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its consideration of the sixth periodic report of Sri Lanka at its
135th Session**

**Submitted by Mannar Women's Development Federation,
Women's Action Network, and the World Organisation against
Torture (OMCT)**

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Introduction

Women's rights are highly politicized in Sri Lanka. Their bodily integrity and sexual reproductive health and rights are bound and dictated by culture and religion. Women and girls are therefore not only placed in subordinate positions socially culturally and legally. Women, their health, well-being, and needs are treated as secondary. Value is placed on female "piety" and "purity", which by default results in severe social implications for those who do not conform to these ideals. Legislation and social norms restrict the self-determination girls and women have over their own bodies. FGM, reproductive violence, such as forced sterilization, obstetric violence, and child marriage are practiced with impunity. In addition, these practices in Sri Lanka have received little attention by relevant international bodies, including this Committee.

In the context of the Human Rights Committee's (Committee) examination of Sri Lanka's implementation of and compliance with, the provisions of the International Covenant on Civil and Political Rights (ICCPR), Mannar Women's Development Federation, Women's Action Network (which is a collective of 7 women's groups working on minority women's rights), and the OMCT wish to bring to the Committee's attention its concerns about Female Genital Mutilation (FGM) and reproductive violence with a particular focus on the scope and scale of FGM; forced sterilization and lack of control over contraception; obstetric violence; child marriage; criminalization of abortion and unsafe termination of pregnancies; lack of gender-sensitive transitional justice mechanisms; lack of gender-sensitive mechanisms for emergency situations.¹ This submission is relevant for the Committee's evaluation of Sri Lanka's implementation of its Covenant obligations and related Covenant rights under articles 2, 3, 6, 7, 17.

¹ The information provided in this report is based on a report, published in May 2022 entitled Women Break the Silence. Gender-based torture in Asia, <https://www.omct.org/site-resources/legacy/Gender-based-Torture-in-Asia.pdf>.

1. Female Genital Mutilation

FGM is a form of gender-based violence against women (GBVAW) and girls and a form of torture². This practice which is known as “female circumcision”, is colloquially referred to as “*sunnat*” or “*khatna*”. For a long time, the practice remained largely undetected in Sri Lanka. For example, the World Health Organisation (WHO) reported a “zero-score” for FGM in Sri Lanka in a report on gender-based violence in 2008, echoed by the UNICEF’s national report card on essential indicators relevant to maternal and child health in Sri Lanka since 2005 that stated instances of FGM have remained at nil. A 2008 joint Ministry of Health (MoH) and WHO report on violence and health in Sri Lanka stated that FGM “does not exist in Sri Lanka”³.

It is only since 2016 that the practice of FGM received public attention in Sri Lanka⁴. Women affected by the practice have 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 Lanka⁵. In response to this advocacy, the MoH issued a circular to all medical professionals highlighting the potential harm and prohibiting the practice⁶. Medical professionals also responded to religious resistance in public debates on the subject by introducing clarity and medically accurate information⁷.

Women who are the victims of FGM also face patriarchal discrimination from family and community members⁸. For a substantial period, Muslim women have faced ostracization, expulsion, threat, and sometimes violence from within their communities for demanding their

² See e.g. CAT, *Concluding Observation on Congo*, UN Doc. CAT/C/COG/CO/1, May 28th 2015, para. 20; Human Rights Council, *Resolution on the Elimination of female genital mutilation*, UN Doc. A/HRC/RES/44/16, July 24th, 2020, para. 13.

³ Wickramage, K., Senanayake, L., Mapitigama, N., Karunasinghe, J., & Tegal, E., *The need for an evidence-informed, multi-sectoral and community participatory action framework to address the practice of female genital mutilation in Sri Lanka*, Ceylon Medical Journal, Vol 63, 2, (2018), 53-57.

⁴ Ibrahim, Zainab & Tegal, Ermiza, FGM in Sri Lanka: It's never 'just a nick', December 25th, 2017, <https://www.aljazeera.com/indepth/opinion/fgm-sri-lanka-nick-171218122855118.html>; Daniel, Smriti, *Butter knife or sharp blade? Either way, FGM survivors in Sri Lanka want it to stop*, Reuters, November 22nd, 2017, <https://www.reuters.com/article/us-sri-lanka-women-fgm/butter-knife-or-sharp-blade-either-way-fgm-survivors-in-sri-lanka-want-it-to-stop-idUSKBN1DM023>; & Ibrahim, Zainab & Tegal, Ermiza, *Towards understanding female genital cutting in Sri Lanka*, Family Planning Association of Sri Lanka, 2019, http://www.fpasrilanka.org/sites/default/files/towards_understanding_female_genital_cutting_in_sri_lanka.pdf

⁵ Ibid.

⁶ Ministry of Health, Nutrition and Indigenous Medicine Sri Lanka, *General Circular Letter 02/33/2018: Medical Professionals Involvement in Female Genital Mutilation*, 2018, <http://www.health.gov.lk/CMS/cmsmoh1/circulars.php>.

⁷ Haniffa, Ruvaiz & Sherriffdeen, A.H., *Female Circumcision: A Medical Perspective*, Sunday Times (Sri Lanka), September 30th, 2018, <https://www.pressreader.com/sri-lanka/sunday-times-sri-lanka/20180930/283373357926312> & Haniffa, Ruvaiz & Sherriffdeen, A.H., *Right of Reply: female genital mutilation*, Daily Mirror (Sri Lanka), September 28th, 2018, <http://www.dailymirror.lk/article/Right-of-Reply-female-genital-mutilation-156101.html>.

⁸ Ibrahim, Zainab & Tegal, Ermiza, *Towards understanding female genital cutting in Sri Lanka*, Family Planning Association of Sri Lanka, 2019, http://www.fpasrilanka.org/sites/default/files/towards_understanding_female_genital_cutting_in_sri_lanka.pdf. & CEDAW, *Concluding observations on Sri Lanka*, UN Doc. CEDAW/C/LKA/CO/8, March 3rd, 2017, para. 22.

rights – particularly rights in relation to family law reform and addressing GBVAW, including domestic violence⁹. All within the broad social and political context that women in Sri Lanka face, including discrimination, failure to respond to the violence they have faced, and failure to secure administrative and legal measures to secure their rights¹⁰. As such, FGM is a difficult concern to raise or publicly advocate against within families, communities, and within the current political context.

a. Scope and Scale of FGM in Sri Lanka

FGM in Sri Lanka falls within the WHO classification Type 1, which refers to the partial or total removal of the clitoral glans and/or the prepuce or clitoral hood, and Type 4, which includes all other harmful procedures to the female genitalia for non-medical purposes, e.g. pricking, piercing, incising, scraping, and cauterizing the genital area¹¹. A majority of those affected appear to have experienced the Type 4 form of FGM of a nick, scrape, pinch, or slight cut to the clitoris or thereabouts. Victims of this practice are new-born girls, or girls at seven days, nine days, 15 days, or 40 days after birth. Consequently, victims have no memory of the procedure¹². A minority of those affected described a more serious Type 1 form of FGM. Young girls of the Dawoodi Bohra community around the age of seven are reported to have experienced Type 1. Anecdotal information also suggests that adult women are subject to the practice as a ritual associated with being accepted as Muslim¹³.

The prevalence of FGM has not been systematically studied. The practice is observed as mainly prevalent amongst the Muslim communities of Sri Lanka. Approximately half of the Muslim population consists of women and girls, amounting to close to 5% of the Sri Lankan population. From within this, owing to a diversity of ideological and sociological factors, the practice varies from group to group and sometimes from place to place within the country¹⁴. Geographically, this means that areas within provinces in which there are significant Muslim populations, such as the Central, Eastern, Northwestern and Western Provinces, are most likely to see FGM observed¹⁵. Exploratory studies thus far suggest that the practice is highly prevalent amongst the very small Dawoodi Bohra community (approximately under 3000 persons). Prevalence is also perceived as high amongst groups of Moors and Malays in Sri Lanka. Within the Dawoodi Bohra community the practice is treated as a mandatory ritual.

⁹ Guruge, Sepali, Ford-Gilboe, Marilyn, Varcoe, Colleen, Jayasuriya-Illesinghe, Vathsala, Ganesan, Mahesan, Sivayogan, Sivagurunathan, Kanthasamy, Parvathy, Shanmugalingam, Pushparani & Vithanarachchi, Hemamala, *Intimate partner violence in the post-war context: Women's experiences and community leaders' perceptions in the Eastern Province of Sri Lanka*, Plos One, 2017, <https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0174801>.

¹⁰ Food & Agriculture Organization, *Rural women in Sri Lanka's post-conflict rural economy*, 2006, <https://www.fao.org/3/ag114e/AG114E00.htm#TopOfPage>.

¹¹ Ibrahim, Zainab & Tegal, Ermiza, *Towards understanding female genital cutting in Sri Lanka*, Family Planning Association of Sri Lanka, 2019, http://www.fpasrilanka.org/sites/default/files/towards_understanding_female_genital_cutting_in_sri_lanka.pdf.

¹² Ibid.

¹³ Ibid.

¹⁴ Ibid.

¹⁵ Dawson, Angela & Wijewardene, Kumudu, *Insights into preventing female genital mutilation/cutting in Sri Lanka: a qualitative interpretative study*, Reproductive Health, Vol 18, 51, (2021), <https://reproductive-health-journal.biomedcentral.com/articles/10.1186/s12978-021-01114-x#citeas>.

Other groups appear to be motivated by conceptions of religious belief and social enforcement for various reasons¹⁶.

The practice is institutionally promoted by the All Ceylon Jama'iyathul Ulema (ACJU), the Center for Islamic Studies, Young Muslim Men's Association Conference, and United Religions Initiative¹⁷. In the case of the Dawoodi Bohra community it is believed to be mandated by their leadership. In response to women complaining about the practice, these groups advocated medicalization as opposed to an outright ban. At the level closest to the practice, FGM is protected, promoted, and carried out mainly by women in the communities. Most often mothers, grandmothers, and mothers-in-law have been described as insisting on the practice being continued. The practice is carried out by "*Ostha Mams*", who are medically untrained female traditional practitioners, and sometimes by licensed medical practitioners¹⁸.

Many justifications are given by those who promote or practice this form of violence. The reasons appear to be broadly that it is required by religion, it is necessary to continue tradition, it is perceived as necessary for health reasons (for cleanliness, to prevent infection, or to make child delivery easier), or to control women's sexual desire and conduct, i.e. to prevent girls being promiscuous, prevent women from being unfaithful to their partners, or to control excessive emotions¹⁹. Reasons given vary and are often contradictory and based on medically inaccurate information²⁰. Those advocating against the practice appear to be motivated by their own memories of the experience and by concerns for the safety and well-being of girls and women²¹.

The health implications of FGM in Sri Lanka have not been systematically studied. Recent literature revealed a range of experiences, including medically diagnosed exposure of nerves causing pain during sex, reduced sexual gratification, and having no perceived impact.

¹⁶ Ibrahim, Zainab & Tegal, Ermiza, *Towards understanding female genital cutting in Sri Lanka*, Family Planning Association of Sri Lanka, 2019, http://www.fpasrilanka.org/sites/default/files/towards_understanding_female_genital_cutting_in_sri_lanka.pdf.

¹⁷ In September 2018, these groups made joint representations to the Parliamentary Oversight Committee on Women and Gender demanding the withdrawal of a circular preventing medical professional carrying out FGM (Daily Mirror, *Muslim groups call for female circumcision to be medicalised*, September 7th, 2018, <http://www.dailymirror.lk/article/Muslim-groups-call-for-female-circumcision-to-be-medicalised-155186.html>). In 2018, the Centre for Islamic Studies in Sri Lanka criticized the government after the health ministry denounced FGM and prohibited doctors from any involvement in the practice (Banerji, Annie, *Sri Lankan Islamic center condemns ban on female circumcision as 'affront'*, Reuters, July 12th, 2018, <https://www.reuters.com/article/us-sri-lanka-women-fgm-idUSKBN1K12OZ>).

In 2008, the ACJU of Sri Lanka issued a fatwa on "female circumcision", saying it is obligatory and recommended, citing religious teachings as well as the view that circumcision is important to maintain cleanliness of the genitals and 'for enjoyment in family life' (Fatwa on Female Circumcision Ref 005/ACJU/F/2008).

¹⁸ Dawson, Angela & Wijewardene, Kumudu, *Insights into preventing female genital mutilation/cutting in Sri Lanka: a qualitative interpretative study*, Reproductive Health, Vol 18, 51, (2021), <https://reproductive-health-journal.biomedcentral.com/articles/10.1186/s12978-021-01114-x#citeas>.

& Ibrahim, Zainab & Tegal, Ermiza, *Towards understanding female genital cutting in Sri Lanka*, Family Planning Association of Sri Lanka, 2019, http://www.fpasrilanka.org/sites/default/files/towards_understanding_female_genital_cutting_in_sri_lanka.pdf.

¹⁹ Ibid.

²⁰ Ibid.

²¹ Ibid

Perceptions of impact also appear influenced by the memory of the FGM procedure and the type of FGM carried out²².

The two cases below are illustrative of how FGM is practiced in Sri Lanka:

- Faiza is often told by her grandmother that her tomboy like behaviour has to do with her not being adequately tamed. She was 12 years when she first heard this phrase from her grandmother. It took another 10 years for her to understand what was done or partially done to her body. She comes from a middle-class Muslim family and while she was reading for her degree she read an article in a newspaper about FGM. She discussed with her fellow classmates, and she was shocked to learn that all four of her friends belonging to the Islamic faith, including a close friend belonging to the Bohra community, have undergone Sunnat. Faiza was scared to ask her mother about the details. She still remembered what her grandmother used to say. She approached her aunt for an explanation, who told her that everyone in her family had undergone Sunnat. Her aunt told her that the ritual was performed on her in their house when she was 30 days old, but, that her father had stopped it halfway through since Faiza cried a lot. The Osthā Mami was given her payment and sent off and no one in her family knows whether she was properly cut. Hearing this shocked her and to date she has had no conversation with her parents on this even though she decided to address this issue in her social media postings²³.
- Anusha was 26 years old when she underwent FGM. She fell in love with a Muslim man who is her best friend's brother and decided to convert to Islam. She was a Hindu by birth and left her family after she married her Muslim boyfriend. A few weeks after their Nikkah (wedding) ceremony her sister-in-law (who is also her best friend) took her to a barber woman (Osthā Mami), saying that she is not fully Muslim until this ritual is performed. Anusha (now called Fathima) was also told by her husband's family that she cannot bear a child without Sunnat being done to her. Fathima knows Muslim men undergo Sunnat but never knew this was done to women as well. She could not resist anything because she had abandoned her family and the only family left is her husband's, thus, she agreed. She still remembers the trauma and how she was held tightly by her sister-in-law and two other women while Osthā Mami slit her clitoris with a blade. She bled and they put some talcum powder on it. She remembers not being able to walk afterwards and feeling faint while her husband's family celebrated it and gifted her with jewellery²⁴.

b. Limitations of the Legal Framework

The practice of FGM is not expressly criminalized. However, in accordance with the Penal Code, it is possible for FGM to be treated as an offence under Section 308A relating to cruelty of children and Sections 310 and 311 relating to harm and grievous harm. However, due to women's limited access to justice, their limited trust in the police and judiciary,

²² Ibid.

²³ Victim was interviewed by the author. Interview on file with the author.

²⁴ Ibid.

extreme delays in investigation and adjudication, and low conviction rates,²⁵ express provision for the offence is necessary.

Although a group of women made a submission in December 2017 to the Minister of Justice to introduce specific language to criminalize FGM, there has been no response to date. The demand sought to expand the definition of grievous harm in the Penal Code (Section 311) to include practices that “excises, infibulates or otherwise mutilates the whole or any part of the labia majora or labia minora or clitoris of another person”, subject to certain medical exceptions²⁶. This measure would need to keep in mind the secretive nature of the practice and the perceived ties between practice and culture, which may need to be specifically addressed as part of policy on this law reform.

c. Lack of Access to Reproductive Health and Rights Information and Services

There is a lack of access to family planning and reproductive and sexual health services and education for many girls and women. Affected communities are particularly vulnerable to this shortcoming due to women not having access to the limited services available either due to control exerted within families or due to fear of discrimination by State sector service providers. Since most affected women belong to the Muslim minority, there are fears of being further marginalized.²⁷ These challenges have not been addressed by government or non-governmental organizations. State agencies have failed to improve accessibility and promote community health services that recognize and address FGM and equip women with relevant information.

Recommendations:

- Amend relevant legal provisions to criminalize FGM or enact specific laws to protect girls from FGM.
- Provide equal access to health care professionals who are trained in providing services to victims of FGM
- Strengthen awareness-raising and educational efforts, targeted at both women and men, with the support of civil society, to eliminate the practice of FGM and its underlying cultural justifications.
- ensure that perpetrators of female genital mutilation are prosecuted and adequately punished and the victims compensated
- work with affected communities to create stigma free and permissive environments for conversations on bodily integrity, autonomy, and women’s rights

²⁵ CEDAW, *Concluding observations on Sri Lanka*, UN Doc. CEDAW/C/LKA/CO/8, March 3rd, 2017, para. 22(a).

²⁶ Center for Policy Alternatives, *Legal Reform to Combat Sexual and Gender-Based Violence. Sri Lanka*, 2020, <https://www.cpalanka.org/wp-content/uploads/2020/11/Law-Reform-to-combat-SGBV-PART-3-FGM-Centre-for-Policy-Alternatives.pdf>.

²⁷ Amnesty International, *Increased Marginalization, Discrimination and Targeting of Sri Lanka’s Muslim Community*, *Public Statement*, 2021, <https://www.amnesty.org/en/documents/asa37/3866/2021/en/>.

2. Forced Sterilization and Lack of Control over Contraception

The lack of safe sex education, affordable and accessible contraception, the stigma surrounding sex and sexuality of women, the criminalization of abortions, and the significance given to “virginity” drives women and girls to resort to risky, sometimes fatal, measures in attempts to avoid having children they were not prepared to have or did not consent to having. The lack of agency, knowledge, and literacy to make informed decisions often leads women to be coerced or compelled into sterilization.

Forced sterilization affects mostly tea plantation workers of Tamil ethnicity, a minority historically persecuted and discriminated against. Since the privatization of plantations in 1992, the primary concern of maximizing profit resulted in the exploitation of female plantation workers, particularly their reproductive rights. Field research conducted in Tamil plantation communities found cases of forced sterilizations, with 97 cases reported within a period of 10 years²⁸.

In the plantation sector, welfare officers promote family planning proactively due to the acute poverty. Interviews the author carried out with women concerned, community leaders, and a doctor revealed that men are reluctant to undergo vasectomy procedures and instead force their wives to undergo sterilisation treatment. It happens that doctors opt for caesareans when delivering babies from disadvantaged women so that it is possible to perform a sterilisation procedure at the same time, following consent from the child’s father. Any medical procedure involving a woman’s womb requires her husband's consent. This also means that women who by their own will want to undergo sterilisation procedures are unable to do so without seeking and gaining this consent.

Sri Lanka does not have comprehensive regulations on informed consent for sterilization, with the only requirement being a consent form signed two weeks prior to the procedure. It was found that most plantation workers would sign the form mere hours before the procedure²⁹. To the knowledge of the author, none of the victims have received any form of redress for this wrongdoing.

It has been recognized that forced sterilization is a form of torture³⁰. The HRC, along with the CAT and CEDAW, have made it clear that such practices need to be prosecuted and perpetrators punished.

Recommendations:

- Prohibit the use of sterilization without the prior, free and informed consent of the person concerned, and ensure that such legislation is effectively implemented
- Prohibit the requirement of consent by the husband or partner of the person concerned for sterilization procedures
- Ensure marginalised communities and targeted minorities are protected against forced sterilization.

²⁸ Balasundaram, Sasikumar, *Stealing Wombs: Sterilization Abuses and Women's Reproductive Health in Sri Lanka's Tea Plantations*, Indian Anthropologist, Vol 41,2, (2011), 57-78.

²⁹ Ibid.

³⁰ CAT, *Concluding observations on Peru*, UN Doc. CAT/C/PER/CO/7, December 18th, 2018, paras. 36-37.

3. Obstetric Violence

Misinformation and the prevalence of cultural ideologies also result in a variety of obstetric violence, understood as the mistreatment that occurs during the care provided during pregnancy, childbirth, or the immediate postpartum period³¹. Women reported of experiencing verbal or emotional violence by care providers during childbirth, including being accused of “messing up” the labor room by delivering a baby, being told they could not afford proper clothes but afford to get pregnant³². There are also reports of physical violence, such as slapping on a woman’s hand during childbirth for accidentally touching the midwife³³. Victims of obstetric violence commonly believe that reacting to abuse or lodging a complaint could have negative implications for their babies³⁴.

Obstetric violence also occurs in the form of hymenoplasty and episiotomy stitches, otherwise known as “husband stitches”. There are Colombo-based “cosmetic medical clinics”, such as London Antiaging, that advertise hymenoplasty procedures in mainstream media and social media campaigns as sexual enhancement procedures³⁵. There are also reputed hospitals, such as Durdens, offering hymenoplasty procedures, citing reasonings ranging from “forgetting the past”, a “gift” for “a special occasion” or the “night of their marriage”, and “cultural beliefs”. The episiotomy stitch or the “husband stitch”, is sometimes performed by doctors without the consent or knowledge of women following vaginal birth. The stitch is intended to create tightness for the increased pleasure of male sexual partners post vaginal birth and/or tearing³⁶.

Obstetric violence intersects with cultural, racial, and religious discrimination³⁷. Studies have found that obstetric violence is mostly experienced by Tamil and Muslim women and women of disadvantaged socio-economic backgrounds. There are particularly strong Sinhala nationalist movements in Sri Lanka³⁸. and space for Muslim communities is shrinking³⁹. Although anti-Muslim sentiment is nothing new, the situation has regressed significantly in recent years. Incidents of violence against Muslims committed with impunity have become

³¹ See d’Oliveira A.F., Diniz, S.G. & Schraiber, L.B., *Violence against women in health-care institutions: an emerging problem*, Lancet, Vol 359, 9318 (2002) 1681–5.

³² Perera, Dinusha, Lund, Ragnhild, Swahnberg, Katarina, Schei, Berit, & Infanti, Jennifer J., *When helpers hurt: women’s and midwives’ stories of obstetric violence in state health institutions, Colombo district, Sri Lanka*, BMC Pregnancy and Childbirth, Vol 18, 211, (2018), <https://bmcpregnancychildbirth.biomedcentral.com/articles/10.1186/s12884-018-1869-z#citeas>.

³³ Ibid.

³⁴ Perera, Dinusha, Lund, Ragnhild, Swahnberg, Katarina, Schei, Berit, & Infanti, Jennifer J., *When helpers hurt: women’s and midwives’ stories of obstetric violence in state health institutions, Colombo district, Sri Lanka*, BMC Pregnancy and Childbirth, Vol. 18, 211 (2018).

³⁵ London Antiaging, *Sexual Treatments*, <https://www.londonantiaging.lk/sexual-treatments>.

³⁶ Murphy, Carrie, *The Husband Stitch Isn’t Just a Horrifying Childbirth Myth*, Healthline, September 27th, 2018, <https://www.healthline.com/health-news/husband-stitch-is-not-just-myth>.

³⁷ General Assembly, *A human rights-based approach to mistreatment and violence against women in reproductive health services with a focus on childbirth and obstetric violence*, UN Doc. A/74/137, July 11th, 2019, para. 44.

³⁸ CNN, *Terror in Sri Lanka. A holy day meant for rest and worship turned deadly in Sri Lanka*, April 2019, <https://edition.cnn.com/interactive/2019/04/world/sri-lanka-attacks/>.

³⁹ Thames, Knox, *Shrinking Space for Religious Minorities in Sri Lanka*, The Diplomat, October 25th, 2021, <https://thediplomat.com/2021/10/shrinking-space-for-religious-minorities-in-sri-lanka/>.

more frequent⁴⁰. This also affects Muslim women when in delivery rooms, where they are verbally and physically abused as previously described⁴¹.

Recommendations:

- take measures to protect women's rights to safe motherhood and access to appropriate obstetric services, and to combat obstetric violence
- investigate and prosecute cases of obstetric violence
- provide legal and social services to victims of obstetric violence
- conduct awareness-raising campaigns and trainings for health-service providers, law enforcement and members of the judiciary about obstetric violence

4. Child Marriage

The Muslim Marriage and Divorce Act (MMDA), which regulates marriages, does not contain an absolute minimum age for marriage. Section 23 provides that “a marriage contracted by a Muslim girl who has not attained the age of 12 years shall not be registered under this Act unless the *Quazi* for the area in which the girl resides has [...] authorized the registration of the marriage”. Not only does this law explicitly permit marriage of girls as young as 12, but it also allows that even younger girls can be forced to marry if authorized by a Muslim magistrate (a *Quazi*)⁴². Moreover, the MMDA makes marriage registration optional. Hence many child marriages are unregistered and complete prevalence of the practice is therefore unknown.

It is estimated that about 12% of Sri Lankan women who are between 20 and 24 have been married before the age of 18⁴³. It is further estimated that numbers increased since 2020 as a result of the pandemic. With schools being closed for months, many families decided to take the opportunity to marry their daughters off⁴⁴.

There has been continued resistance to reform the MMDA. Religious leaders have argued that increasing the age of marriage for girls to over the age of 18 would allow premarital sex and children born out of wedlock. This perspective suggests that Muslim women are sexualized from a very early age and that reproduction is the key reason for marriage⁴⁵. Unsurprisingly, there have been instances in which girls were forced to marry

⁴⁰ Amnesty International, *Sri Lanka: Authorities must end violence and discrimination against Muslims*, October 17th, 2021, <https://www.amnesty.org/en/latest/news/2021/10/sri-lanka-authorities-must-end-violence-and-discrimination-against-muslims/>.

⁴¹ Perera, Dinusha, Lund, Ragnhild, Swahnberg, Katarina, Schei, Berit, & Infanti, Jennifer J., *When helpers hurt: women's and midwives' stories of obstetric violence in state health institutions, Colombo district, Sri Lanka*, BMC Pregnancy and Childbirth, Vol 18, 211, (2018), <https://bmcpregnancychildbirth.biomedcentral.com/articles/10.1186/s12884-018-1869-z#citeas>.

⁴² Muslim Marriage and Divorce At, § 23, August 1st, 1954.

⁴³ UNICEF, *The State of the World's Children 2016*, p. 152,

⁴⁴ Grant, Harriet, *Why Covid school closures are making girls marry early*, the Guardian, September 7th, 2020, <https://www.theguardian.com/global-development/2020/sep/07/why-covid-school-closures-are-making-girls-marry-early>.

⁴⁵ Abdul Saroor, Shreen, *Why is the ACJU blocking MMDA reforms?*, Daily FT, August 2nd, 2019, <https://www.ft.lk/opinion/Why-is-the-ACJU-blocking-MMDA-reforms-/14-683174>.

their rapists in order to prevent shame and restore the honor of the girl's family, particularly when the victim was pregnant⁴⁶.

Child marriage threatens the lives and futures of girls and women and makes them more vulnerable to further violence⁴⁷. It is a form of reproductive violence. Child marriage threatens the lives and futures of girls and women and makes them more vulnerable to further violence⁴⁸. Child marriage is often accompanied by early and frequent pregnancies which result in high maternal morbidity and mortality rates⁴⁹.

Because of its detrimental effect for girls' mental and physical health and potential threat to life, the CAT and Special Rapporteur on Torture have found that child marriage amount to torture or cruel, inhuman, or degrading treatment⁵⁰.

Recommendations:

- Set the minimum age to marry at 18 years in all relevant laws including the MMDA
- Raise awareness among parents, teachers and community and religious leaders about the negative effects of child marriage on the health and well-being of girls and women
- Reforming the MMDA without any further delay to ensure that the legalized underage marriages and teenage pregnancies are stopped completely.

5. Criminalization of Abortion and Unsafe Termination of Pregnancies

Archaic legislature, such as laws concerning abortion, have prevailed since 1883. The existing abortion law not only restricts women's right to abortions but also criminalizes the act. Section 303 of the Penal Code provides that anyone voluntarily causing a pregnant woman to miscarry is subject to up to three-years imprisonment and/or payment of a fine, unless it was caused in good faith to save the women's life. Under this law, doctors and women who induce their own miscarriage are subject to the same penalties⁵¹. It has been cited as one of the strictest abortion laws in the world⁵². Given the lack of alternative regulated mechanisms and care, women and girls are forced to resort to means that are unsafe and sometimes fatal⁵³. In 2016, the MoH reported that 658 unregulated abortions were performed daily, being the second or third top causes for maternal mortality⁵⁴. In an interview

⁴⁶ Ibid.

⁴⁷ Office of the UN High Commissioner for Human Rights, *Child and forced marriage, including in humanitarian settings*, oft he <https://www.ohchr.org/en/issues/women/wrgs/pages/childmarriage.aspx>.

⁴⁸ Office of the UN High Commissioner for Human Rights, *Child and forced marriage, including in humanitarian settings*, oft he <https://www.ohchr.org/en/issues/women/wrgs/pages/childmarriage.aspx>.

⁴⁹ Ibid.

⁵⁰ See e.g. CAT, *Concluding Observations on Sierra Leone*, UN. Doc. CAT/C/SLE/CO/1, June 20th, 2014, para. 16; *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment on Gender Prespectices and Torture and other Cruel, Inhuman and degrading treatment*, UN Doc. A/HRC/31/57, January 5th, 2016, para. 63.

⁵¹ *Penal Code 1885, Section 303*, Sri Lanka.

⁵² Davidson Ladly, Meghan, *Sri Lanka's backstreet abortions: hundreds of women take daily risks with illegal terminations*, The Telegraph, August 5th, 2020, <https://www.telegraph.co.uk/global-health/women-and-girls/sri-lankas-backstreet-abortions-hundreds-women-take-daily-risks/>.

⁵³ Kumar, Ramya, *Abortion in Sri Lanka: The Double Standard*, Am J Public Health, Vol. 103,3 (2013) 400-404.

⁵⁴ News First, *Over 650 abortions on a daily basis: Health Ministry elaborates*, May 9th, 2016, <https://www.newsfirst.lk/2016/05/09/650-abortions-daily-basis-health-ministry-elaborates/>.

with the International Planned Parenthood Federation, Sonali Gunaseka, Director of Advocacy at the Family Planning Association of Sri Lanka, stated that the mortality rates for unregulated abortions stands at approximately 15%, due to complications resulting from unsafe conditions as well as a lack of necessary aftercare⁵⁵. Another grievance, which poses a challenge when seeking necessary care, is caused by the threat of prosecution for unplanned and/or unwanted pregnancies. All parties involved in the abortion process may face criminal charges, which makes finding safe services particularly difficult, especially for low-income families. Even in cases of medical examination and aftercare for rape cases in Sri Lanka, the procedure can be incredibly invasive, prejudicial, and retraumatizing, as survivors are profiled and often directly or indirectly blamed for the assault.

Recommendations:

- Amend relevant legal provisions to decriminalize abortion
- provide equal access to abortion clinic and post- abortion services
- Strengthen measures to ensure access for girls, adolescents and women, including those living in rural areas, to adequate sexual and reproductive health services, including modern contraceptive methods and family planning

6. Lack of Gender-sensitive Transitional Justice Mechanism

Sri Lanka has a long and complex history of ethnic tensions between the Sinhalese majority and Tamil minority that resulted in a prolonged civil war between the Liberation Tigers of Tamil Ealam (LTTE or the Tamil Tigers) and the Sinhalese dominated Sri Lankan government. The LTTE fought to create an independent Tamil state in the Northeast of Sri Lanka due to continuous discrimination and violence against the Tamils. The conflict has resulted in serious human right violations under international humanitarian law by all parties, including arbitrary arrests, extrajudicial killings, disappearances, displacement, use of child soldiers, torture, ill-treatment of persons in detention, and GBVAW⁵⁶. The impact of the armed conflict on women has been felt in several different ways. Many female heads of households from ethnic and ethnoreligious minority groups in areas affected by the war experience high rates of poverty, unemployment, and are vulnerable to violence⁵⁷.

Although the war ended in 2009, the conflict and its remnants are still visible within Sri Lankan society, which remains deeply divided. In March 2021, the Human Rights Council passed resolution 46/1 that highlights continuing atrocities committed against ethnic and religious minorities, systemic impunity, and eroding rule of law and access to justice⁵⁸. Resolution 46/1 further strengthens the capacity of the Office of the High Commissioner to “collect, consolidate, analyse and preserve information and evidence and to develop possible

⁵⁵ International Planned Parenthood Federation, *Fighting for safe abortion access in Sri Lanka*, 2019, <https://www.ippf.org/blogs/fighting-safe-abortion-access-sri-lanka>.

⁵⁶ For background information on the conflict in Sri Lanka, see the comprehensive investigation of the UN, HRC, *Comprehensive report of the Office of the United Nations High Commissioner for Human Rights on Sri Lanka*, UN Doc. A/HRC/30/61, September 28th, 2015.

⁵⁷ Committee on the Elimination of Racial Discrimination, *Concluding Observations on Sri Lanka*, UN Doc. CERD/C/KLA/CO/10-17, October 6th, 2016, para. 27.

⁵⁸ HRC, *Promoting reconciliation, accountability and human rights in Sri Lanka*, UN Doc. A/HRC/RES/46/1, March 26th, 2021.

strategies for future accountability processes for gross violations of human rights or serious violations of international humanitarian law”⁵⁹.

Many studies conducted on Sri Lankan women’s reproductive concerns in conflict affected areas found higher levels of poverty, higher rates of early marriage, pregnancy, home births, maternal mortality, lower levels of early contraceptive use and depletion of reproductive healthcare services in the North and East of the country⁶⁰. There has been no accountability as of yet for these grievances, violations, and acts of violence enacted against women and girls despite the countless documented cases, reports, and testimonials brought forward after the war ended. Gross negligence and mistreatment by authorities has rendered victims and survivors with no support, no services, or State mechanisms to address their issues⁶¹.

Recommendations:

- ensure effective access to justice for all women victims of violence during the conflict, in particular reproductive violence, including adequate reparation
- investigate well documented cases of sexual violence during war and in the aftermath of the war through an international justice process
- ensure the participation of women at all stages of the peace process in national reconciliation and all reconstruction initiatives, as well as in transitional justice processes, in particular at the decision-making level

7. Lack of Gender-sensitive Mechanisms for Emergency Situations

During the many years of conflict, the situations of displacement, the natural disasters, like the Tsunami, and now the pandemic and economic crisis, the State did not have a response mechanism catering to women and girls’ needs and vulnerabilities⁶². This is despite the increase of sexual assault, forced marriages, unwanted pregnancies, child marriages, spread of sexually transmitted infections, trafficking, sexual slavery, and abuse being overwhelmingly common during crisis situations, such as conflict situations or emergency situations, like the post-tsunami period, when many cases of sexual violence were reported,⁶³ and the current governance and economic crisis.

“Woman to Woman” was a training program requested by the Sri Lankan Women’s Coalition for Assisting Tsunami Affected Women (CATAW) and developed by the UN Population Fund. CATAW identified and documented key issues experienced by women while developing responses to issues. The coalition cited a lack of services, infrastructure,

⁵⁹ Ibid para. 6.

⁶⁰ Kottegoda, Sepali, Kumudini, Samuel & Sarala, Emmanuel, *Reproductive Health Concerns in Six Conflict-Affected Areas of Sri Lanka*, Reproductive Health Matters, Vol 16, 31, (2008), 75–82, <https://www.tandfonline.com/doi/pdf/10.1016/S0968-8080%2808%2931359-7?needAccess=true>.

⁶¹ Kodikara, Chulani, *Justice and accountability for war related sexual violence in Sri Lanka*, Open Democracy, August 15th, 2016, <https://www.opendemocracy.net/en/5050/justice-and-accountability-for-war-related-sexual-violence-in-sri-lanka/>.

⁶² Kottegoda, Sepali, Kumudini, Samuel & Sarala, Emmanuel, *Reproductive Health Concerns in Six Conflict-Affected Areas of Sri Lanka*, Reproductive Health Matters, Vol 16, 31, (2008), 75–82, <https://www.tandfonline.com/doi/pdf/10.1016/S0968-8080%2808%2931359-7?needAccess=true>.

⁶³ Pittaway, Eileen, Bartolomei, Linda & Rees, Susan, *Gendered dimensions of the 2004 tsunami and a potential social work response in post-disaster situations*, International Social Work, Vol.50, 3 (2007); Pikul, Corrie, *As Tsunami Recedes, Women’s Risks Appear*, Women’s eNews, January 7th, 2005, <https://womensenews.org/2005/01/tsunami-recedes-womens-risks-appear/>.

appropriate health and medical services, female healthcare providers, female police officers, resources, such as sanitary products, safe spaces, and security arrangements for women and girls' specific issues. They also highlighted a lack of healthcare resources and services essential during prenatal and post-natal periods, and for childcare. The heightened vulnerabilities during crisis situations, restricted mobility, and limited access to services further victimizes survivors of violence. Women's needs remain unaccounted for in disaster and crisis situations⁶⁴. In a country that has normalized negative sexist socio-cultural ideologies and practices, Sri Lanka also lacks the necessary State-implemented policies and interventions to ensure that women and girls' specific needs, such as their sexual and reproductive rights, are met specially in the context of current medicine, food and fuel shortage and lack of political will to look at food security through women's perspectives. The same can be said for the plight of Sri Lankan women in the current Covid-19 pandemic, during which a multitude of sexual and reproductive health rights violations increased ⁶⁵ and women were forced to work in conditions that exposed them to Covid-19, particularly in over-crowded garment factories where a third wave of Covid-19 just started.

Recommendations:

- Increase participation of women in decision-making position and management of natural disasters and emergency situations, particularly in the current economic crisis;
- Provide reparations for conflict, economic crisis and emergency related GBVAW;
- include reproductive related needs of women into emergency policies, economic recovery, and disaster responses
- Declare services related to reproductive needs and GBVAW as essential services in a crisis situation.

8. Lack of Sex Education and Public Awareness

The State, as the entity that has sworn to protect its citizens, has a responsibility to rectify mainstream discourse, to take the necessary measures to dissolve rape culture that shifts the blame on survivors rather than the perpetrators, and the notion of girls and women being "responsible" to prevent and resist assault. However, sex education in Sri Lanka is inadequate⁶⁶. Although the solution seems self-evident, measures taken by civil society have been terminated at every juncture. The textbook entitled "*Hathe ape potha*", which details safe sex practices, was banned by the State, while grade 11 health books horrifically state that unwanted pregnancies occur due to women and girls "acting out of their feelings instead of rational thinking"⁶⁷. It blames survivors of sexual assault for their experiences and villainizes persons with mental health issues by branding them sexual predators. The provision of safe sex education that is inclusive of important components, such as consent, compliance,

⁶⁴ Pittaway, Eileen, Bartolomei, Linda & Rees, Susan, *Waves of Violence – Women in Post-Tsunami Sri Lanka*, The Australasian Journal of Disaster and Trauma Studies, Vol 2, (2005), 1174-4704, <http://trauma.massey.ac.nz/issues/2005-2/rees.htm>.

⁶⁵ HRW, *The Right of Everyone to Sexual and Reproductive Health: Challenges and Opportunities During Covid-19*, 2021, <https://www.hrw.org/node/378945/printable/print>.

⁶⁶ de Silva, Nisali, *Majority of students believe sex education inadequate, study say*, Economynext, January 9th, 2020, <https://economynext.com/majority-of-students-believe-sex-education-inadequate-study-says-47410/>.

⁶⁷ Dissanayake, Methmalie, *Questionable G11 Text Book Causes Furore*, Ceylon Today, May 1st, 2021, <https://ceylontoday.lk/news/questionable-g11-text-book-causes-furore>.

coercion, reproductive health and rights, pleasure, exercising bodily autonomy, sexually transmitted infections, and contraception, would make a huge difference in equipping individuals to make informed decisions regarding their bodies.

Recommendations:

- Adopt and implement a comprehensive policy with effective and sustained measures, aimed at women, men, girls and boys, to overcome stereotypical attitudes about the roles and responsibilities of women and men in the family and in society
- Make sex education compulsory in schools and introduce *Hathe ape potha* at grade 7

About the Authors

Mannar Women Development Federation (MWDF) was organized in 1998 to empower the women in Mannar District in the northern province. Regular work of MWDF since its inception is defending women's rights through awareness raising and advocacy while providing legal aid, livelihood support, referral and protection to victims.

Women's Action Network (WAN) was founded in 2010 in the post war context. Currently WAN works in 9 districts (war affected north & east and north western provinces) on combating GBV, access justice & national & international lobby on reforming discriminatory & unequal laws and policies. WAN is a voluntary network.

The World Organisation against Torture (OMCT) works with 200 member organisations to end torture and ill-treatment, assist victims, and protect human rights defenders at risk wherever they are. Together, we make up the largest global group actively standing up to torture in over 90 countries. We work to protect the most vulnerable members of our societies, including women, children, indigenous peoples, migrants and other marginalized communities. To achieve this, we advocate with governments to change or implement their laws and policies, we help victims seek justice and strive to hold perpetrators to account. Because torture can never be tolerated, and human dignity is not negotiable