

Mandates of the Working Group on discrimination against women and girls; the Special Rapporteur in the field of cultural rights; the Special Rapporteur on the independence of judges and lawyers and the Special Rapporteur on the sale, sexual exploitation and sexual abuse of children

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(Please use this reference in your reply)

23 October 2023

Excellency,

We have the honour to address you in our capacities as Working Group on discrimination against women and girls; Special Rapporteur in the field of cultural rights; Special Rapporteur on the independence of judges and lawyers and Special Rapporteur on the sale, sexual exploitation and sexual abuse of children, pursuant to Human Rights Council resolutions 50/18, 46/9, 53/12 and 52/26.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **a Draft Bill for the Amendment of the Muslim Marriage and Divorce Act No.13 of 1951 (MMDA), which, would it be adopted, would be contrary to international human rights norms.**

On 31 December 2020, the Minister of Justice appointed a 10-member Advisory Committee on Muslim Law Reforms, to identify and advise him on areas of the Muslim Personal Laws in Sri Lanka that require reform, including the MMDA.

On 16 June 2021, the Advisory Committee, comprising academics, lawyers and Islamic scholars, submitted a report to the Minister of Justice. This report outlined proposals for amendment of the MMDA that the Committee advised were in line with Shari'ah and Islamic jurisprudence, the Constitution of Sri Lanka, and the documented harmful impacts of the MMDA in its current form.

The Ministry of Justice subsequently formulated a Draft Bill, yet to be made public, which reportedly contained highly progressive amendments to the MMDA, based on the 2021 report by the Advisory Committee.

According to the Advisory Committee's report of June 2021, the press statement issued by the Advisory Committee, and an unofficial version of the Draft Bill dated 4 May 2023, the Draft Bill contained the following amendments, as of 4 May 2023:

1. Registration of marriage will be necessary to ensure the legal validity of the marriage. Registration will have to take place immediately following the solemnisation of the marriage (traditionally referred to as *Nikkah*).
2. It will be mandatory for brides to sign and consent to their marriage.
3. The role of the *Wali* will be made optional and at the request of the bride.

4. Couples may enter pre-nuptial agreements.
5. In the event of divorce, dowry and any other transactions of money exchanged at the time of marriage may be recovered.
6. Matrimonial property rights will be introduced. Property acquired during the marriage will be fairly distributed at the time of divorce.
7. Divorce by mutual consent and equal divorce procedures for men and women will be recognized, including rights of appeal.
8. Children's affairs will be prioritized during divorce cases.
9. Alimony and compensation (*Mata 'a*) will be recognized.
10. Maintenance orders will be based on criteria ensuring that adequate maintenance is paid. To increase access to justice, applications for maintenance may be made to a Magistrate court.
11. Women will be permitted to hold official positions created by the MMDA, including as Marriage Registrars, *Quazis* and Conciliators (depending on the system adopted).
12. Muslim couples in which only one party is Sri Lankan will be allowed to marry under the country's MMDA.
13. If the *Quazi* system is to be maintained, the Advisory Committee has proposed that it should be reformed and subjected to proper supervision mechanisms. If the *Quazi* system is to be abolished, the Advisory Committee has proposed establishing a community-based mechanism of Conciliators. Conciliators would handle consensual divorce applications. Contested cases requiring a judicial decision would be taken to the District Court.

In a letter dated 8 June 2023, 17 male Muslim Members of Parliament (MPs) submitted recommendations in response to the Draft Bill on MMDA Reforms to the Minister of Justice. The MPs' recommendations reportedly included:

1. Retaining the mandatory consent of a male guardian for women to enter into marriage, thereby denying Muslim women their full autonomy;
1. Retaining the exclusion of Muslim women from holding public office under the MMDA, resulting in male-only Marriage Registrars and *Quazis* (judges);
2. Maintaining the *Quazi* system without any changes, including criteria and process for appointing *Quazis*, which currently: a) exclude women from holding the post of *Quazis* and Marriage Registrars; b) fail to define educational and other criteria required for appointees; c) fail to set up legal responsibilities, whereby the Judicial Service Commission is given the responsibility of ensuring training, discipline and

maintaining standards of the cadre; d) prevent the District Court, a formal judicial body currently mandated to hear family law matters for all citizens excluding Muslims, to have jurisdiction over contested matters of matrimonial fault, matrimonial property and fair compensation at time of divorce;

3. Continuing exceptions to the minimum age of marriage, which is currently set at 18 years old for all non-Muslim Sri Lankan citizens, as per the 1995 amendment to the (General) Marriages Registration Ordinance 1905, to allow under 18-year-old Muslims to be married;
4. Retaining the current highly discriminatory divorce system and procedures, which are lengthy and disadvantageous for women;
5. Rejecting new provisions for sharing of matrimonial property and securing the best interests of children, introduced in the Draft Bill for the Amendment of the MMDA based on the Advisory Committee's report of June 2021 and dated 4 May 2023;
6. Maintaining the discrimination between different sects and *madhabs* (schools of jurisprudence) of Muslims in Sri Lanka, some of which deny any right of the woman to initiate divorce.

The entire MMDA reform process is currently stalled, and the Minister of Justice is reportedly considering amending the Draft Bill based on the recommendations put forward by the Muslim MPs on 8 June 2023.

If recommendations put forward by the 17 Muslim MPs were to be introduced into the Draft Bill, it would be contrary to international standards and obligations on the protection of women's rights. The adoption of a Draft Bill that would incorporate such recommendations would significantly restrict women's and girls' rights and put Sri Lanka in violation of its obligations under international law. We encourage all concerned authorities to ensure that the revised law guarantees women's and girls' rights, in accordance with the international human rights standards presented below.

Regarding the principles of equality and non-discrimination in the family:

The recommendations put forward by the 17 Muslim MPs would exclude Muslim women and girls from internationally and constitutionally guaranteed rights of equality and non-discrimination enjoyed by all other Sri Lankan citizens, which would also be in violation of Sri Lanka's international human rights obligations under the Convention on the Elimination of all forms of Discrimination against Women (CEDAW), ratified by Sri Lanka on 5 October 1981.

The CEDAW condemns discrimination against women in all its forms (art. 2). It requires State parties to take all appropriate measures to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women (art. 5). It recalls that States parties shall accord to women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity. In particular, they shall give women equal rights to conclude

contracts and to administer property and shall treat them equally in all stages of procedure in courts and tribunals (art. 15(2)). State parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women, the same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases, the interests of the children shall be paramount (art. 16 (l)(d)).

In this connection, we would also like to refer your Excellency's Government to the CEDAW Committee's General Recommendation (GR) 21 on equality in marriage and family relations, which states that whatever form the family takes, and whatever the legal system, religion, custom or tradition within the country, the treatment of women in the family both at law and in private must accord with the principles of equality and justice for all people, as set at article 2 of CEDAW. Furthermore, the CEDAW Committee's General Recommendation 33 on access to justice indicates that State parties have obligations under articles 2, 5(a) and 15 of the Convention and under other international human rights instruments to ensure that women's rights are equally respected and that women are protected against violations of their human rights by all components of plural justice systems (GR 33, para. 61). In addition, with the aim to eliminate discrimination against women, General Recommendation 33 concludes that State parties should ensure that women have access to all available judicial and non-judicial remedies (GR 33, para. 19 (a)), provide effective and timely remedies, and that they respond to the different types of violations experienced by women, as well as adequate reparation (GR 33, para. 19 (g)).

We would also like to recall General comment No. 28 (2000) of the Human Rights Committee on equality of rights between men and women, which states that "States parties [to the International Covenant on Civil and Political Rights] must take measures to ensure that freedom of thought, conscience and religion, and the freedom to adopt the religion or belief of one's choice — including the freedom to change religion or belief and to express one's religion or belief — will be guaranteed and protected in law and in practice for both men and women, on the same terms and without discrimination. These freedoms, protected by article 18, must not be subject to restrictions other than those authorized by the Covenant and must not be constrained by, inter alia, rules requiring permission from third parties, or by interference from fathers, husbands, brothers or others. Article 18 may not be relied upon to justify discrimination against women by reference to freedom of thought, conscience and religion." (para. 21)

We would like to recall that under international law, polygamy is deemed discriminatory and harmful for women and girls. The CEDAW Committee and Human Rights Committee have recommended that States should prohibit polygamy on the grounds that it contravenes women's right to equality with men and can have serious emotional and financial consequences for women and their dependents (Human Rights Committee GR 28, para. 24 and CEDAW Committee GR 21, para. 14). Such practice should be repealed and the legal solution must protect the rights of women and girls, who remain the victims of these harmful marriages. Their rights to subsistence, to property, including land and inheritance, to a place of residence, to custody of children and to remarry must be guaranteed.

In this connection, we would also like to refer to article 4 (c & d) of the United Nations Declaration on the Elimination of Violence against Women, which stipulates that States should exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women. The CEDAW Committee recognised gender-based violence as a "form of discrimination that seriously inhibits women's ability to enjoy rights and freedoms on a basis of equality with men" in its General Recommendation 19 on violence against women (GR 19, para. 1). In its General Recommendation 35, the CEDAW Committee recommended States parties "repeal, including in customary, religious and indigenous laws, all legal provisions that are discriminatory against women and thereby enshrine, encourage, facilitate, justify or tolerate any form of gender-based violence" (GR 35, para. 29(c)).

We would also like to bring to your Excellency's attention the 2017 Concluding Observations of the CEDAW Committee ([CEDAW/C/LKA/CO/8](#)), which recommended as a priority 'Follow-Up Issue' for the Sri Lankan government to review and repeal all discriminatory laws that violate fundamental rights, in particular amend all Personal Laws, including the Muslim Personal Law, to remove discriminatory provisions regulating ownership, inheritance, transfer and disposal of land and property, as well as provisions regulating legal capacity, marriage, divorce, and child custody.

We would like also to refer your Excellency's Government to the Convention on the Rights of the Child (CRC), ratified by Sri Lanka on 12 July 1991, which guarantees the best interests of the child as a primary consideration (art. 3) and children's right to freedom of thought, conscience and religion (art. 14). We would also like to highlight that the primary responsibility for supporting the child in the exercise of his or her human rights lies on the parents. According to article 5 of the Convention on the Rights of the Child, they should provide "appropriate guidance and direction" to the child in that regard. Article 14, paragraph 2, of the Convention further specifies that general understanding by enshrining due respect for the rights and duties of the parents "to provide direction to the child in the exercise of his or her right" to freedom of religion or belief. Both parents must be able to provide that guidance on an equal footing, without discrimination based on their gender or religion. Article 5 also states that parental guidance must be "consistent with the evolving capacities of the child". The child, once capable of forming personal views, must be given the chance to express such views freely. Article 12, paragraph 1, of the Convention requires that the views of the child be "given due weight in accordance with the age and maturity of the child". Thus, the child should in the course of time assume an increasingly active position in the exercise of his or her rights, including freedom of religion or belief.

We would like to refer to the report of the Special Rapporteur on the sale, sexual exploitation and sexual abuse of children (A/HRC/49/51), which highlights that in many cases, child marriage amounts to a form of sale of children, as covered by the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, namely "any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration" (art. 2 (a)). The Committee on the Rights of the Child in its General comment No. 13 (2011), para. 25 (d), has listed the sale of children for sexual purposes and forced marriage as a manifestation of child sexual abuse and exploitation. The aforementioned report also underscores that the harmful practice of child marriage restricts the rights of girls and deprives them of the

opportunity to participate in any decision-making that affects their lives and develop to their full potential. It increases the risk of early and unplanned pregnancy, which in turn increases the risks of maternal and neonatal morbidity and mortality, and exposes the child to intimate partner violence, with far-reaching effects both at the individual and at community levels. The report recommends for the stronger community involvement in order to ensure long-term solutions that directly involve girls and women, boys and men, including by enhancing knowledge of the real societal costs of child marriage and the sale and trafficking of children for sexual exploitation, and on the lasting benefits of education and life-skills trainings.

Furthermore, we would like to refer your Excellency's Government to the Working Group on discrimination against women and girls' report on discrimination against women in cultural and family life ([A/HRC/29/40](#)), which highlights that plural legal systems create complex and confusing legal situations and that these systems limit women's enjoyment of the right to equality in their private and public lives (paragraph 61). It also states that neither cultural diversity nor freedom of religion may justify discrimination against women (paragraph 17) and that the State has an obligation to punish and to put an end to impunity and excuses or justification that perpetuate gender-based discrimination in cultural and family life (paragraph 69). Furthermore, the Working Group recommends to States parties to bring parallel customary, religious and indigenous law systems in line with international human rights law, particularly in respect of gender equality, and to grant women the right to appeal, in State courts, decisions of religious, customary or indigenous authorities, whether formal or informal, that have violated their right to equality (paragraph 73 (a) (viii)). The experts also recommend to criminalize marital rape and ensure victims have access to remedy (paragraph 73 (c) (vi)).

We would also like to refer to the Special Rapporteur on freedom of religion or belief's report on the elimination of all forms of religious intolerance ([A/68/290](#)), which states that as a human right, freedom of religion or belief can never serve as a justification for violations of the human rights of women and girls (paragraph 30).

Furthermore, we would like to refer to the report of the Special Rapporteur in the field of cultural rights on the cultural rights of women, which states that women have the right to transform existing cultural patterns and thinking. The right to take part in cultural life implies that women must become equal participants and decision makers in all the cultural affairs of their own specific communities, and in the wider "general" society, in social, economic and political life, including in the decision-making processes in these arenas ([A/67/287](#), paras. 37-38). Women must be recognized as, and supported to be, equal spokespersons vested with the authority to determine which of the community's traditions are to be respected, protected and transmitted to future generations (para. 75). To this effect, the Special Rapporteur recommends that States adopt measures to ensure the freedom of women to refuse to participate in traditions, customs and practices that infringe upon human dignity and rights, to critique existing cultural norms and traditional practices and to create new cultural meanings and norms of behaviour (para. 79 h). She further recommends that States enhance the participation of women, including through temporary special measures, in the legal professions and at all levels of the judiciary, as an important means of increasing women's contribution to the process of legal interpretation of the content and scope of human rights, including cultural rights ([A/67/287](#), para. 80 l).

The Special Rapporteur also reminds States that cultural diversity is not a justification for practices that violate women's human rights; not all cultural practices can be considered as protected in international human rights law, and cultural rights may be subject to limitations in certain circumstances. Stated more explicitly: the principle of non-discrimination, which lies at the root of the principle of universality of human rights, must always be respected (A/67/289, para. 60). To this effect, she recommends that States should ensure that respect for cultural diversity does not translate into a pluralistic legal system allowing for customary laws, traditions or practices that contravene women's human rights, including their cultural rights (para. 80 i).

Taking into consideration the above-mentioned international human rights standards, we would like to urge your Excellency's Government to move ahead with the Draft Bill based on the recommendations submitted by the 2021 Advisory Committee to amend the MMDA, complying through such action with Sri Lanka's international human rights obligations. We hope that the executive and legislative authorities will seize this reform process to ensure that domestic law is brought in line with such obligations and that it will not lead to potential retrogressions. We also strongly encourage the inclusion of, and consultation with, Muslim women's groups throughout this reform process and beyond.

We remain at your disposal to provide any technical assistance to the authorities upon request.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all matters brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information, updates and/or comment(s) you may have on the current status of the legislative reform of the MMDA.
2. Please provide information on any measures that your Excellency's Government has taken or intends to take in order to ensure that the revised MMDA will be in compliance with international human rights law.

This communication, as a comment on pending or recently adopted legislation, regulations or policies, and any response received from your Excellency's Government, will be made public via the communications reporting website after 48 hours. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

Please accept, Excellency, the assurances of our highest consideration.

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