LTTE International Secretariat, p. 4.

of beliefs about women's strength, endurance, potential, determination, courage and talents. It sets the same goals and expectations for women as it does for men.[45]

This information is useful as it reveals that women were seemingly under the same expectations as men. This paper will later discuss how women's involvement in such activities disrupts violent masculinity and the male 'monopoly' over violence, leading to altered gender identities.

SGBV During the War

The final area of literature to be considered is the work that has been done about SGBV in northern and eastern Sri Lanka during and after the war. In analysing the nature of SGBV it is relevant to note how different actors and their authority structures were involved, or not involved, in such actions.

The Tamil Centre for Human Rights documented cases of Tamil women raped by the SLF in the north east of the island between 1996 and 2000. One Tamil woman was raped every 16 days, every two months a Tamil woman was gang-raped and murdered by the SLF and every three months a girl child was gang-raped.[46] Rape and SGBV were largely reported at checkpoints and while in the custody of state forces. Amnesty International asserted that between 2001 and 2002 there was an increase in the number of incidents of sexual violence against women in custody by police, army and navy personnel.[47] Since women were active members of the LTTE, they were seen as a security threat and subjected to sexual violence as a means of coersion.[48] Furthermore, the intervention of Indian forces between 1987 and 1990 saw accusations of rape of girls and women against the IPKF.[49]

However, the high prevalence of sexual violence committed by authority forces leads to distrust of government institutions and low reporting rates. Complaints of rape during the conflict were often not effectively dealt with by authorities leading to the repeated collapse of investigations and prosecution.[50] The fear of armed forces due to past and present actions places a significant impairment on the mobility of women and their ability to build their own capacity. The heavily militarised environment of the north

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[45] *Ibid*, p. 6.
[46] Bastick, M., Grimm, K. and Kunz, R. 2007. *Sexual Violence in Armed Conflict: A global overview and implications for the security sector.* [report] Geneva: Geneva Centre for the Democratic Control of Armed Forces, p. 109.
[47] Amnesty International. 2002. *Sri Lanka: Rape In Custody.* AI Index 37/001/2002. [report], p. 3.
[48] Bastick, M., Grimm, K. and Kunz, R. 2007. *Sexual Violence in Armed Conflict: A global overview and implications for the security sector.* [report] Geneva: Geneva Centre for the Democratic Control of Armed Forces, p. 109.
[49] Wood, E. 2009. Armed Groups and Sexual Violence: When is wartime rape rare?. *Politics and Society,* 37 (1), p. 144.
[50] Amnesty International. 2002. *Sri Lanka: Rape In Custody.* AI Index 37/001/2002. [report], p. 3.

requires frequent interaction with armed forces making access to education, employment and activities outside the home a considerable risk.[51]

The LTTE & Sexual Violence

SGBV perpetrated by the LTTE is thought to be rare. The group has been accused of using child soldiers for labour and sexual purposes[52] but the prevalence of SGBV, particularly as a war tactic, is almost non-existent.[53] The work done by Wood on the lack of sexual violence within the LTTE during the conflict shows that despite the widespread brutality of the LTTE, there is little evidence to suggest that this brutality was directed towards sexual violence in a military context. This was the result of a 'puritanical code of conduct' encompassing all areas of life that demanded members committed themselves entirely to the group, and demonstrate their willingness to sacrifice everything, including a private life for the cause.[54] The code was managed by a strong discipline system-

> *Punishment is severe when rules prohibiting sex with fellow cadre are violated. Two of Prabhakaran's bodyguards were executed when it was discovered that they had engaged in sex on duty. A cadre in Batticaloa killed herself rather than face the disciplinary consequences of her pregnancy. One leader of the organisation was expelled in light of allegations that he had engaged in sex with another member.[55]*

This describes an environment where SGBV has been delegitimised by authority structures and as a result, SGBV does not get infused into masculine identity as being a right. It does not however, mean that SGBV will be eliminated.

4. SGBV in Post-Conflict Sri Lanka

A 2011 report from International Crisis Group described women in northern Sri Lanka as facing a severe lack of security in the aftermath of the civil war-

> *Many still live in fear of violence from various sources. Those who fall victim to it have little means of redress. Women's economic security is precarious, and their physical mobility is limited. The heavily militarised and centralised control of the north and east – with almost exclusively male, Sinhalese security forces raises particular problems for women there in terms of their*

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[51] International Crisis Group. 2011. *Sri Lanka: Women's Insecurity in North and East*. Asia Report Number 217. [report] International Crisis Group, p. i.

[52] Bastick, M., Grimm. K. and Kunz, R. 2007. *Sexual Violence in Armed Conflict: A global overview and implications for the security sector*. [report] Geneva: Geneva Centre for the Democratic Control of Armed Forces. p. 109.

[53] Wood, E. 2009. Armed Groups and Sexual Violence When is wartime rape rare?. *Politics and Society*, 37 (1), p. 146.

[54] *Ibid*, at p. 150.

[55] *Ibid*, at p. 152.

safety, sense of security and ability to access assistance. They have little control over their lives and no reliable institutions to turn to. The government has mostly dismissed women's security issues and exacerbated fears, especially in the north and east. The international community has failed to appreciate and respond effectively to the challenges faced by women and girls in the former war zone.[56]

International Alert describes the culture in the post-conflict era as being a 'militarised, masculine' environment which is a result of a pervading Sinhalese nationalism that advocates for women to preserve their ethnic group by producing 'heroic sons'.[57] This ideology could explain SGBV against Tamil women by SLF, as demonstrated by Enloe's analysis. It does not explain the position of Tamil men who have been influenced by alternate constructs.

This research looks specifically at Tamil men, focusing on former members of the LTTE as they have spent time in a military setting. In northern and eastern Sri Lanka there are approximately ten thousand former LTTE members who have been reintegrated into the community.[58] While there is no data available specifically on former combatants and their propensity towards SGBV, non-combatant men have been living in a highly militarised environment for the last thirty years under the authority of the LTTE. This is also an environment that cultivates violent masculinity. The group that has been in a closed, military environment are most likely to have developed a violent concept of masculinity. As a result, if SGBV is a consequence of violent masculinity, it will be most readily identifiable within this group.

In the post-conflict regions of Sri Lanka, domestic violence perpetrators are Tamil men.[59] While there is limited numerical data on the prevalence of domestic violence specifically in the northern and eastern provinces, a report from International Crisis Group says that violence within families is widespread and on the rise.[60] The most recent numbers specifically pertaining to the war-affected areas are those of the experiences of 286 children in north-eastern Sri Lanka recorded in 2008. 42.2 percent of children surveyed had witnessed wife beating, but only rarely reports of sexual violence against family members during the conflict.[61]

It is important to point out that within the Tamil community, women are at a greater threat of SGBV from family members in their home than non-family members. This identifies a distinction between SGBV being public or private and reflects its acceptability. In this case it can be assumed that public SGBV is not widely considered acceptable.

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[56] International Crisis Group. 2011. *Sri Lanka: Women's Insecurity in North and East*. Asia Report Number 217. [report] International Crisis Group, p.1.

[57] International Alert. 2009. *Global Monitoring Checklist on Women, Peace and Security*. [report] GAPS-UK. p. 11.

[58] Anti-Defamation League. 2013. *Liberation Tigers of Tamil Eelam*. [online] Available at: http://archive.adl.org/terrorism/symbols/liberation_tigers_te2.asp [Accessed: 4 Jul 2013].

[59] International Crisis Group. 2011. *Sri Lanka: Women's Insecurity in North and East*. Asia Report Number 217. [report] International Crisis Group, p.2.

[60] *Ibid*, at p. 29.

[61] Catani, C., Shauer, E. and Neuner, F. 2008. Beyond Individual War Trauma: Domestic Violence Against Children in Afghanistan and Sri Lanka. *Journal of Marital and Family Therapy*, 34 (2), p. 169.

This literature review has covered a number of relevant areas that warrant further attention. The outline of violent masculinities shows that the wide variety of contexts within which this particular concept of masculine identity manifests itself would suggest this could be expected in some way in Sri Lanka. Along with the highly militarised environment of northern and eastern Sri Lanka and the high prevalence of SGBV makes this assumption even safer.

The complexity in this situation is the type of SGBV that the northern and eastern provinces experienced and the role of women during the conflict. When this is analysed in greater depth it can be seen that there are a number of elements that could explain why there are high rates of domestic violence but not violence against women from non-family members. It is not the case that a context with only domestic violence demonstrates a complete cultural rejection of SGBV, however analysis of the overall context becomes a useful tool to draw the line between legitimated violence against women and delegitimated violence against women. It is tnese elements that this paper is concerned with.

Methods

Hypothesis

The line between legitimated SGBV and delegitimated SGBV can be demonstrated through a number of methods. The aim of this study is to identify the prevalence of violent masculinity in the post-conflict environment in Sri Lanka. This will reveal whether there are culturally developed gender identities that give men the perceived right to commit SGBV. The hypothesis is that domestic violence committed by family members in the Tamil community combined with the low rates of SGBV from non-family members suggests SGBV is delegitimated.

In addition to this, attention will be given to the unique feature of gender roles in conflict-affected areas of Sri Lanka by considering the role women played in armed forces during the conflict. This paper proposes that the inclusion of women in active combatant roles within the military has decreased the prevalence of violent masculinity. High rates of SGBV in the main form of domestic violence would then be explained not by a genderised concept of a male's right to domination over a female, rather that SGBV is delegitimated. Delegitimated SGBV can be explained by other reasons such as mental health conditions like PTSD which can be common amongst former combatants and populations in conflict areas, and is also linked to domestic violence. This study engaged in collecting data on the prevalence of violent forms of masculinity in post-conflict areas of Sri Lanka and collecting data on gender roles within the LTTE

Methods of Collecting Data

A number of methods could be used to conduct this research. Identifying cultural behaviours and understanding how this impacts gender relations would lend towards the use of an ethnographic survey or participant observation. Participants could be observed and their behaviour interpreted directly by the researcher. These methods were however not available in this context due to financial and human limitations. As a foreign female, the researcher felt community observation would be problematic as her presence was likely to disrupt natural behaviour unless she was able to spend many months in the community. This was not available as an option.

For this reason drawing on the observations of community members, including former combatants and NGO practitioners who have worked in communities with reintegrated former combatants would help preserve the integrity of the data. Interviewees have the benefit of being part of the community and therefore can offer genuine observations of the natural state. The challenge of this is that observations are at the discretion and interpretation of the participants. A further difficulty this method presents is that information extracted from participants is based on the researchers knowledge of what to ask for which may result in information blind spots. For example, if asking about domestic violence, the researcher and the participant's definition of spousal rape could differ.

Definition of Violent Masculinity

To address this problem, a framework was developed to define terms and violent masculinity based on observable behaviours. Violent masculinity was defined as follows: aggressive behaviour through words or actions, bond with weapons, male gangs, acts of violence/sexual violence against men and acts of violence/sexual violence against women. Other relevant features of violent masculinity that could not be readily identified through the observation of behaviour include promotion of violence as a means of acquiring power and identifying oneself through use of aggression

These were not included in the qualitative research as it was decided it would be too subjective for respondents and it would be difficult for a participant unfamiliar with the language around the theme leading to a high chance of misinterpretation. The criteria were chosen based on the researchers definition of violent masculinity. It is important to note that expression of one of these features does not constitute violent masculinity in itself, rather a cluster of them existing concurrently.

Sample Group

The data collection focused on former combatants as they are a group that had a high likelihood of demonstrating violent masculinity. Data was not available to demonstrate if former combatants had higher rates of SGBV than non-combatants in northern Sri Lanka. Former combatants were used because their experience in a military environment would suggest they have the highest likelihood of associating violence with masculinity. The absence of violent masculinity here would make it unlikely it would exist

significantly elsewhere in the community. The former combatants have also lived in Tamil society, therefore their gender identity would be a product of both Tamil culture and the militarised environment. The absence of violent masculinity in former combatants would exhibit that neither Tamil culture nor the military environment of the LTTE encouraged violent masculinity. This is opposed to looking at Tamil men in general who would only be able to provide evidence of violent masculinity in Tamil culture.

The research targeted the former administrative hub of the LTTE in the district of Kilinochchi. Kilinochchi witnessed combat throughout the war and many former combatants have been resettled in the area.

Methods of Data Collection

The primary method of data collection used was structured and semi-structured interviews with practitioners that have worked with former combatants and former combatants themselves. The purpose of conducting interviews with the practitioners was to ascertain a broad overview of an area where former combatants had been resettled. Combined with open questions to discuss the general nature of the community, closed questions were asked based on the above criteria of violent masculinity. To support this data, structured interviews with a small number of former combatants were conducted. These interviews were aimed at identifying how women were viewed during their time with the armed forces and in the post-conflict context. These interviews were conducted with both males and females.

A total of 40 interviews were conducted over 14 days within the space of two months. Details of these interviews can be found in Table 1.

Table 1.

	Interview Type	Number
Former Combatants	Structured	7 female 7 male
NGO Practitioners	Semi-structured	1 female 10 male
	Structured	6 female 9 male

Challenges of Data Collection

The data collection faced a number of challenges that limited the scope of the research. This was mostly a result of the limited financial and human resources available as well as the ongoing high military presence and suspicion of foreigners in Sri Lanka. The research was only able to use a small sample to base the data on, but drew on a number of sources with a wider perspective in order to overcome this.

Without the resources available for an interpreter, the research relied on the staff of NGOs for interpretations. They were unable to translate verbatim and instead paraphrased responses, therefore the information that was delivered to the researcher was at the discretion of the NGO worker and not the respondent. While the data collected in the first phase was useful and gave a broad overview of the situation, it became necessary to make the results comparable, the questions more simplistic to avoid misinterpretation and ensure straightforward answers that the interpreters could relay easily. It is for this reason that in the second stage of data collection practitioners were asked closed-questions which have been tabulated in the following section.

As the NGOs supporting the research were unable to provide a female Tamil interpreter, interviews with women about experiences of domestic violence were abandoned. It was believed that without a female interpreter such questions were insensitive, and the respondent may not feel comfortable discussing experiences honestly in the presence of a male. Without this data, secondary resources were used to discuss the nature of domestic violence in conflict-affected areas of Sri Lanka.

A further challenge faced was finding female practitioners in the area as the NGOs supporting the research had few, or sometimes no females on staff. After the initial interviews however, there appeared to be no significant difference between the observations of male and female staff members, so the 2:1 ratio of male to female participants was unlikely to distort the results. It was also the case that female practitioners conducted fewer field visits and therefore did not have the same level of experience as male practitioners.

Another issue was the concern respondents expressed because of the suspicion of authorities if the NGO workers and foreign researcher spent too much time talking to the former combatants outside NGO compounds. The high military presence and frequent visits of SLF to the area meant it was more suitable to meet combatants who visited the NGO compounds on their visit to their case manager. This meant there was no control over origins of the sample, and while they were from the same district, the research was unable to focus on one specific part of the district. The high military presence and observation also meant most participants, both NGO practitioners and former combatants, only took part on the provision of anonymity therefore all names of participants and NGOs have been withheld. A combination of local and international NGOs were consulted. All participants were either Sinhalese or Tamil.

Data Presentation

Absence of Violent Masculinity

Data collected through interviews with practitioners that have worked in and around Kilinochchi on the prevalence of violent masculinity presented no significant presence. The data was collected based on the theoretical framework of what constitutes violent masculinity discussed in the Methods section. Respondents were initially asked how many former combatants they had worked with directly. Answers to this question varied from 12 to 300. The significant difference between the amounts is due to the fact that

some NGOs operate programs specifically for former combatants conducting case management, while others operate projects within communities where combatants live.

Table 2.1 shows the data collected on weapon ownership amongst former combatants as observed by practitioners. The results unanimously agreed that neither males nor females owned weapons.

Table 2.1 - *To the best of your knowledge, how common is weapon ownership in the community you work in? E.g. gun, explosives, blades used for defensive purposes.*

Every male has a weapon	Some males own weapons	No males own weapons
0	0	15
Every female has a weapon	Some females own weapons	No females own weapons
0	0	15

Reponses to questions regarding the prevalence of male gangs were almost unanimous with 1 respondent answering gangs were somewhat common. This could be a result of confusion as to the definition of a male gang. The question had to be clarified in some cases to determine the difference between a paramilitary group funded by the Sri Lankan government operating in Jaffna and groups of young boys operating informally. The results are displayed in Table 2.2.

Table 2.2 - *Is there a prevalence of male gangs?*

widespread	somewhat common	not at all
0	1	14

Almost all respondents were aware of SGBV in the community. The most frequent response was however that they had 'heard' of it, rather than witnessed it firsthand. This corresponds with the high rates of SGBV from family members in private rather than non-family members in public. See results table 2.3

Table 2.3 - *Are you aware of SGBV in the community where you work?*

Yes	No
14	1

The responses to the question regarding the perpetrators of SGBV were varied. Husbands were most commonly identified as the perpetrators of SGBV. Other perpetrators were identified as strangers, fathers, brothers and uncles. The varied answers corresponds with the previous question where respondents did not have first had evidence of SGBV rather had heard of it. This could lead to confusion or misinformation regarding the identity of the perpetrators. Of significance here is the low number of reports that strangers are responsible for SGBV. The most common form of SGBV that practitioners were aware of was domestic violence committed by family members, rather than unknown perpetrators. See table 2.4.

Table 2.4 - *Who are the perpetrators of SGBV? Select more than one if necessary*

Males	Females	Husbands	Fathers	Brothers	Uncles	Other family member	Stranger	SL Forces	No Answer given
12	0	7	6	5	5	1	3	2	3

Table 2.5 displays the answer to the question regarding practitioners' observations of aggression amongst males. Two-thirds of respondents had witnessed some form of aggression amongst males, however 70 percent reported that these happened rarely, while 30 percent reported it happened monthly. There were no practitioners who reported that the aggression happened weekly or daily. See Table 2.6.

Table 2.5 - *Have you personally witnessed aggression amongst males? E.g. physical fights. If yes, please give example of context and cause.*

Yes	No
10	5

Table 2.6 - *What is the frequency of this form of aggression amongst males?*

daily	Weekly	monthly	rarely
0	0	3	7

This data as a whole demonstrates that the established criterion for what constitutes violent masculinity has not been met to any significant degree. A practitioner made the comment that-

Everyone in the community knows that rape and violence against women is wrong. (Interview 1)[62]

Identifying this is pivotal in understanding the nature of the SGBV that exists within the community.

Positive Status of Women in LTTE

Questions on the role and status of females under the LTTE were asked of 7 female cadres and 7 male cadres. These questions were aimed at outlining their role as members of the LTTE and in the post conflict period. Only one out of fourteen respondents had reported they had witnessed any form of SGBV during their time with the LTTE-

It never happened like that, we were all seen as the same and we were protected by one another. (Interview 4)

This corresponds with Wood's work regarding the lack of SGBV committed by the LTTE. See Table 2.7.

One respondent had second-hand information that sex slaves were used by senior members of the LTTE in sex camps-

As for Prabhakaran, while his ideas about women and men (being equal) are accurate, it only applied to the junior cadres. In his own camps, and those of the senior officers, they have found camps where women were rounded up from nearby villages and transported as prostitutes. (Interview 13)

The respondent was asked to clarify the term 'prostitute' and answered that the women were not offered compensation for their services and were held against their will. When the former combatants were asked about senior officials using women for sexual purposes, none of the respondents were aware of such cases-

I don't know anything about that (senior cadres using women for sexual purposes), nothing happened that was wrong.

This comment does not necessarily contradict the previous statements from the former combatants as they were all junior cadres and may not have had access to senior officials.

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[62] *A list of interview subjects has not been included at the request of the subjects who participated on the provision of anonymity for security reasons.*

Table 2.7 - Did you witness any sexual or gender based violence during your time with the LTTE?

	Yes	No
Female	I	6
Male	0	7

No females who were asked if they had experienced any discrimination based on their gender during their time with the LTTE reported such experiences. Male cadres were asked about the position of women under the LTTE. There was consensus amongst the males that firstly women were given access to the same positions as men and that their gender differences were catered for-

Women were equally treated, all of them. (Interview 15)

It should be noted however that each of the men interviewed reported that their units were entirely male units that worked with female units. In a focus group consisting of two male ex-cadres and three female ex-cadres the group agreed that women did not face discrimination with one female respondent saying-

We were treated better than the men, we had everything we needed. (Focus Group 1)

When asked to explain what being treated better than men looked like, the women said the LTTE made particular provisions for female needs that were separate to men. See Table 2.8 and 2.9.

Table 2.8 - Did you experience any discrimination based on your gender during your time with the LTTE?

	Yes	No
Female	0	7

Table 2.9 - Do you feel gender differences were respected and provided for, particularly for women?

	Yes	No
Females	7	0
Males	7	0

Finally, cadres were questioned on the topic of the post-conflict situation for women and how this has affected gender roles. Responses to this question were varied with some reporting no problems and some reporting severe problems. One male former combatant respondent made the comment that-

> *Society has not accepted the changes that have happened because of the war because culturally men and women are supposed to be different. Women and men should have different jobs because of the fitness of women. (Interview 15)*

The most common problem reported for women was finding economic assistance as men were prioritised in the rehabilitation efforts of the government and INGOs. A male in the focus group commented that-

> *Women cadres are suffering the most in the post-conflict period to get jobs and money. (Focus Group 1).*

A female cadre whose husband had died in the conflict and had a son reported that she had had similarly difficult experiences-

> *It is difficult for me to get a job because no one wants to hire a female ex-cadre because I was above them and they don't want to be my boss. Men are given priority for economic assistance. (Interview 1).*

Female respondents who reported they had encountered no problems in the post-conflict situation were often married or lived with their family which is a possible explanation for the different experiences. Another problem that women have faced in the post-conflict period has been the stigma attached to them as a result of their association with the LTTE making them a less eligible wife. Former cadres expressed a number of reasons for the stigma including the surveillance female cadres are under from the SLF and rumours that some female ex-cadre have been sexually involved with SLF members-

> *They (the Sri Lankan Forces) pay frequent visits to female ex-cadres. We just see them going into the house. (Interview 3)*

There are also concerns that a woman's time with the military has changed her view of traditional Tamil gender roles-

> *Men do not want to marry an ex-cadre because they are afraid they won't be able to control her. (Interview 10)*

This information demonstrates that there is the feeling that the women involved in the armed forces will not be easily dominated, and that there is a desire for Tamil society to maintain traditional roles post-conflict.

Analysis - the Nature of SGBV in Post-Conflict Sri Lanka

The data demonstrates that first SGBV has existed in both the conflict and non-conflict environment and continues to be prevalent in war affected areas of Sri Lanka. Second, it has occurred in a variety of ways including sexual violence as a tool of war. The perpetrators of SGBV in northern Sri Lanka are both domestic partners and authority figures. A number of relevant points from this overview of insecurity of women in north and east Sri Lanka can be drawn; perpetrators of SGBV are predominantly male,[63] perpetrators of SGBV against Tamil women have been/are either intimate partners or members of SLF,[64] women have access to minimal, if any, institutional support,[65] SGBV was not widespread under the LTTE[66] and the existence of sexual violence against men is unknown.

Each point contributes to understanding the role of violent masculinity and whether or not there is a culture that legitimises violence against women. When analysing the causes and contexts, it is necessary to distinguish between acts of SGBV committed by family members, and those committed by opposition security forces. This paper only deals with domestic violence.

Absence of Violent Masculinity and Delegitimated SGBV

The data collected from practitioners in the Kilinochchi district showed that there is no significant, observable expression of violent masculinity in the area. This can be determined through two strands of evidence to come from the data collection. The first is that the practitioners questioned were aware of SGBV within the community with 14 out of 15 respondents answering that they knew of its existence. They indicated a variety of perpetrators who were primarily family members. These answers demonstrate that the practitioners were aware of and could identify violence in their environment when questioned.

The three other areas of questioning investigated the prevalence of violent masculinity covered by weapon ownership, aggression amongst males and male gangs. The research exhibited no significant presence of any of these features. Out of 15 respondents, 15 answered there were no weapons, 14 answered there were no gangs and out of the 10 respondents who answered they had witnessed aggression amongst males, 7 responded that this occurred rarely and 3 responded that it occurred monthly. It therefore cannot be drawn

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[63] Catani. C.. Shauer. E. und Neuner. F. 2008. Beyond Individual War Trauma: Domestic Violence Against Children in Afghanistan and Sri Lanka. *Journal of Marital and Family Therapy*, 34 (2), p. 171.

[64] International Crisis Group. 2011. *Sri Lanka: Women's Insecurity in North and East*. Asia Report Number 217. [report] International Crisis Group; Amnesty International. 2002. *Sri Lanka: Rape In Custody*. AI Index 37/001/2002. [report].

[65] International Alert. 2009. *Global Monitoring Checklist on Women, Peace and Security*. [report] GAPS-UK.

[66] Wood, E. 2009. Armed Groups and Sexual Violence: When is wartime rape rare?. *Politics and Society*, 37 (1), pp. 131-161.

from this data that the evidence meets the criteria established to identify the presence of violent masculinity. The minor variations in the results, particularly regarding aggression amongst males are variations that could be present in other contexts without it being an indication of violent forms of masculinity. For example, the individual act of owning a weapon does not represent an adherence to violent masculinity.

The absence of violent forms of masculinity in the area of study becomes clearer when the evidence is compared with other contexts where it could be said there is a prevalence of violent masculinity. To take South Sudan as an example, the country as a whole has high rates of SGBV with perpetrators often being unknown males in public area, such as near water collection points.[67] There is also a high prevalence of male gangs including 'White Armies' or other armed groups, some of which are known for conducting cattle raids against rival villages.[68] Male members of the US military demonstrate similar types of behaviour through resistance to women being involved in all areas of army life (e.g. front line combat), significant levels of sexual harassment, SGBV against female military members and minimal support available for victims with 90 percent of female veterans of the Gulf War claiming to have been harassed in the military with incidents ranging from rape to physical and psychological abuse.[69] Lack of support for women's concerns is demonstrative of a gender bias towards men. While the context and perpetrators are different to that of northern and eastern Sri Lanka, the prevalence and nature of the violence demonstrates a form of legitimated discrimination against women and the resulting SGBV where males are willing to commit sexual violence against non-family member females.

More broadly speaking, a 2013 WHO report on violence against women across the globe found South Asia, including Sri Lanka, India, Bangladesh, Thailand and Myanmar to have the highest rate of intimate partner violence (IPV) with a rate of 37.7 percent. When the criteria is widened to include IPV and non-partner violence, then Africa has the highest prevalence at 45.6 percent, almost 5 points higher than South Asia with a rate marginally higher than the level of IPV at 40.2 percent. Unlike the South Asia group, the countries investigated for Africa include a number of conflict or post-conflict areas such as Democratic Republic of the Congo, Uganda, Rwanda, Liberia and Mozambique.[70] Many of these conflicts involve or have involved rebel armies, child soldiers and used sexual violence. These circumstances create an environment where SGBV is legitimated as part of the context which allows it to be widespread and often in public contexts such as gang rapes or rape being used 'as a tool of war'.

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[67] Danish Refugee Council. 2012. *Sexual and Gender Based Violence Rapid Assessment: Doro Refugee Camp, Upper Nile State, South Sudan.* [e-book] Available through: Danish Refugee Council Website http://drc.dk/fileadmin/uploads/pdf/IA_PDF/South_Sudan/sexual_gender_based_violence_south_sudan.pdf.

[68] Arnold, M. and Alden, C. 2007. This Gun Is Our Food: Demilitarising the White Army Militias of South Sudan. *Security in Practice,* Working Paper 722 (3), p 5.

[69] Segal, L. 2008. Gender, War and Militarism: Making and questioning the links. *Feminist Review.* (88), pp. 21 – 35: Reports on rape within the US military amongst 500 women showed that 30 percent of females had experience attempted or completed rape. It is estimated that 90 percent of cases of rape go unreported (Merriman, 2010).

[70] WHO.int. 2013. *WHO WHO report highlights violence against women as a 'global health problem of epidemic proportions'.* [online] Available at: http://www.who.int/mediacentre/news/releases/2013/violence_against_women_20130620/en/index.html [Accessed: 27 June 2013].

These features are indicative of violent forms of masculinity but are not significantly shared by the former combatants in Sri Lanka. The high rates of domestic violence and absence of other types of SGBV indicate that for the most part, violence against women is kept private. An island wide report from Care Sri Lanka evinced that 74 percent of men did not agree with the statement that 'there are some times when a woman deserves to be beaten'.[71] While these numbers do not correspond with the high rates of domestic violence, the report comments that men are aware that they need to be politically correct in their answers which is in itself an indication of perceptions.[72] While everyone is aware domestic violence exists, this awareness comes primarily from second-hand information rather than eyewitness accounts. This suggests SGBV, while prevalent, is not acceptable and therefore delegitimated.

Women Can Be Violent Too

The next section of this report will concentrate on how the role of women in the LTTE explains the absence of violent forms of masculinity. For this point, the research comes back to the point made by Katz regarding the construction of masculinity-

> *Masculinity is defined in opposition to femininity which requires a constant reassertion of what is masculine and what is feminine. This is accomplished through the image system by equating masculinity with violence, power and control and femininity with passivity.[73]*

When applying this to the LTTE it shows that an alternate construction of masculinity and femininity took place. Considering this analysis from Katz, the high number of women members of the LTTE and how they were used becomes a valid point. Even though it is not uncommon for women to be members of armed forces around the globe, the use of women in military positions has often been met with controversy when women try to join established armed groups that have a history of only using men in positions of violence. The ongoing struggle to allow women to operate on the front line in some areas around the globe is demonstrative of this. One of the main conservative arguments in the United States against allowing women access to front line positions uses gender stereotypes-

> *Ground combat is one area in which women through biology and human nature are not equal to men...No one wants to imagine their son in these circumstances either, obviously, but women face special tortures. And no, the rape of men has never held comparable appeal...We can train our men to ignore the screams of their female comrades, but is this a society we want to create?[74]*

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[71] De Mel, N., Peiris, P. and Gomez, S. 2013. *Broadening Gender: Why masculinities matter.* [report] Colombo, Sri Lanka: Care International Sri Lanka, p. 20.

[72] *Ibid*, at p. 24.

[73] Katz, J. 2003. Advertising and the Construction of Violent Masculinity: From Eminem to Clinique for Men. In: Dines, G. and Humez, J. eds. 2003. *Gender, Race and Class in the Media.* 2nd ed. Sage Publications, p. 352.

[74] Parker, K. 2013. Combat Puts Women at Unique Risk. *The Washington Post*, [online] 25 January. Available at: http://articles.washingtonpost.com/2013-01-25/opinions/36548646_1_direct-combat-men-and-women-fallacy [Accessed: 28 January 2013].

These arguments are grounded in traditional military gender views that appeal to values. First, the idea that the rape of men is not as appealing as the rape of women, and the assumption that men are somehow programmed to come to the aid of women in distress. This assumes that within the military ranks there is a chivalrous tradition, although the previously mentioned high rates of SGBV within the US military demonstrate an alternate reality. This argument also denies that women can become physically as strong as men, regardless of evidence that it is possible for women to meet the same physical standards as men. This perspective is built on the idea of natural male aggression and female passivity.

The relatively short military history of the LTTE meant the use of women was not challenging a long-standing masculine military tradition with established gender roles where men were violent and women were passive. This made it easier for women to occupy non-traditional roles. The militarised environment presented a new foundation on which gender roles could be built. It was not seen as a threat to tradition or a militarised masculine identity and by most accounts women were viewed as valuable and equal combatants.

The data collected from the interviews with former combatants demonstrated this. Out of the 7 female combatants interviewed, none reported having experienced any discrimination based on their gender during their time with the LTTE. All of the former combatants agreed that gender differences were respected and provided for with the one female making the comment that they were treated better than the men (Focus Group 1). These responses exhibit that women had their gender specific needs met, rather than requiring them to conform to masculine standards. Within the LTTE men did not have a monopoly on violence or military culture and women did not have to mould themselves to suit a male-dominated military environment.

In addition to the subverted roles that challenged gender identities, the strong sanctioning of SGBV by the LTTE contributes to the delegitimisation of SGBV. Wood's research showed that SGBV was strongly condemned by the LTTE leadership and harsh punishments were handed down to offenders. As a result, out of the 14 male and female combatants interviewed, 13 reported that they had never witnessed any SGBV during their time with the LTTE and were not aware of leadership committing SGBV.

Negative sanctions on SGBV from authority figures and comrades play a vital role in preventing SGBV in a military context. The previously mentioned contexts of DRC and Uganda are environments where SGBV has a high prevalence. SGBV has been promoted by military authorities where cases have been reported of rebel forces units committing acts of SGBV against communities as a military tactic.[75] The allowance of acts of SGBV to be committed in public contexts, with permission from or under the order of military authority normalises and legitimates the use of SGBV and the idea that women are subjects to a man's sexual need. Through this a man's dominance and a woman's subordination are ingrained in gender roles which do not dissipate after demobilisation.

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[75] Myles, R. 2013. UN Report Highlights Congo's Continuing Rape Crisis. *Digital Journal*, [online] Available at: http://digitaljournal.com/article/349996 [Accessed: 3 July 2013].

The report from one respondent of senior LTTE members operating sex camps has not been previously mentioned in work on sexual violence and the LTTE. The respondent who had visited a camp in Puthukkudiyiruppu at the end of the war answered that Tamil women were used as sex slaves and had their uteruses cleaned out monthly to prevent pregnancy (Interview 13). As this point could not be substantiated by a second source its usefulness is limited. Further investigation should be undertaken to verify this information as it contradicts previous reports.

Delegitimated Violence Against Women

SGBV in conflict-affected areas of Sri Lanka cannot be explained by a culture that legitimises violence against women through gender identities. The absence of certain behaviours of males that when adopted together would indicate a concept of masculinity that promotes violence as an expression of manliness helps explain this. An outcome of violent masculinity is often SGBV as a result of the belief that women are subordinate to men and therefore sexual violence is acceptable. The absence of these types of behaviours in males makes post-conflict Sri Lanka an unusual case, as these are typically qualities that would be developed in a highly militarised environment.

An investigation into the role of women in the LTTE suggests that this could be explained by the gender roles promoted by the LTTE. Women were viewed as equal members of the armed forces and acted in violent roles thus removing the male monopoly of violence. Violence is not a behaviour that is directly associated with manliness and therefore violence against women is not legitimated by gender constructs. This is enforced by the fact that the SGBV committed by Tamil men is domestic violence, and not against women who are not family members which indicates that it is not acceptable to commit violence against any women.

To explain the prevalence of SGBV in northern and eastern Sri Lanka, attention needs to be given to the question of why domestic violence is the primary form of SGBV. The data collection indicated that domestic violence was something everyone was aware of, but no one had firsthand knowledge of. All accounts were vague and expressed with a sense of hesitancy. This would suggest there is a degree of shame behind domestic violence and such acts are kept private.

The comment from the practitioner that 'everyone in the community knows that rape and violence against women is wrong' supports the conclusion that SGBV is delegitimated. Despite being aware that it is wrong, it still happens and in private. If SGBV was legitimised, then it would be more common for such acts to happen outside the home and in group contexts.

High rates of SGBV can be pinned on conditions under which individuals behave against their personal judgement. One such explanation of this is PTSD. The literature review showed there is a strong correlation between acts of aggression and PTSD. even more significantly amongst former combatants and individuals with war exposure. Due to the length and brutality of the conflict in Sri Lanka, it is plausible

that there have been high rates of war exposure for military or civilian populations which would make a wide prevalence of PTSD likely. This hypothesis warrants further investigation.

Conclusion

Literature regarding SGBV in post-conflict environments provides a variety of explanations as to why SGBV occurs generally but it is necessary for each context to be understood and examined in order to tailor specific responses.

Sri Lanka is a unique post-conflict environment. The combination of high rates of domestic violence and low rates of non-family member violence against women demonstrate that there is a trend towards a particular type of SGBV. This is different than in other post-conflict environments where there are high rates of both forms of SGBV. A further point of interest for Sri Lanka was the significant role women played in armed forces. Women made up a significant proportion of the LTTE in a conflict that lasted nearly 30 years. A great deal of attention has been given to the role of women in the LTTE but what warrants deeper investigation was how this impacted gender roles in the post-conflict environment.

A common feature of gender roles in the post-conflict environment is violent masculinities. Violent masculinities are present across the globe in many different contexts, particularly conflict areas. Part of this concept of the masculine identity can view SGBV as being legitimate. Women are subordinate to men, men have a right to sex therefore SGBV is acceptable. When this is the case, SGBV will be widespread such as in the Democratic Republic of the Congo where SGBV is acceptable not only by comrades, but institutionalised through military structures. When this violent masculinity is identified, addressing the problem becomes about changing values and a culture. It was hypothesised that the involvement of women in the armed forces has led to the absence of violent masculinities. This was investigated first through establishing criteria to identify the presence of violent masculinities in the conflict-affected areas of Sri Lanka, and then to gather data from former combatants on their view of gender roles within the LTTE.

The study showed that there was no prevalence of violent masculinities. The former combatants questioned reported overwhelmingly that women were treated equally and had their gendered needs met by authority structures in the LTTE. Furthermore, this research and that from Elisabeth Wood demonstrated that SGBV was not practiced by the LTTE and was negatively sanctioned by authority structures. Finally, women were used in violent positions in the LTTE and not restricted to traditional passive female roles.

The combination of these factors means men did not hold a monopoly of violence nor a significantly dominant role over women in the military environment which prevents acts of violence from being associated with manliness. When this was combined with negative sanctioning of SGBV by authority structures, it can be said that SGBV has been delegitimated. This point is supported by the high levels of SGBV committed by family members, but not from non-family members. It indicates that SGBV is kept private and is a cause for shame. People are not comfortable admitting to it or demonstrating it in public.

This is different from other post-conflict areas where SGBV is more acceptable both publicly and privately.

The mere conclusion that SGBV in the conflict-affected areas of Sri Lanka is delegitimated is not actionable data. Where this becomes of use to practitioners is by helping understand why SGBV still happens even in a context where it is delegitimated. One such explanation is PTSD which has been shown to have a strong correlation with domestic violence, particularly in the context of former combatants and conflict-affected areas. With PTSD as the explanation it demonstrates why SGBV can be seen as delegitimate but still exist. Individuals are aware that their actions are wrong, so they keep them private. This can be seen as symptomatic of PTSD under the hyper-arousal cluster of symptoms which include aggression, irritability and violent outbursts. These are often a physiological response rather than cognitive.

The recommendations of this paper are therefore to ensure that mental health services are being provided to males in conflict-affected areas as part of SGBV prevention work. Further investigation should be undertaken into the mental health status of males to ascertain clear data on the prevalence of PTSD and then services provided specifically for the Sri Lankan context.

Too often across the globe measures to address SGBV are only developed to target women. While these programs are important. targeting women is treating the result and not the cause. With ongoing, in-depth studies into the perpetrators of SGBV preventative measures can be enforced which would reduce the cases of SGBV occurring. This would allow men to challenge their own concepts of gender roles or seek necessary help and give women the opportunity to enjoy lives free from the threat of violence.

The State's Power of 'Eminent Domain' *vis à vis* Vulnerable Communities – Some Comparative Illustrations

Ashwita Ambast[*]

1. Introduction

Land rights are traditionally, intensely contested entitlements between communities. The role of the State in this regard and particularly the power that the State has to acquire private property using its right of eminent domain has been complex, often not taking into account the rights of ethnically or socially marginalized communities and particularly women. As observed recently, concrete due process requirements observing equity and fair process in land acquisitions is absent in many South Asian countries.

> *We have observed this in the case of India and Nepal. Even in Malaysia, there has been a practice of acquisitions being conducted on an ad hoc basis because the wording of the legislation is too wide.[1] However, the rights of those whose lands are acquired can be protected if compensation offers are made to landowners prior to the acquisition taking place. This has been the case in Australia.[2]*

This paper undertakes a comparative analysis of land acquisition policies in two South Asian countries, India and Nepal, looking critically at the prevailing law as well as instances of arbitrary land acquisitions in order to enable examination of these problems from a common regional perspective with the needs and concerns of vulnerable communities and displaced women in mind.

2. India

India's power of eminent domain over its territories[3] has increasingly been used by the Indian state to facilitate its developmental agenda. Around 3,300 big dams have been built in the last six decades.[4] Each

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[1] *Land Grab, Malaysian Style* [online] Available at: http://www.freemalaysiatoday.com/category/opinion/2012/10/06/land-grab-malaysian-style/ [Accessed on 13 January 2013].

[2] J. de A. Guneratne, K.Pinto-Jayawardena and R.Gunaratne, '*Not This Good Earth; The Right to Land, Displaced Persons and the Law in Sri Lanka*', Law & Society Trust, October 2013, at page xviii.

[3] U. Ramanathan, *A Word on Eminent Domain*, [online] Available at: www.ielrc.org/content/a0902.pdf [Accessed 26 September 2012]; *Coffee Board* v. *Commissioner of Commercial Taxes* (1988) 3 SCC 263.

[4] R. Hemadri, *et al.*, *Dam Displacement, Policy and Law in India*, [online] Available at: http://www.dams.org/docs/kbase/contrib/soc213.pdf [Accessed 30 September, 2009].

developmental project has required the government to acquire large tracts of land: the Sardar Sarovar Dam submerged an area of 37,000 hectares[5] and the Bhilai Steel Plant required up to 13,500 hectares.[6]

This has mostly been done by force of law with minimal consultation with affected parties. Other examples of projects for which the government acquired a large tract of land include the Bhakra project, the Hirakud project and the Tungabhadra project.[7] The natural consequence for this has been the displacement of the people residing on these lands as well. Estimates of the number of people fallen victim to compulsory acquisition of land by the government over the years vary considerably, given that an approximate number of 3300 big dams have been constructed in India over the last 5 decades.[8] Some conservative estimates indicate that the figure is close to around 50 million citizens.[9]

The power of eminent domain in India is manifested in the Land Acquisition Act, 1894 [LAA],[10] a compilation of erstwhile local legislation.[11] Under the LAA, land may be acquired for any 'public purpose'.[12] Any 'person interested' is entitled to receive compensation.[13] Compensation for acquisition is calculated on the market price of the land, the crop lost, any change of residence, any diminution of profits that might ensue and an additional 30% *solatium* is provided as well.[14]

Several problems have been identified in regards to the LAA:

(i) The term 'public purpose' was of wide import and was left to the discretion of the ruling government.[15] In fact, in a series of decisions delivered by the Supreme Court of India, it was ruled

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[5] Editor, "Sardar Sarovar Project: Review of Resettlement and Rehabilitation in Maharashtra" 28(34) *Economic and Political Weekly* 1705 (1993) at 1706.

[6] M. Asif, "Why Displaced Persons Reject Project Resettlement Colonies" 35(24) *Economic and Political Weekly* 2005 (2000) at 2006.

[7] R. Hemadri, *et al.*, "Dam Displacement, Policy and Law in India", Available at: http://www.dams.org/docs/kbase/contrib/soc213.pdf (Last Accessed: 30th September, 2009). For further illustration, refer to the annexture.

[8] *Ibid.*

[9] R. Hemadri, *et al.*, op.cit. refer to Appendix I

[10] The Land Acquisition Act, No. 1 of 1894.

[11] The Bengal Regulation, 1 of 1824; The Bombay Act No. XVII of 1850; The Madras Act No. XX of 1852.

[12] Section 6(2), LAA.

[13] Section 3(b), LAA.

[14] Section 23, LAA.

[15] An early definition of public purpose by Batchelor J. as being "*a purpose, that is, an object or aim, in which the general interest of the community, as opposed to the particular interest of individuals, is directly and vitally concerned*" is seen in *Hamabai Framjee Petit* v. *Secretary of State*, (1911) 13 Bom LR 1097 The Supreme Court of India upheld this definition in *Sooraram Pratap Reddy* v. *Distt. Collector*. In paragraph 67 the court also stated that "*The expression ('public purpose') is of very wide amplitude. It is merely illustrative and not exhaustive. The inclusive definition does not restrict its ambit and scope. Really, the expression is incapable of precise and comprehensive definition. And it is neither desirable nor advisable to attempt to define it. It is used in a generic sense of including any purpose wherein even a fraction of the community may be interested or by which it may be benefited.*"

that the term 'public purpose' is not capable of a rigid definition.[16] This is problematic because it gives the state sanction to acquire land even for purposes that were not intended under the act and which need not logically fall within the scope of 'public purpose'.

(ii) Additionally, the provision for urgent acquisition[17] by which legal safeguards could be supervened in the interest of speed was being abused.[18] This trend is evident in a series of Supreme Court decisions. For example, in *Smt. Somavanti v. State of Punjab*,[19] five judges of the Supreme Court were pleased to hold that the decision of the government on what is 'public purpose' is final and is not justiciable by a court of law. Given this position of law, there is no procedural way that the discretion of the appropriate government can be questioned by third parties.

(iii) Section 3(b) of the Act defines 'persons interested' as including "*all persons claiming an interest in compensation to be made on account of the acquisition of land under this Act; and a person shall be deemed to be interested in land if he is interested in an easement affecting the land*".[20] The definition of 'person interested' is narrow and refers only to easmentary right holders.[21]

(iv) In addition to point (iii), as land rights are for the most part patrilineal, compensation will target men and overlook the impact of resettlement on women.

(v) The LAA is silent on rehabilitation and there was no corresponding national rehabilitation law. Some states have enacted laws (such as the Madhya Pradesh Pariyojana Ke Karan Vishtapith Vyakti (Punasthapan) Adhiniyam, 1985, The Maharashtra Project Affected Persons Rehabilitation Act, 1999 and the Karnataka Persons Displaced by Projects Act, 1987) which have mandatory legal application,[22] but others merely adhere to their State level norms (The Orissa Resettlement and Rehabilitation of Project Affected Persons Policy, 1994) or the National Rehabilitation Policies (the most recent being the policy of 2007[23]) that have no binding value. Even under these regimes, affected

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[16] *State of Bihar v. Kameshwar Singh* 1952 AIR(SC) 252, 259; *Hamabai v. Secretary of State* 1911 (13) BomLR 1097; *State of Bombay v. R.S. Nanji* 1956 SCR 18; *State of Bombay v. Bhanji Munji & Another* 1955 (1) SCR 777; *State of Bombay v. Ali Gulshan* 1955 (2) SCR 867; *Somawanti v. State of Punjab* 1963 (2) SCR 774.

[17] Section 17, LAA.

[18] A. Goswami, *Land Acquisition, Rehabilitation and Resettlement: Law and Politics*[online] Available at http://www.iihs.co.in/wp-content/themes/education/resources/FINAL.PDF.pdf, at 9 [Accessed 26 September 2012].

[19] 1963 SCR (3) 774. Also see: *Sharda Devi v. State of Bihar* (2003) 3 SCC 128, where the Court said: "*The power to acquire by State the land owned by its subjects hails from the right of eminent domain vesting in the State which is essentially an attribute of sovereign power of the State. So long as the public purpose subsists the exercise of the power by the State to acquire the land of its subjects without regard to the wishes or willingness of the owner or person interested in the land cannot be questioned*".

[20] Section 3(b), LAA.

[21] Section 3(b), LAA.

[22] *Ganpat Balwant Pawar v. Special Land Acquisition Officer* AIR 1984 Bom 382.

[23] National Rehabilitation and resettlement Policy, 2007 [online] Available at http://dolr.nic.in/dolr/downloads/pdfs/NRRP2007.pdf [Accessed 30 September 2012].

persons have little or no say in the rehabilitation process and the compensation package provided is not satisfactory.[24]

The adverse consequences of development are most strongly felt by the vulnerable groups from whom land is acquired. For example, the displacement of women from the traditional agrarian environment, where they are involved in all forms of economic activity, to an industrialized setting means women are placed in an environment where their skills are no longer of economic value. When landownership is placed in the hands of men, women are left economically dependent on their husbands or male family members with little or no capital available to them to them for their own self-determination.[25]

Around 50 million citizens have been displaced by development projects.[26] Land owners, supported by groups such as National Alliance for People's Movement[27] and politicians working in rural development[28] have historically demanded a participative process of acquisition and mandatory compensation and rehabilitation provisions[29] (resulting in situations such as Posco[30]). On the other hand, private companies have supported liberal acquisition norms to facilitate their businesses.[31] Parties funded by corporate houses[32] and politicians interested in the 'economic development' support this group.[33] The state is thus grappling with three primary issues: *First*, when should the state use the power of eminent domain; *second*, who should be compensated; *third*, what constitutes fair compensation.[34]

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[24] A critique of India's Draft Rehabilitation Policy, 2006 [online] Available at: http://www.aitpn.org/Issues/II-08-06-Rehabilitation.pdf [Accessed 26 September 2012].

[25] Bharathi, M *Tribal Women's Perspective on the Land Acquisition Bill* [online] Available at http://www.indiaenvironmentportal.org.in/files/file/Land%20Acquisition%20Bill.pdf [Accessed 18 December 2013]

[26] S. Singh, *Taming the Water: The Political Economy of Large Dams in India* (New Delhi: Oxford University Press, 1997) at 188-190; M. Asif, "Why Displaced Persons Reject Project Resettlement Colonies" 35(24) *Economic and Political Weekly* 2005 (2000) at 2007.

[27] NAPM, No Acquisition for Profiteering is Welcome but National Development Planning, Resettlement and Rehabilitation Act is the Need of the Hour [online] Available at: http://napm-india.org/node/733 [Accessed 30 September 2012].

[28] *Land Acquisition Bill: The Battle Continues* [online] Available at: http://profit.ndtv.com/news/politics/article-land-acquisition-bill-the-battle-continues-310373 [Accessed September 2012].

[29] *Land for Bill gives true Value* [online] Available at: http://www.thehindu.com/opinion/lead/article3889718.ece?homepage=true [Accessed 30 September 2012].

[30] *Widespread Protests bring Land Acquisition to a halt* [online] Available at: http://m.businesstoday.in/story/land-acquisition-protests-halt-india-projects-greater-noida/1/17153.html [Accessed 18 October 2012].

[31] *Jairam Ramesh tries to dispel apprehension about land bill before GoM meeting* [online] Available at: http://articles.economictimes.indiatimes.com/2012-09-26/news/34101966_1_land-bill-land-acquisition-act-urgency-clause [Accessed 19 October 2012].

[32] *CPM coffers bulge with capitalist cash, reveals data given to EC* [online] Available at: http://articles.timesofindia.indiatimes.com/2012-08-10/india/33136412_1_cpm-leader-prakash-karat-congress-and-bjp [Accessed 19 October 2012].

[33] *Ministry pushing Land Bill before GoM meeting* [online] Available at: http://www.thehindu.com/news/national/investorfriendly-clauses-of-land-acquisition-bill-being-highlighted/article3932319.ece [Accessed 19 October 2012].

[34] *India grapples with Land Acquisition Rules* [online] Available at http://www.prsindia.org/media/articles-citing-prs/india-grapples-with-land-acquisition-rules-1813 [Accessed 19 October 2012].

Two new bills were formulated in 2007 in order to tackle the deficiencies of the existing framework. The Land Acquisition (Amendment) Bill, 2007 [LAA Bill, 2007] aimed to amend the archaic provisions of the LAA,[35] while the Resettlement and Rehabilitation Bill, 2007 [RR Bill, 2007],[36] outlined benefits that the displaced persons would receive. Under the LAA Bill, 2007: (i) the scope of 'public purpose' was limited[37] (ii) 'person interested' was extended to include forest dwellers and tenants[38] (iii) the additional cost of resettlement was considered as part of the cost of acquisition[39] and compensation was deemed to include distress caused by delay,[40] destruction to soil[41] and acquisition could not be made without compensation being paid to the person affected.[42] Additionally, the LAA Bill, 2007 introduced social impact assessment for cases involving extensive displacement[43] and established the Land Acquisition Compensation Disputes Settlement Authority to adjudicate disputes relating to land acquisition.[44] Applicable to all cases of compulsory acquisition and forced displacement,[45] the RR Bill, 2007 made provision for housing,[46] property,[47] employment[48] and other benefits.

After being passed in the Lok Sabha, on account of the opposition by the CPI(M) and BJP in the Rajya Sabha,[49] both bills lapsed in 2009.[50] Some matters which remained controversial included (a) the unclear definition of public purpose (b) the unclear circumstances in which 'urgent' acquisition could be carried out. The Rehabilitation and Resettlement Bill, 2009 and Land Acquisition (Amendment) Bill, 2009 were drafted but were not introduced by the Cabinet in the 15th Lok Sabha.[51] When consulted on the bills, in addition to relaxing their position against the acquisition of land for private companies, in May 2011 the Congress-constituted NAC recommended that the two bills be fused into a single comprehensive

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[35] Statement of Objects and Reasons, The Land Acquisition (Amendment) Bill, 2007.
[36] Statement of Objects and Reasons, The Resettlement and Rehabilitation Bill, 2007.
[37] Section 5(v), LAA Bill, 2007.
[38] Section 5(i), LAA Bill, 2007 '/w Section 3(b) RR Bill, 2007.
[39] Section 5(ii), LAA Bill, 2007.
[40] Section 12, LAA Bill, 2007.
[41] Section 11, LAA Bill, 2007.
[42] Section 14, LAA Bill, 2007.
[43] Section 8, LAA Bill, 2007.
[44] Part IIA, LAA Bill, 2007.
[45] Section 2, RR Bill, 2007.
[46] Section 35, RR Bill, 2007.
[47] Section 36, RR Bill, 2007.
[48] Section 41, RR Bill, 2007.
[49] *Land acquisition, R&R Bills lapse* [online] Available at http://www.business-standard.com/india/news/land-acquisition-rr-bills-lapse/01/41/350406/ [Accessed 19 October 2012].
[50] *The Land Acquisition, Resettlement and Rehabilitation Bill* [online] Available at http://www.prsindia.org/billtrack/the-land-acquisition-rehabilitation-and-resettlement-bill-2011-1978/ [Accessed 19 October 2012].
[51] Standing Committee Report on The Land Acquisition, Rehabilitation and Resettlement Bill, 2011 [online] Available: athttp://dolr.nic.in/dolr/downloads/pdfs/Land%20Acquisition,%20Rehabilitation%20and%20Resettlement%20Bill%202011%20-%20SC(RD)'s%2031st%20Report.pdf [Accessed 19 October 2012].

legislation.[52] The Standing Committee recommended *inter alia* that the social impact assessment must be made discretionary below a certain threshold, that benefits to displaced people should be doubled with every displacement and that the rate of interest payable when compensation is not accepted should be fixed at 15%.[53] However, these recommendations have not been fully incorporated in the 2011 Bill.

The 2011 Bill adheres broadly to the NAC recommendations[54] and was introduced in the Lok Sabha in September 2011. The Standing Committee on Rural Development submitted its report on the 2011 Bill on 17th May 2012.[55] The Bill (i) tightens the definition of 'public purpose' further and prevents the acquisition of multi-cropped land. In cases where acquisition is made for a non-delineated purpose or for a private party, 80% approval of the project affected people is necessary[56] (ii) makes the R&R package available to both 'affected parties' and livelihood losers[57] (iii) increases the minimum compensation to four times the market price in rural areas and twice the market price in urban areas (with 100% *solatium*[58]).

A Brief Case Study: The Sardar Sarovar Dam

The SSD is a multi-purpose project which was constructed in pursuance of the orders of the Narmada Water Disputes Tribunal for sharing the Narmada River water between the states of Maharashtra, Rajasthan, Madhya Pradesh and Gujarat in India.[59] The construction of the Sardar Sarovar Dam [SSD] is one of the most popular cases of displacement by the government which became controversial. In fact, the World Bank which was a patron of the project withdrew its support for the project in 1994. The most significant factor in the controversy is the height of the dam as this has a direct bearing on the environmental impact as well as the number of people displaced by the dam. The government on the other hand has consistently taken the position that the construction of the dam is in the greater interest of the nation as it will irrigate around 1.8 million acres of land.[60] The stance of the Supreme Court on the project can be described as ambivalent at best. The alleged apathy of the government to the needs of the people and environment resulted in the creation of the popular protest movement, the Narmada Bachao Andolan, by Medha Patkar.[61]

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[52] *13th Meeting of the NAC* [online] Available at http://nac.nic.in/press_releases/25_may_2011.pdf [Accessed 19 October 2012].

[53] Standing Committee Report on Land Acquisition (Amendment) Bill, 2007 and Standing Committee Report on Rehabilitation and Resettlement Bill, 2007.

[54] M. Ghatak and P. Ghosh, *The Land Acquisition Bill: A Critique and Proposal* 46(41) EPW 65,65 (2011).

[55] *Standing Committee Report on The Land Acquisition, Rehabilitation and Resettlement Bill, 2011* [online] Available at: http://dolr.nic.in/dolr/downloads/pdfs/Land%20Acquisition,%20Rehabilitation%20and%20Resettlement%20Bill%202011%20-%20SC(RD)'s%2031st%20Report.pdf [Accessed 19 October 2012].

[56] Section 3(za), 2011 Bill

[57] Section 3(x), 2011 Bill.

[58] Section 29, 2011 Bill.

[59] *Sardar Sarovar Project* [online] Available at http://www.nvda.nic.in/pdf_files/ssp.pdf [Accessed 19 October 2012].

[60] *The Sardar Sarovar Dam: A Brief Introduction* [online] Available at http://www.narmada.org/sardarsarovar.html [Accessed 19 October 2012].

[61] *See:* http://www.narmada.org/;

Pursuant to a writ petition in 1995 filed by the Narmada Bachao Andolan to stop the construction of the dam, in 2000, the Indian Supreme Court, by a majority of 2:1 provided the go ahead for an immediate increase in the height of the dam to 90 mts from 88 mts and also increased the authorized construction to 138 mts.[62] In the decision,[63] Justice Kirpal on behalf of the majority of judges not only held that the dam was not a threat to the environment[64] but also that the resettlement plan was suitable.[65] This decision disappointedactivists.[66] Since this decision, in 2003, the Supreme Court has disallowed any increase in height of the SSD. However, the height of the dam was raised to 95mts by the Narmada Control Authority in 2002 and to 100 mts in 2004.[67]

Critiquing the Law in India

It is clear from the study above of the SSD project that the Indian authorities are not always respectful of the basic human and environmental rights. Criticism continues to be levied against the approach of the Indian state. The problems with the LAA regime have already been discussed. However, there has been significant criticism to the 2011 Bill as well. Some concerns with the proposed Bill are:

(i) Noting that market price in its absolute sense is an inadequate parameter to calculate compensation,[68] Clause 20 of the Bill provides that market price can be calculated by (i) Government-fixed guidance value; or (ii) an average of the sale prices in the area over the preceding three years; whichever is higher. This is to be multiplied by three in rural areas (which seems to be targeted at softening the blow on account of acquisition of agricultural land and partly accounting for the massive increase in value which is seen in rural land after acquisition and development). However, these corrections may not have their desired impact in some cases. They fail where (i) guidance values do not keep pace with actual ground realities; and (ii) there is deliberate undervaluation of the land by individuals in order to evade stamp duties or circumvent other provisions of law. Perhaps a committee which meets on a periodic basis can be appointed to look into aligning the guidance values with the realities of land pricing. Additionally, this committee could analyse the best available methods to tackle undervaluation of land prices by citizens. It is important to note that concerns of this nature

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[62] *Go-ahead for India dam project* [online] Available at http://news.bbc.co.uk/2/hi/south_asia/978064.stm [Accessed 19 October 2012].

[63] C.A. No. 6014/1994 W P.(C) Nos. 345/94, 104/1997. S.L.P. (C) No. 3608/1985 & T.C.(C) No. 35 of 1995.

[64] The court states that, "*It is not possible, in view of the aforesaid state of affairs, for this Court to accept the contention of the petitioner that the environmental clearance of the project was given without application of mind.*"

[65] The court ruled that "*Dealing with the contention of the petitioners that there is a need for a review of the project and that an independent agency should monitor the R&R of the oustees and that no construction should be permitted to be undertaken without the clearance of such an authority, the respondents are right in submitting that there is no warrant for such a contention.*" It is notable that in the minority decision, Justice S.P. Bharucha stressed that the environmental clearance provided amounted to no clearance at all.

[66] *Drowned Out* [online] Available at: http://www.frontlineonnet.com/fl1722/17220290.htm

[67] http://www.narmada.org/nba-press-releases/may-2005/ncadecision.html [Accessed 19 October 2012].

[68] M. Ghatak and P. Ghosh, *The Land Acquisition Bill: A Critique and Proposal* 46(41) EPW 65,66 (2011).

exist in other countries as well. In Malaysia, it is argued that acquisition of traditional land has adversely affected traditional groups such as the Orang Asli.[69]

(ii) Principles of 'no forced displacement' and 'free, informed consent' are absent[70]

(iii) Applying the social impact assessment for acquisitions of all sizes may hamper rehabilitation[71]

(iv) Acquisition of land for private purpose is still permitted under the 2011 Bill[72]

There are no R&R provisions for the temporary land acquisition.[73] This is problematic as compromises the interests of victims of temporary acquisition and leaves them without any relief.

(v) The 2011 Bill does not adequately include women in the decision making process. The Bill calculates compensation according to family situation and the assistance funds are to be deposited into the bank account of the landowner.[74] A study in Gujarat showed that women accounted for only 12% of landholders.[75] While the Bill states that the land or house allotted 'may' be in the joint names of the wife and husband, the weak language leaves the decision to the discretion of the official.[76]

(vi) The provisions for social impact assessment as they stand may slow down the process of acquisition, resettlement and rehabilitation.[77] Moreover, there are some substantive objections to the nature of the Social Impact Assessment. For one, it has been argued that by removing the distinction between the plain areas, tribal and hilly lands (as there is now a more objective criterion governing the acquisition of land), the Bill encroaches on the protections offered to

[69] *Traditional Lands Acquisition and Compensation* [online] Available at http://www.academicjournals.org/ijps/pdf/pdf2010/18%20Sep/Alias%20et%20al.pdf [Accessed on 14 January 2013].

[70] *A Good Bill that Disappoints* [online] Available at: http://www.thehindu.com/opinion/lead/article2366476.ece [Accessed 19 October 2012].

[71] *Legislative Brief: The Land Acquisition, Rehabilitation and Resettlement Bill* available at http://www.prsindia.org/uploads/media/Land%20and%20R%20and%20R/LARR%20-%20Final%20Brief.pdf

[72] http://www.thehindu.com/news/national/theres-need-for-more-clarity-in-land-bill/article2311226.ece

[73] M. Ghatak and P. Ghosh, *The Land Acquisition Bill: A Critique and Proposal* 46(41) EPW 65,65 (2011).

[74] *Tribal Women's Perspective on the Land Acquisition Bill* [online] Available at http://www.indiaenvironmentportal.org.in/files/file/Land%20Acquisition%20Bill.pdf [Accessed 18 December 2013]

[75] *Realising Women's Right to Land and Other Productive Resources,* [online] Available at http://www.ohchr.org/Documents/Publications/RealizingWomensRightstoLand.pdf [Accessed 18 December 2013] p.53

[76] *Tribal Women's Perspective on the Land Acquisition Bill* [online] Available at http://www.indiaenvironmentportal.org.in/files/file/Land%20Acquisition%20Bill.pdf [Accessed 18 December 2013]

[77] http://www.countercurrents.org/chitra300811.htm

the tribal areas. While there needs to be consent provided where there are over 100 tribal families affected, what happens in cases where there is a much smaller group of families affected? The Bill provides that such cases of acquisition will be examined by a group of experts. However, the powers and duties of this group have not been clearly outlined.

(vii) There have been concerns that the dispute resolution mechanisms that have been described in the Bill are ambiguous and that the court structure of the consumer protection act and other similar legislations should be taken inspiration from in order to generate a comprehensive adjudicatory mechanism.

(viii) The urgent acquisition clause in the draft is not clear. The urgency provision is found in Clause 30(2) of the Bill and it allows for urgent acquisitions for a minimum area required for the defence of India, national security and emergencies arising out of natural calamities. This provision can only be invoked in the 'rarest of rare' case. It would be useful if these broad terms were given some direction either through illustrations or through the use of examples. There must also be clarity on the consequences of these provisions not being complied with. Ideally, any attempt at an urgent acquisition outside the parameters permissible under Clause 30 should be declared void.

(ix) The definition of 'public purpose' is still a hotly contested issue. The Bill in Clause 2(y) defines public purpose. There are several ambiguities in the same. For one, sub-section (ii) of section 2(y) permits the acquisition of land for specified projects, "*where the benefits largely accrue to the general public*".[78] This section once again does not provide adequate guidelines to the Appropriate Government. It has been argued before that it is unwise to introduce any limitations on the definition of 'public purpose' as it may hamper the powers of the government in the future. However, it is submitted that this argument is not inconsistent with the creation of some guidelines for how public purpose must be understood. This has been done in several other jurisdictions. For instance, in Green v. Frazier,[79] a decision of the US Supreme Court, it was held that "*public purpose or public business has for its objective the promotion of the public health, safety, morals, general welfare, security, prosperity, and contentment of all the inhabitants or residents within a given political division, as, for example, a state, the sovereign powers of which are exercised to promote such public purpose or public business.*" A guideline of this nature in the Indian context will go a long way in guiding the discretion of the Appropriate Government. Another interesting point is that the provision also permits the acquisition of land "*for any other purpose useful to the general public*", subject to the consent of 80% of the affected persons through a process of informed consent.

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[78] Section 2(y), 2011 Bill.
[79] 176 N.W. 11, 17, 44 N.D. 395.

3. Nepal

The manner in which land has been perceived in relation to the state in Nepal is interesting. Before 1964, the King was seen as being the owner of all the land in Nepal and private parties were merely leased an interest in the land by the King in exercise of his sovereign power.[80]

This scheme was whittled down to a system of joint title-holding between the land holders and land users under the Land Act of 1964.[81] This act was enacted in order *"to accelerate the pace of economic development of the country; to bring about improvement in the standards of living of the actual peasants dependent on the land by making equitable distribution of the cultivable land and by making easily accessible the necessary know-how and resources on agriculture and to keep up the convenience and economic interests of the general public by providing encouragement to make maximum increase in agricultural production"*.[82] Ever since, through legislative amendments, land has come to be held almost exclusively by the land users.[83]

Over 80% of the population depend on agriculture and land for their livelihood.[84] Women play an important role in farming the land in Nepal, increasingly so with the 'feminization of agriculture' as men move into urban settings undertaking nonagricultural work, leaving women to take care of the land.[85] Despite this being the case, land rights are for the most part are passed between men and with less than 20% of landowners being women.[86] This leaves women in a particularly vulnerable position when it comes to land acquisition.

Of late, entitlements that people have to their land and property have been threatened by rampant development-induced involuntary displacement. It has been reported that *"Some of the major hydro-electric projects that caused involuntary displacement in Nepal are the Karnali Chisapani Project (60,000 people), West Seti (14,500 people), Pancheshwor (15,000 People), Koshi High Dam (75,000 people), Kali Khola (40,000 people), Marsyangdi (17,000 People), Burhi Gandkai (6,000 people) and Uttar Ganga (60,000 people) and Kulekhani (3,000 people) (Dixit 1994, Pandey 1998) and Trishuli (5,600 people)."*[87] Against this background, this segment of the paper will look into the law relating to land acquisition in Nepal.

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[80] http://www.forestrynepal.org/images/publications/Property%20law%20in%20Nepal.pdf
[81] The Land Act 1964.
[82] Preamble, The Land Act, 1964.
[83] http://www.forestrynepal.org/images/publications/Property%20law%20in%20Nepal.pdf
[84] Lunsalee, R. R. (2002) Land issues in Nepal. In *Paper presented at regional workshop on land issues in Asia*, June 4 – 6, Phnom Pennh, Cambodia; Allendorf. Kerra; *Do Women's Land Rights Promote Empowerment and Child Health in Nepal?*; World Development vol. 35, no. 11 pp.1975 - 1988
[85] *Women in Nepal* [online] Available at http://www.adb.org/sites/default/files/pub/1999/women_nepal.pdf [Accessed 18 December 2013] p.30
[86] *Women Land Rights Campaign*, [online] Available at http://www.csrcnepal.org/index.php/campaign/women-land-rights-campaign [Accessed 18 December 2013]
[87] http://cprpnepal.org/wp-content/uploads/2011/08/The-Policy-of-the-Government-of-Nepal.pdf

Legislative Framework

The primary legislation that governs the acquisition of property in Nepal is the Land Acquisition Act 1977.[88] The stated objective of the legislation is to *"amend and consolidate current Nepal law pertaining to land acquisition".*[89] Under the Act, acquisition can be made for any 'public purpose'. The definition of public purpose is laid out in Section 2(b) of the Act. This provision states that the term includes:

"(b) 'Public Purposes' means undertaken in the interest of or for the benefit or use of the general public, or functions to be undertaken by Government of Nepal and the term also included the following: (1) Project approved by Government of Nepal. (2) Project undertaken by local bodies in different levels."[90]

Subject to the acquisition being for a public purpose, the Nepalese government has the power to acquire land anywhere in the country.[91] The meaning of the term public purpose is further fleshed out in Section 4 of the legislation which states that land can be acquired where an institution requests the government to acquire land for its purposes or where a request is made by an institution fully connected or owned by the government of Nepal.[92]

The Land Acquisition Act, 1977 also contains the procedure to be used for the acquisition of land. In order to acquire land, notice must first be provided under Section 6 and after a report on the preliminary action is passed within 15 days,[93] notification under Section 9 shall be passed of land acquisition. Under this notification, mention shall be made of the purpose for which land is acquired, the particulars of the land, whether the houses on the land will be acquired as well, etc.[94] This notice shall also notify all people interested that an application for compensation must be submitted by them to the revenue officer within a stipulated amount of time.[95] It is important to note that at this stage, it is within the powers of the landowner to file a complaint stating why his or her land should not be acquired with the Ministry of Home Affairs of the Government of Nepal.[96]

Despite these elaborate procedures, it is to be noted that circumvention of the same is permitted in specific circumstances. Under Section 25, the government of Nepal has the power to acquire land under 'special circumstances'. By this, land may be acquired in situations of urgency where *"to maintain transport or communication facilities, or to ensure safety of life and property against extensive damage, or to protect any other public property in the event of sudden diversion of the course of any river, or any natural*

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[88] See, http://www.lawcommission.gov.np/en/documents/prevailing-laws/prevailing-rules/Prevailing-Laws/Statutes---Acts/English/Land-Acquisition-Act-2034-(1977)/

[89] Long Title, Land Acquisition Act, 1977.

[90] Section 2(b), Land Acquisition Act, 1977.

[91] Section 3, Land Acquisition Act, 1977.

[92] Section 4, Land Acquisition Act, 1977.

[93] Section 8, Land Acquisition Act, 1977.

[94] Section 9, Land Acquisition Act, 1977.

[95] Section 10, Land Acquisition Act, 1977.

[96] Section 11, Land Acquisition Act, 1977.

disaster, or any other extraordinary circumstances".[97] Sub-section (6) makes it clear that "*Except in case relating to the amount of compensation, no complaint against the acquisition of land shall be entertained.*"[98] Therefore, in cases of urgent acquisition, the provisions relating to complaint by the interested people can be circumvented. Further, in Section 27 of the Act, it is stated that: "*Notwithstanding anything contained elsewhere in this Act, Government of Nepal may acquire any land for any purpose through negotiations with the concerned landowner. It shall not be necessary to comply with the procedure laid down in this Act while acquiring lands through negotiations.*"[99]

There is no separate and distinct law on resettlement and rehabilitation in Nepal. The Land Acquisition Act does however contain prescriptions on how to calculate and award compensation. In Section 16, the criteria to be considered when awarding compensation are laid out. It is stated that the Compensation Fixation Committee shall count for:

(a) The guidelines that are released by the government from time to time concerning compensation

(b) The losses suffered by the concerned person

(c) The price of the land at the time acquisition was notified

(d) The value of crop and constructions on the land to be acquired

(e) The losses suffered by the concerned person on account of moving away from the plot of land

In addition to the provisions concerning the award of compensation, there are certain other relevant sections in the Land Acquisition Act of 1977 itself. For example, S. 14 of the Act states as follows:

> *Allotment of Other Lands in Exchange : In case any person whose land is wholly acquired under this Act wants to obtain compensation in the form of land elsewhere, Government of Nepal may, in exchange for such land, allot him/her any waste land, or land belonging to itself, or any other land which it is going to allot or sell in accordance with prevailing Nepal law, if available.*

Resettlement and rehabilitation in Nepal was spearheaded by the Rapti Development Board in 1956 which was established with the objective of resettling those affected by the flood victims of Chitwan Valley in 1955.[100] This resulted in the creation of the Nepal Punarvas (Resettlement) Company in 1964 which was responsible for the execution of several resettlement programmes in the Terai region of Nepal.

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[97] Section 25, Land Acquisition Act, 1977.
[98] Section 25(6), Land Acquisition Act, 1977.
[99] Section 27, Land Acquisition Act, 1977.
[100] *History of Land Settlement in Nepal Terai* [online] Available at http://www.mtnforum.org/sites/default/files/pub/6988.pdf [Accessed 19 October 2012].

The department eventually became non-functional and in 1988, the Resettlement Department that was created under the Ministry of Housing and Physical Planning was also dissolved. In any event, these institutions did not deal extensively with project displaced people but with other forms of resettlement.[101]

It is also important to note that corporate bodies and the government have undertaken independent resettlement and rehabilitation plans on a project-by-project basis. One such example is the Resettlement Action Plan for the Kabeli Corridor 132 KV Transmission Line Project wherein it was provided that given the large tracts of land necessary for the execution of the project, the World Bank Involuntary Resettlement Policy was to be made applicable.[102] By this, not only was providing alternative employment an essential component of the resettlement framework, the whole process of resettlement was made more participative.

A similar initiative can be seen in the resettlement plan that was created for the Gokuleshwor-Thaktholi-Darchula Road by the Ministry of Physical Planning and Works, particularly, the Department of Roads. Herein, cash compensation was provided for all those who lost livelihoods on account of the land acquisition and houses were reconstructed for the family that sought such relief for loss of their residence. Interestingly, public health programmes were also initiated to make the construction workers and local population more familiar with the threats associated with HIV/AIDS and other sexually transmitted diseases.

Case Study: The Irrigation and Water Resources Management Project

The Irrigation and Water Resources Management Project (IWRMP) is a project that has been executed by the Government of Nepal and the World Bank. The stated objective of the project is to "*improve irrigated agriculture productivity and management of selected irrigation schemes and enhance institutional capacity for integrated water resources management.*"[103] It targets Western, Mid-Western, and Far-Western Development Regions as an effort to provide rehabilitation and support to small and medium farmers, to enhance the ground-water development in plain areas of some regions and also to support the institutional development in water resources, planning and management at a 'macro' level. In Nepal, this project is seen as a central level project as it seeks to provide irrigation to farmers in Nepal all year round. The project has been carried out under the Department of Irrigation in Nepal.[104]

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[101] *Nepal: Preparation of National Resettlement Policy Framework* [online] Available at http://www2.adb.org/Documents/Reports/Consultant/38215-NEP/38215-NEP-TACR.pdf [Accessed 19 October 2012].

[102] *Resettlement Action Plan* [online] Available at: http://www.nea.org.np/images/supportive_docs/RAP%20FOR%20ANGLE%20TOWERS%20-%20Kabeli%20TL.pdf [Accessed 19 October 2012]

[103] *Irrigation & Water Resources Management Project* [online] Available at http://www.worldbank.org/projects/P099296/irrigation-water-resources-management-project?lang=en [Accessed 19 October 2012].

[104] See, http://www.doi.gov.np/

Under the project, the government plans to construct several small and medium irrigation projects.[105] This is expected to necessitate significant internal displacement. In response to this, the World Bank has framed a resettlement and rehabilitation network. The two-fold objective of this framework is to (i) minimise internal displacement by project interventions and (ii) where displacement is inevitable, to minimise the losses experienced by people. The benefits of this programme are to be provided not just to the project affected people, but also the squatters and encroachers who are dependent on the land acquired.[106]

Although there is no extensive reporting on the impact of the project, information from other similar projects indicates that the IWRMP is a cause for concern, particularly in respect of the West Sethi project.[107] In this project:

(i) There was lack of disclosure of the project documents. Most papers were available only in English

(ii) The environmental assessment undertaken was flawed

(iii) The public hearings were a farce

(iv) There was no provision made for the training and employment of local people

Similar grievances were also raised against the Arun III Hydropower Project. In fact, the mobilization of NGOs and community groups in the case of the Arun III project compelled the World Bank to withdraw support for the dam.[108] Another project of note which has recently been introduced in Nepal is the Water Resource Project Preparatory facility which the Asian Development Bank has agreed to fund with a contribution of 11 Million USD. This project is also being carried out by the Department of Irrigation and it has been stated that it will "*improve the readiness of water resources management projects for the implementation and it is expected that the there will be more water efficient and climate and disaster resilient food supply after the completion of this project*".[109]

A third relevant project is the 20 year Road Plan whose objective is to create Strategic Road Networks throughout Nepal which will connect the Northern portions of the country with the Southern portions. This project too has been funded by the Asian Development Bank. Currently, the affected region has been

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[105] See, http://www.iwrm.gov.np/

[106] Resettlement and Rehabilitation(R&R) Framework [online] Available at http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2007/09/27/000020439_20070927150741/Rendered/PDF/RP5880SAR1RAP1P099296.pdf [Accessed 19 October 2012]

[107] *Nepal Dam's Future Uncertain* [online] Available at: http://www.internationalrivers.org/resources/nepal-dam%E2%80%99s-future-uncertain-1656 [Accessed 19 October 2012].

[108] *Defining the "Local" in the Arun Controversy: Villagers, NGOs, and The World Bank in the Arun Valley, Nepal* [online] Available at: http://www.culturalsurvival.org/ourpublications/csq/article/defining-local-arun-controversy-villagers-ngos-and-the-world-bank-arun-v [Accessed 19 October 2012].

[109] *ADB provides Rs 946m for water resources management* [online] Available at http://www.myrepublica.com/portal/index.php?action=news_details&news_id=44314 [Accessed on 13 January 2013].

chalked out and it has been decided that the resettlement and rehabilitation procedure which attempts to be compliant with international and domestic norms such as the Public Roads Act.[110] The consequences of these projects must also be looked into.

Critiquing the Law in Nepal

There are some concerns evident regarding the law in Nepal as outlined below:

(a) There is in effect no law that governs the resettlement and rehabilitation of project displaced people in Nepal. Many attempts have been made by international organizations such as the World Bank and the Asian Development Bank to create guidelines in this regard, but there is no established standard that must be followed in all projects. A national level policy document, or better still, legally enforceable legislation, is recommended in Nepal. This can be on the lines of what is being worked on in the Indian context.

(b) The Act offers no provision for the impact of relocation and compensation on women. Where in India, the Land Acquisition Rehabilitation and Resettlement Bill (2011) provides an, albeit weak, option for the compensation account to be in the name of both the husband and wife, in Nepal compensation is offered only to the landowners and tenants,[111] who are predominantly men. The Act demonstrates no awareness of the impact of resettlement on women and their economic capacity if relocated to a new environment.

(c) The absence of any standard policy in Nepal is in violation of the 1986 Declaration on the Right to Development made by the General Assembly. In the case of project like the West Sethi project, these include the right to participation in the process of development and the right to life and livelihood.[112] The absence of such generally accepted principles will be felt when there is a need to interpret an ambiguity in policy. In such circumstances, having a clear policy basis can greatly assist the court in making determinations that are beneficial to the people affected by the project. It will also do away with divergent decision making.

(d) Section 33 of the Land Acquisition Act, 1977 states that "*In case the land, acquired for the Government of Nepal or on institution fully owned by the Government of Nepal pursuant to this Act, is not required for that purpose as it was acquired or there remains surplus land upon using it for that purpose, the Government may use such land for public purpose and the institution may*

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[110]*Short Resettlement Plan for Taplejung-Suketar Link Road* [online] Available at http://indigenouspeoplesissues.com/index.php?option=com_content&view=article&id=679:nepal-road-connectivity-sector-i-project&catid=31&Itemid=64 [Accessed on 13 January 2013].

[111] Section 20, Land Acquisition Act, 1977

[112]*Development-induced displacement* [online] Available at: http://www.internal-displacement.org/8025708F004BE3B1/(httpInfoFiles)/C753862FA2CF8B7CC1257115004752ED/$file/Protectio n%20from%20module%20handout%20development%20displacement.pdf [Accessed 19 October 2012].

use such land in of the activity as mentioned in Sub-section (1) of Section 4."[113] Given this position of law, it is fully possible for the government to acquire the land for one purpose which is permitted under the act and later change the manner in which it is used. This is particularly problematic since after the acquisition has taken place, people concerned will not have an opportunity to object to the process if they feel that it is not a legitimate act of the state. It is urged that this provision be amended to provide the persons affected power to object to the new public purpose as well.

(e) Another problem with the law relating to acquisition in Nepal is that it is not participatory and very often, the stakeholders have no say in how the decisions are made under the law. One recent example of this is the case of Rakamkarnali, the site selected for a new urban development area in Dailekh district. The local populace of this region has filed a complaint against the Ministry of Home Affairs regarding the manner in which the acquisition was conducted. Notice was given to those who are affected, but allegedly, they had been given no say in the setting of price for acquisition of their lands. One land owner has stated that: *"We were happy about the new urban development in our area and were planning to apply for compensation. However, the DAO unilaterally determined the land price without waiting for expiry of the deadline it had set"*. Another local, Mr. Khadak Bahadur Majhi, stated that *"(w)e are not saying the price should be higher or lower but our question is why the committee was in such hurry to determine the price without the participation of landowners in the process"*.[114]

As of now, the government has announced its intention to create a new legislative framework to deal with the acquisition of land. This is because there have been many grievances about the manner in which the process has been carried out in certain projects. The new act will also cater to the interests of those private bodies that are interested in acquiring land for public interest. Importantly, the new legislation is also set to tackle the tendency of the local people to raise their land prices at the time at which acquisition takes place. The Joint Secretary of the National Planning Commission, Puspa Lal Shakya, has said on record that *"Most of the big infrastructural projects have been victims of compensation demands that are hard to meet...Given the government's failure to start the project early by paying compensation, locals go on making more demands"*.[115] The proposed bill envisions a broader definition of 'public purpose' which includes acquisition of land for the residential requirements of public entities.

Nepal is currently plagued by the weakness of the economy in general. This has resulted in the Ministry of Finance instructing the other ministries not to use their capital budget for the acquisition of land and construction of new buildings. A senior official at the ministry of physical planning and works has commented that *"(l)and acquisition process is being carried out for over a year for key projects like*

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[113] Section 33, Land Acquisition Act, 1977.
[114] *Price Set for Land Acquisition Angers Locals* [online] available at http://www.myrepublica.com/portal/index.php?action=news_details&news_id=46601 [Accessed on 13 January 2013].
[115] *Land acquisition: Proposed Act Seeks to make Process Easier* [online] Available at http://www.housingnepal.com/news/national/467 [Accessed on 13 January 2013].

Kathmandu-Tarai fast track, mid-hill highway, Tarai postal road and cross-border railway. How can we initiate civil works of the projects without acquiring land?".[116] Therefore, it is clear that this has affected the progress of the large projects that have been termed as Nepal's pride. It is still unclear whether the people have been compensated for their land already or not. In any event it is important to note that the law must clarify what happens to the interests of the people in such cases.

A problematic question concerning land acquisition, especially where it has been done forcibly, is whether the people affected are liable to pay capital gains taxes. This issue came to light recently when the persons affected at the Biratnagar acquisition refused to pay the government capital gains tax when they were forced to give up their lands. Sources from the government claim that "*(t)his has mainly created problems in distributing compensation for the land acquired for India-Nepal Railway link. Around 25 owners have refused to pay CGT,*".[117] In the future, a policy clarification on this point would be useful.

4. Conclusion

Much like the situation in neighbouring Sri Lanka, both India and Nepal face problems relating to land acquisitions being carried out for political purposes without considering the human impact.

Accountability mechanisms which act as a check on the power of the government to acquire land for politically motivated purposes and which ignore the needs and concerns of vulnerable communities including displaced women remain significantly lacking across countries in South Asia. This should lead to strong regional and collective pressure being exerted on South Asian governments to rectify these lapses.

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[116] *Land Acquisition Ban to hit National Pride Projects* [online] Available at http://www.myrepublica.com/portal/index.php?action=news_details&news_id=39051 [Accessed on 13 January 2013].
[117] *Land Acquisition Ban to hit National Pride Projects* [online] Available at http://www.myrepublica.com/portal/index.php?action=news_details&news_id=39051 [Accessed on 13 January 2013].

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