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Sri Lanka

Submission to the UN Universal Periodic Review
Forty-Second Session of the UPR Working Group of the Human Rights Council

Date: 14 July 2022

Submitted by: Alliance for Minorities, Women's Action Network, Muslim Women's Development Trust and Equality Now

Alliance for Minorities is a collective of 7 community-based organizations in Sri Lanka that work on promoting and protecting the rights of ethnic and religious minorities, especially women and girls.

Contact email: AFMSL2016@proton.me Contact name: Sithara Abdul

Women's Action Network (WAN) is a collective of women's groups in Sri Lanka that empowers and advocates for women and women survivors of war, violence and other injustices.

Muslim Women's Development Trust works exclusively on Muslim girls and women's rights in Puttalam districts and island-wide across Sri Lanka.

Equality Now is an international human rights organisation with ECOSOC status working to protect and promote the rights of women and girls worldwide since 1992, including through our membership network of individuals and organisations in over 160 countries.

Introduction and Summary

1. During the previous UPR cycle, Sri Lanka received 39 recommendations to strengthen and improve measures regarding women's rights protection. Of these recommendations, 11 of them related to preventing and eliminating violence against women, and 6 recommendations to ensure equality for men and women in the law. In particular, the recommendations called on the Sri Lankan government to remove provisions which discriminated against women in relation to inheritance, succession and the disposal of immovable property; to address the absence of a minimum age of marriage under Muslim personal law, and to repeal all legal provisions which discriminate against women and girls. We appreciate that the Sri Lankan government recently amended the Land Development Ordinance (LDO) that discriminated against women from inheriting state land and ensured gender equality in state land succession.¹
2. This submission highlights the need to address Female Genital Mutilation/Cutting (FGM/C); provisions in family laws which are discriminatory against women; and the need for the law to establish a minimum age for marriage within the Muslim community.

Discriminatory Family Laws & Reforms required to the Muslim Marriage and Divorce Act

3. The Muslim Marriage and Divorce Act (MMDA) was enacted by the parliament of Sri Lanka in 1951, codifying many customs that were prevalent among Muslims. This law is administered not through a regular court system but through a post manned by an individual termed 'Quazi'. According to the present MMDA, women cannot be appointed as Registrar of Muslim Marriages, Quazis, members of the Board of Quazis (appellate forum of the Quazi), assessors or juries.
4. The MMDA contains numerous sex discriminatory provisions which violate international human rights standards. The Act does not require a woman's full and free consent to enter into a marriage (particularly in the case of Sunni Muslims). It allows the *Wali* (the closest male guardian of the bride) to "consent" to the marriage on behalf of the bride and the signature of the bride is not required in the marriage register.² This provision legally permits forced marriage. In cases where the bride has no *Wali*, the Quazi is required to make an order on behalf of the bride for the marriage to take place.³ Studies have found that this provision has resulted in the forced marriage of girls by *walis* who abuse their legal authority and compel women and girls into marriages even at a young age.⁴ The requirement of the signature of a *Wali* for a valid marriage of a woman or girl should be removed, and the signature of the bride must be made mandatory. These provisions violate the right to equality and non-discrimination of women and girls.
5. Equality should also be maintained in the grounds for divorce and the procedure irrespective of it being initiated by a husband or by a wife, without any discrimination. According to the present MMDA, a Muslim male has a right to divorce his wife without any reason and/ or without her consent.⁵ But a Muslim female cannot divorce her husband without proving the matrimonial fault on the part of the husband, and/or if there is no fault on the part of the husband, without his consent and without paying any compensation to him.⁶
6. The MMDA allows for a Muslim man to marry up to four wives legally and any subsequent marriage thereafter is not considered illegal, but 'irregular'. In addition, in the current MMDA, the registration of the marriage is not compulsory and thus there is no way to identify how many times a Muslim man has married and how many wives he has parallelly. The usual practice of polygamy in Sri Lanka is that men avoid registering multiple marriages. This also causes confusion in obtaining birth certificates and children's school enrolment and it makes it more convenient for men to avoid paying child maintenance. Further, consent of existing wives is not required before the man can enter into any subsequent marriage (though the man is required to give notice to the Quazi before taking multiple wives)⁷. A woman is permitted to take only one husband. This discriminatory right of Muslim men in respect of polygamy should be abolished.
7. Muslim women are also not entitled to any maintenance or support upon divorce, except for maintenance for only three months, even if there is no fault on part of the woman during the divorce.⁸ This is unequal compared to laws applicable to other communities in Sri Lanka, as the provisions of the Maintenance Act, Civil Procedures Code and the General Marriage Registration Ordinance entitle non-Muslim women to claim maintenance and/or alimony (a lump sum payment calculated based on the spouse's wealth) and child support after divorce.

Access to maintenance, alimony and child support for women is critical until gender equality is realized in all spheres of life, particularly so that women can enjoy economic independence. The provisions related to matrimonial affairs in these legislations should be made applicable to Muslim women as well. Currently, the Quazis have exclusive jurisdiction under the MMDA to adjudicate upon matrimonial-related issues.

8. According to the present Act, the MMDA is applicable only to Muslims who are inhabitants of Sri Lanka. The law is not applicable to Sri Lankan Muslims who live abroad, Sri Lankan Muslims who are citizens of other countries or their descendants. The limitations in the applicability of the Muslim Marriage and Divorce Act cause several practical problems. Presently, many Sri Lankans, including Muslims, live abroad either as Sri Lankan citizens or as citizens of the countries where they live. The limitation in the applicability of the Muslim Marriage and Divorce Act prohibits Sri Lankan Muslims from marrying persons in other countries under the MMDA. Further, Sri Lankan Muslims not inhabitants of Sri Lanka cannot marry in Sri Lanka under the MMDA. The right to marry non-citizens is a right afforded to all Sri Lankans except Muslims and is therefore discriminatory.
9. Since the 1980s, Muslim women have been advocating for reforms to the MMDA. In response, the government has set up five different committees to look into the issue and propose reforms. The fourth committee was appointed in 2009 and deliberated on the issue for nine years. Due to the societal pressure for finalising the report of the committee, the proposed reforms were shared in 2018. These reforms were opposed by the All Ceylon Jamiyyathula Ulama (ACJU) which was used to exert political pressure on the government to not go ahead with any reform.
10. In August 2019, in the backdrop of national security concerns post the Easter bombings, the Cabinet approved some reforms to MMDA in line with the Committee's recommendations. A Memorandum was submitted to the Cabinet by the Minister of Justice for MMDA reforms in November. The Ministry of Justice appointed a 10-member Advisory Committee on Muslim Law Reform in December which included lawyers, religious scholars and a member of the ACJU.
11. In March 2021, the Cabinet approved reforms to MMDA and also decided to abolish polygamy and remove the position of Quazis; however, these reforms are yet to be passed as law. In June 2021, the Advisory Committee handed over its report to the Ministry. In November 2021, a Presidential Task Force was appointed to report on 'One country, one law' for Sri Lanka, with some focus on the MMDA.
12. In February 2022, the mandate of the Task Force was extended by 3 months. Based on media reports, the Minister of Justice has cited 'pressures from the community' to have proposed that polygamy be retained with strict conditions and the Quazi system be retained to give permission for polygamous marriage. It was also reported that three Ministers of the Cabinet opposed these recommendations in favour of the "one country, one law" agenda. The Minister of Justice also revealed that MMDA reforms are on hold until the One Country One Law Presidential Task Force report is submitted which was to have been submitted in May 2022.

13. It is crucial that the required reforms to the MMDA are fast-tracked on an urgent basis to ensure full compliance with the Constitution of Sri Lanka (particularly Article 12 which guarantees equality before law) as well as international human rights standards.
14. The Sri Lankan General Marriage and Registration Ordinance only allows divorce based on fault. Thus, it takes a long time for divorce, particularly for women who are seeking divorce within an abusive marriage or on a mutual basis. There have been moves to reform GMRO to accommodate consensual divorce, but nothing has materialized so far. The GMRO also bars marriages between Muslims from being registered under the GMRO and thus Muslim women and men have no choice other than to marry under the current oppressive MMDA.

Discriminatory Property Laws & Constitutional Protection

15. The Matrimonial Rights and Inheritance Ordinance (Jaffna), Ordinance No. 1 of 1911 is applicable to a section of the Tamil community to whom the customary Tesawalamai law applies. Article 6 of the Ordinance restricts a married woman from disposing of and dealing with her own immovable property without the written consent of her husband.⁹ Such sex discriminatory laws relating to the disposal of a woman's own property restrict women from being economically independent and reinforce gender roles and stereotypes.¹⁰
16. Discriminatory laws such as the provisions highlighted in this submission continue to exist in Sri Lanka, despite the equality guarantee in Article 12 of the Constitution of Sri Lanka, due to the overriding clause of Article 16(1) which states that all existing written and unwritten law (passed before 1978) will be valid and operative even if they are inconsistent with the fundamental rights provided under the Constitution.¹¹ This article impedes the universal application of fundamental human rights.

Female Genital Mutilation/Cutting

17. Female Genital Mutilation/Cutting (FGM/C), locally referred to as “sunnat” or “khatna” is known to take place in Sri Lanka amongst the Moor, Malay and Bohra communities. However, the practice remains largely unrecognized and unaddressed in Sri Lanka.
18. As is known today, FGM/C in Sri Lanka falls within the Type 1 and Type 4 classifications for FGM/C by the World Health Organization (WHO). Victims of this practice are newborn girls, or girl children at 7 days, 9 days, 15 days or 40 days after birth; or young girls at the age of 7 (in the Bohra community). The practice is perceived as mainly prevalent amongst the Muslim communities of Sri Lanka. Considering approximately half of the Muslim population consists of women and girls, this broadly means close to 5% of the Sri Lankan population is potentially affected. However, support for the practice varies based on varying ideological beliefs amongst Muslim communities and this must be taken into account.
19. The prevalence of FGM/C has not been systematically studied as yet. A study published by the Family Planning Association in Sri Lanka in 2019 surveyed 26 women, of which 20 women self-identified as having undergone FGM/C, while an additional four assumed that they had undergone the practice since everyone in the family had.¹² However, the Department of Census and Statistics (DCS) – the state organisation recording the status of Sustainable Development Goals (SDGs) in Sri Lanka has not included indicator 5.3.2 on

“Proportion of girls and women aged 15-49 years who have undergone female genital mutilation, by age”.

20. In 2016, the practice of FGM/C received considerable public attention in Sri Lanka. Women affected by the practice had begun advocating for state intervention to protect children likely to be harmed. Confidential submissions were made to the Human Rights Commission of Sri Lanka, the National Child Protection Authority of Sri Lanka, the Sectoral Oversight Committee on Women and Gender of the Sri Lanka Parliament and the Women’s Caucus of the Parliament of Sri Lanka. The only positive measure was as a result of submissions by affected women in 2016 to the Sectoral Oversight Committee on Women and Gender. This resulted in a Circular issued in May 2018 by the Director General of Health Services prohibiting medical practitioners within the State health service from carrying out FGM/C.¹³
21. In 2018, the Committee on the Rights of the Child recommended that Sri Lanka “[b]an, as currently under discussion, female (circumcision) for girls, a form of genital mutilation practised by the Dawoodi Bohra community and carry out awareness-raising activities, including campaigns, on the patriarchal nature of this practice and its negative effects on health”.¹⁴
22. Despite this, the Sri Lankan government has not taken concrete steps toward eradicating the practice; and there is no specific law prohibiting the practice within the country.

Child Marriage

23. The Marriage Registration Ordinance 1908 (Chapter 112) set the minimum age of marriage at 18.¹⁵ However, the General Marriage Registration Ordinance specifically states that it does not apply to Muslims, creating a discriminatory situation where Muslim girls are not protected from child, early and forced marriage. For Muslims, the Muslim Marriage and Divorce Act does not set any minimum age of marriage. It also specifically provides that children under the age of 12 can be given in marriage with the consent of the Quazi (Muslim judges).¹⁶
24. Further, according to the Sri Lankan Penal Code, sexual intercourse with a girl under the age of 16 years, with or without consent, is considered rape. However, the exception to this clause states that it does not apply in the case of marital rape of girls over the age of 12 unless the parties are judicially separated.¹⁷ This exception largely affects Muslim girls, since they are the only community where marriage under the age of 18 is permitted by law. This provision thus not only legitimises child marriage but permits child sexual abuse of “married” children, even when the child does not otherwise meet the minimum age of consent for sex.
25. The prevalence of child marriage in Sri Lanka is approximately 10%.¹⁸ However, it is known that the practice specifically affects girls in certain communities. Research from 2017 demonstrated that child and early marriages were still taking place in the Muslim community, with Quazis noting that there were many instances of early marriages.¹⁹ The report also found that marriages arranged by guardians are occurring to girls between 14 and 17 years of age, in districts like Puttalam and Batticaloa.²⁰

Recommendations

26. We would respectfully request the following recommendations be issued to Sri Lanka:

(i) Amend Article 6 of the Matrimonial Rights and Inheritance Ordinance (Jaffna) to provide Tamil women with the right to dispose of their own property without spousal consent in all circumstances;

(ii) Ensure that the law fixes the minimum age of marriage at 18 without exceptions for all girls irrespective of their religion or community; including by amending the provisions of the Muslim Marriage and Divorce Act;

(iii) Repeal Article 16(1) of the Constitution to ensure that the constitutional guarantee of equality applies to all laws;

(iv) Quazi system should be abolished and the reformed Muslim Marriage and Divorce Act should be administered by the District Courts; or a special Family Court set up to adjudicate these issues.

(v) Amend General Marriage and Registration Ordinance to allow consensual divorce and allow Muslims to register marriages under the General Marriage and Registration Ordinance

(vi) Fast-track the proposed reforms to the Muslim Marriage and Divorce Act, and ensure that:

- the right of Muslim men in respect of polygamy is abolished;
- marriage registration is made mandatory with a mandatory requirement for full and free consent of the bride;
- the requirement for the guardian to sign the marriage contract is removed
- divorce procedures are made equal for all men and women
- alimony (Ma'taa) is legally recognized as an entitlement of a divorced wife, especially in the case of unilateral divorce (thalak) by the husband
- property (money, land and houses) gifted by the wife at the time of marriage must be recoverable at the time of divorce.
- the reformed MMDA applies equally to all Muslims in Sri Lanka and foreigners who wish to have a Muslim marriage in Sri Lanka.
- women are permitted to take up all administrative and judicial roles within the reformed MMDA
- procedures under the Maintenance Act applicable to all other citizens are accessible to Muslims.

(vii) Pass a law prohibiting all forms of FGM/C in Sri Lanka and establish a national action plan to eradicate the harmful practice of FGM/C in all its forms across the country, including the dedication of resources to prevention and education aspects;

(viii) Conduct research and collect data on the national prevalence of FGM/C in the country across all communities.

Endnotes

1. <https://economynext.com/sri-lanka-parliament-passes-land-development-amendment-bill-gender-equality-inheritance-sought-91579/>)
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3. Section 47, Muslim Marriage and Divorce Act
4. Hyshyama Hamin & Hasanah Cegu Isadeen, *Unequal Citizens: Muslim Women's Struggle for Justice and Equality in Sri Lanka*, 2017, <https://mplreformsdotcom.files.wordpress.com/2016/12/unequal-citizens-study-hyshyama-hamin-hasanah-cegu-isadeen1.pdf>
5. Section 27, Muslim Marriage and Divorce Act
6. Section 28, Muslim Marriage and Divorce Act
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12. Zainab Ibrahim & Ermiza Tegal, Towards understanding Female Genital Cutting in Sri Lanka, December 2019. Available at http://www.fpasrilanka.org/sites/default/files/towards_understanding_female_genital_cutting_in_sri_lanka.pdf
13. Sri Lankan Ministry of Health, Nutrition and Indigenous Medicine, Circular on Medical Professionals Involvement in Female Genital Mutilation, 2018
14. Committee on the Rights of the Child, *Concluding Observations on the combined fifth and sixth periodic reports of Sri Lanka*, CRC/C/LKA/CO/5-6, 2 March 2018.
15. Section 15, Marriage Registration Ordinance 1908
16. Section 23, Muslim Marriage and Divorce Act 1951. The qualification to become a Quazi is a Muslim male with good character.
17. Section 363, Sri Lankan Penal Code
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19. Hyshyama Hamin & Hasanah Cegu Isadeen, *Unequal Citizens: Muslim Women's Struggle for Justice and Equality in Sri Lanka*, 2017, <https://mplreformsdotcom.files.wordpress.com/2016/12/unequal-citizens-study-hyshyama-hamin-hasanah-cegu-isadeen1.pdf>
20. Ibid.