

SUMMARY REPORT ON FAMILY-RELATED ISSUES IN SRI LANKA 90th CEDAW Session, February 2025

Introduction

The Global Campaign for Equality in Family Law¹ (GCEFL), Equality Now, and Musawah are pleased to submit this summary report to the Committee on the Elimination of Discrimination Against Women (CEDAW) on Sri Lanka's periodic report for the 90th CEDAW Session on February 13th, 2025.

Following the briefing to the CEDAW Committee in October 2023 on Article 16 and family law, the Global Campaign for Equality in Family Law (GCEFL), together with Coordinating Committee members Equality Now and Musawah, respectfully submits this summary report to contribute to the analysis of Sri Lanka's compliance with the Convention on the Elimination of All Forms of Discrimination against Women ("the Convention"). In this report, we focus on violations of articles 1 (equality), 2 (non-discrimination), 5 (gender stereotypes), 15 (legal equality) and 16 (marriage and family) of the Convention, providing a general overview of discriminatory aspects related to family law and practices. National experts were consulted in preparing this report. On matters pertaining specifically to the Muslim family laws of Sri Lanka, GCEFL would also like to draw the attention of the CEDAW Committee to the thematic report submitted for the 88th session by Muslim Personal Law Reforms Action Group (MPRAG), Sri Lanka.

In the last CEDAW Review of Sri Lanka (2017), the Committee reiterated its previous recommendations in 2002 (A/57/38, para. 275) and 2011 (CEDAW/C/LKA/CO/7, para. 17) and noted as a follow-up issue that the State party accelerate its law reform process, with the full participation of women, and ensure, within a specific time frame, to review and repeal all discriminatory laws that violate fundamental rights, in particular to: ***'Amend all Personal Laws, including the Muslim, Kandyan and Tesawalamai Personal Laws, 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. However, there have been no amendments to any of the family laws to date.'***²

Given the severity of discriminatory issues under the family laws of Sri Lanka, particularly the Muslim Marriage and Divorce Act (MMDA), we would like to urge the CEDAW Committee once again to kindly consider granting more time and specific attention to Article 16-related matters during the Constructive Dialogues. Suggested recommendations for COB's have been included from page 10 onwards.

¹ The Global Campaign for Equality in Family Law (GCEFL) is led by a coalition of 8 women's rights, human rights and faith-based organisations including [Equality Now](#), Act Church of Sweden, CLADEM (Latin American and Caribbean Committee for the Defense of Women's Rights), [Musawah](#), Muslims for Progressive Values, SOAWR (Solidarity for African Women's Rights) network represented by FEMNET, Women's Learning Partnership, and UN Women. More info: www.equalfamilylaws.org

² CEDAW COB of Sri Lanka 13(b)

SUMMARY OF ISSUES

Related CEDAW Arts.	Issues Related to Family Law / Practices	Details
1, 2, 15, 16	<p>General Marriages (Registration) Ordinance (GMRO)</p> <p>Divorce grounds Matrimonial property</p> <p>Exemption of Muslims</p>	<p><i>Grounds of Divorce Law</i></p> <p>The law on divorce is premised on fault-based dissolution. Section 19(2) of the General Marriages (Registration) Ordinance, No. 19 of 1907 (GMRO)³ stipulates the grounds of dissolution of marriage - adultery, malicious desertion or incurable impotency at the time of marriage. Unlike many other parts of the world, the law does not recognize the ground of ‘irretrievable breakdown of marriage’ or dissolution by mutual consent.</p> <p><i>In practice and the impact on women</i></p> <p>The law in its present form is harmfully adversarial, and does not address how marriage, and the breakdown of it, actually works. Proving the fault-based grounds is also a challenging task.⁴</p> <p>In the recent Supreme Court case of <i>Gomes v. Gomes</i> (2018)⁵, a woman was not successful in proving constructive malicious desertion on the part of her husband, despite a broad range of evidence of the breakdown of the marriage. The Court recognized the ‘heavy toll’ the divorce action had on the spouses and children, and noted the need for reform of Section 19(2) of the GMRO, to include the irretrievable breakdown of marriage.⁶</p> <p><i>Exemption of Muslims</i></p> <p>Section 64 (“Interpretation”) of the GMRO defines “marriage” to exclude marriages contracted under the Kandyan Law and marriages ‘contracted between persons professing Islam’. Therefore, Muslim couples do not have the option to choose to be married under the general law. This is in contrast to Kandyans who have the choice of marrying under the Kandyan law or General law.</p>

³ General Marriages (Registration) Ordinance, No. 19 of 1907 (GMRO), http://www.commonlii.org/lk/legis/consol_act/m131146.pdf

⁴ Expert interview with Professor Sharya Scharenguivel

⁵ *Gomes v. Gomes*, S.C. Appeal No. 123/14, 7 June 2018, <https://negombolawsociety.com/wp-content/uploads/2019/02/Gomes-Vs-Gomes.pdf>

⁶ See pp. 19-20 (obiter) in *Gomes v. Gomes*, S.C. Appeal No. 123/14, 7 June 2018

		<p>Matrimonial property and the division of property upon divorce</p> <p>Presently, the discretion to decide on division of property upon dissolution of marriage is vested with the Court. Section 615 of the Civil Procedure Code ('Settlement upon decree of divorce or separation')⁷ grants the Court the power to order conveyance or payments by both or either of the spouses 'as the court thinks reasonable'.⁸ Similarly, section 618 ('Court may inquire into ante-nuptial and postnuptial settlements') gives the Court the power to make orders in relation to the property settlements entered into by the parties to a marriage. There is no set criteria for how the Court determines the division of property. Sri Lankan courts do not recognise women's unpaid care work and non-monetary contributions to the matrimonial home when determining the division of property.</p>
1, 2, 15, 16	<p>Tesawalamai (customary law of the Sri Lankan Tamil inhabitants of the Jaffna peninsula)</p> <p>Disposing women's assets in marriage</p>	<p>The Tesawalamai law impacts property and succession rights of married persons to whom the Tesawalamai applies. The current law on matrimonial rights and property in Tesawalamai is governed by the Jaffna Matrimonial Rights and Inheritance Order No. 1 of 1911 (JMARIO) and the Jaffna Matrimonial Rights and Inheritance (Amendment) Ordinance No. 58 of 1947.</p> <p>There are two main issues in the JMARIO (as amended). Section 6 of the JMARIO provides that a married woman does not have full power to dispose of her immovable property (her separate property) without the consent of her husband.⁹ This violates a woman's rights to equality in property administration and contract rights.¹⁰</p>

⁷ Civil Procedure Code, No. 2 of 1889,

www.lawnet.gov.lk/wp-content/uploads/2016/11/CIVIL-PROCEDURE-CODE.pdf

⁸ Note: More generally, there have been a few court decisions that used a 'reasonableness and fairness' approach to decide how matrimonial assets should be divided upon dissolution of marriage. For instance, see *Mangalika de Silva v. Joseph de Silva* 2015 1 SLR 235,

<https://negombolawsociety.com/wp-content/uploads/2019/02/Mangalika-De-Silva-nee-Hemachandra-Vs.-Prabhat-h-Joseph-De-Silva.pdf>

⁹ Note: The section makes a distinction between movable and immovable property. The woman has power over the former, but not the latter.

¹⁰ For an overview of Tesawalamai law and issues pertaining to the provisions in the JMARIO, see Chapter 3, *Personal Laws: An Analysis on the Legal Gaps and Context* (Verite Research, December 2023),

https://www.veriteresearch.org/wp-content/uploads/2023/12/20231214_PersonalLawsofSriLanka_F.pdf

1, 2, 15, 16	Muslim Marriage and Divorce Act (MMDA)	<p>The 1951 Muslim Marriage and Divorce Act (MMDA), governs all Muslims in Sri Lanka who marry another Muslim including persons who convert to Islam, containing provisions pertaining to registration and procedures of marriage and divorce, including wife and child maintenance. There are serious concerns that the MMDA violates the rights of Muslim women and limits access to justice, due process and redress within the Act itself as well as due to practical problems with procedures and implementation via the Quazi system which administers the MMDA.¹¹</p> <p>Lack of Minimum Age of Marriage: As per section 23 of the MMDA, the marriage of a girl below the age of 12 could be registered with the consent of the Quazi (Muslim judge). Solemnization of a marriage¹² even without the authorization of the Quazi is still considered a valid marriage (See Section 16, MMDA). This in effect means that there is no minimum age of marriage for girls. Section 636 of the Penal Code which sets the statutory rape age as 16 years, has an exception for girls who are married over twelve years of age and is not judicially separated from the man.</p> <p>Lack of Equality, Autonomy and Decision-Making for Muslim Women Entering Marriage: In the MMDA adult Muslim women are considered minors, as they are unable to enter a marriage of their own free will and require the permission of a male guardian or ‘wali’, restricting women’s individual and equal agency and autonomy in familial matters. In cases where the woman has no wali, the Quazi is required to make an order authorizing the marriage.¹³</p> <p>Unequal Provisions for Divorce:</p> <p>There are unequal provisions of substantive requirements and procedure for divorce. Under <i>talaq</i> divorce, a man can divorce his wife unilaterally and without giving notice directly to the wife, while a wife under <i>fasah</i> divorce is required to give notice and prove matrimonial fault on the part of the husband, including with evidence of two witnesses.</p>
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¹¹ For detailed information on Muslim Family Law issues in Sri Lanka, please refer to MPLRAG’s CEDAW report submission for the 66th session, Feb 2017, 8th Periodic Review of Sri Lanka:

<https://www.mmdasrilanka.org/treaty-body-reporting/>.

¹² <https://www.mmdasrilanka.org/studyrelease-unequal-citizens/>

¹³ MMDA Section 47(3).

		<p>Polygamy: The MMDA allows for a Muslim man to marry up to four wives legally without any conditions (including the consent of the existing wife or wives), and any subsequent marriage after four wives is also not considered illegal, but ‘irregular’ (temporarily invalid without any legal repercussions).</p> <p>Discrimination and Ill-treatment by Quazi Court System Faced by Muslim Women: Women's organizations¹⁴ note that most Quazis have entrenched notions of gender roles and are in favour of practices like polygamy, due to which they have a biased treatment towards women seeking divorce or maintenance orders, often dismissing women who face domestic violence at the hands of their husbands. There is lack of state oversight and monitoring of the functioning of the Quazi court system. There is also no formal, structured and mandatory training about the MMDA or code of conduct for Quazis by the Judicial Service Commission.</p> <p>Marital property rights: There is currently no regime under which Muslim women can obtain their share of marital property under the MMDA.</p>
<p>1, 2, 15, 16</p>	<p>Access to Justice on family matters</p> <p>Lengthy, ineffective, costly</p>	<p>There are several issues pertaining to access to justice. For instance, litigation costs are high, and legal aid for family matters is not always readily available.</p> <p>Moreover, there are several delays in the justice system. Filing an action for divorce can take over a decade, as evidenced in the case of <i>Gomes v. Gomes</i> (2018). While maintenance inquiries are relatively timely, delays have been reported.</p> <p>In terms of evidence in maintenance inquiries, the burden is still on the complainant to produce documents such as salary slips and bank statements. This burden may disproportionately affect wives who may not have access to or are prevented from having access to their husbands’ bank account details and other relevant documentation.</p>

¹⁴ Inside the Quazi Courts System in Sri Lanka (2021) – Ermiza Tegal and Hasanah Cegu Isadeen for CHANGE Humanitarian Organisation
<https://www.mmdasrilanka.org/wp-content/uploads/2022/06/Inside-the-Quazi-Courts-System-in-Sri-Lanka-by-CHANGE-Humanitarian-Organization-English.pdf>

		<p>Currently, the court does not call for these documents to assess the monthly salary.¹⁵</p> <p>There is no family court system - proceedings in the District Court are adversarial in nature and privacy of the proceedings is not guaranteed. Moreover, Tamil speakers cannot always access services in their preferred language.¹⁶</p> <p>There is a lack of gender-sensitivity among judges.</p> <p>Another issue during the COVID-19 pandemic was the lack of outreach efforts for the availability of protection orders, maintenance, and other services for victims and complainants.¹⁷</p>
<p>1, 2, 5, 16</p>	<p>Marital Rape and Female Genital Mutilation/Cutting (FGM/C)</p>	<p><i>Marital Rape</i></p> <p>The current Penal Code provisions do not criminalize marital rape in all circumstances. Section 363 of the Penal Code of Sri Lanka 1883 (as amended) provides that ‘A man is said to commit “rape” who has sexual intercourse with a woman under circumstances falling under any of the following descriptions :- (a) without her consent even where such woman is his wife and she is judicially separated from the man:...’.¹⁸ In essence, this section only provides for a limited definition of rape extending only to a married woman raped by her husband if she is judicially separated from him.</p> <p><i>Female Genital Mutilation/Cutting (FGM/C)</i></p> <p>Presently, FGM/C is not explicitly addressed in the law, nor are there any prevalence estimates or national-level data on the practice. There have only been small-scale studies documenting the practice.¹⁹ For instance, a report in 2019 surveyed 26 women, of which 22 self-identified as having undergone FGM/C.²⁰ Similarly in 2017, a report with 15 testimonials was put together by women activists and</p>

¹⁵ Expert interview with Ms.Ermiza Tegal, Attorney-at-law and member of the MMDA Family Law Reform Committee and GMRO Family Law Reform Committee 2021.

¹⁶ See ‘Imagining a Family Court System’ (Position Paper 6, MLPRAG, November 2021),

<https://www.mmdasilanka.org/imagining-a-family-court-system/>

¹⁷ See Ermiza Tegal, ‘Failing Women Everyday: Legal Protection from Domestic Violence in Sri Lanka’

¹⁸ Penal Code of Sri Lanka 1883, http://hrlibrary.umn.edu/research/srilanka/statutes/Penal_Code.pdf

¹⁹ *Female Genital Mutilation/Cutting: A Call for a Global Response* (Equality Now 2020),

<https://equalitynow.org/resource/female-genital-mutilation-cutting-a-call-for-a-global-response/>

²⁰ Zainab Ibrahim & Ermiza Tegal, *Towards Understanding Female Genital Cutting in Sri Lanka* (Family Planning Association of Sri Lanka, December 2019),

https://www.fgmcri.org/media/uploads/Academic%20Papers/ibrahim_srilanka_2019.pdf

		<p>survivors documenting their experiences.²¹ The practice is carried out in ‘secret’ facilitated by family members, and research evidence shows that the practice is almost entirely carried out within minority Muslim communities, but not among all sects or groups.</p> <p>Moreover, Types 1 and IV (according to the WHO classification) of FGM/C emerge as the types practiced in Sri Lanka. Ibrahim & Tegal (2019) conclude that there’s an inconsistency and diversity of experiences, narratives and justifications for the practice; it’s an evolving conversation; there is no enabling environment for conversations on bodily integrity and sexual rights and pleasure; there is no formal medical training on the practice in Sri Lanka; and medical professionals express reluctance to engage.</p>
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SIGNIFICANT DELAYS TO FAMILY LAW REFORMS

1. General Marriage Registration Ordinance (GMRO)

Over the last two decades, several official committees have proposed reforms to the general laws applicable in family matters.²² The latest, the Family Law Advisory Committee convened by the Ministry of Justice in 2019 used the previous drafts as a foundation to develop a new set of proposals for reform.

The draft Matrimonial Causes Bill by the 2019 Committee addresses several issues in the general divorce law including the introduction of divorce by mutual consent and irretrievable breakdown of marriage as a ground for both divorce and judicial separation; provision for several matrimonial orders which take the realities of the breakdown of marriage into account (eg: payment of litigation costs of spouse without means, interim orders in the interest of spouse and children, exclusion of parties from the household on several grounds etc); representation of the interest of children, among other provisions.

In June 2021, the Committee presented the draft Matrimonial Causes Bill to the Minister of Justice. Since then, there have been no updates on the reforms process. The Government of Sri Lanka continues to delay the process of reform to the GMRO and all other family laws. Of specific note is the reluctance to

²¹ See generally *Legal Reform to Combat Sexual and Gender-Based Violence, Part III: Female Genital Mutilation* (Centre for Policy Alternatives, November 2020), <https://www.cpalanka.org/wp-content/uploads/2020/11/Law-Reform-to-combat-SGBV-PART-3-FGM-Centre-for-Policy-Alternatives.pdf>

²² Report of the Commission of Marriage and Divorce (Canekeratne Report) of 1956, Report on Family Law Reform of 2010 prepared by a committee of experts chaired by Prof. Savitri Goonesekere, for the Ministry of Justice, the Matrimonial Causes Act of 2007 drafted by the Law Commission of Sri Lanka chaired by Mr. Nihal Jayamanne PC and the Report on Matrimonial Causes drafted by the Law Commission under the chairmanship of Mr. Romesh de Silva PC.

allow Sri Lankan Muslims the option to marry under the GMRO following push back by conservative Muslim Members of Parliament.

2. Thesawalamai

There have been no significant calls for, or attempts at reforming the Thesawalamai.

3. Muslim Marriage and Divorce Act (MMDA)

Longstanding Call for Reforms: Over the past many decades, various groups especially Muslim women's groups have been advocating and lobbying for various aspects of reforms of the MMDA. Since 1970, the few official attempts at reforming the Muslim Marriage and Divorce Act (MMDA) have been to no avail. The last significant attempt was a Committee appointed by the Minister of Justice in 2009 to consider reforms to the MMDA. Women's groups report that a progressive draft bill was prepared by the Ministry of Justice in 2023, the progress of which was blocked by conservative Muslim Members of Parliament who proposed their own set of regressive amendments.

In October 2023, the UN Working Group on Discrimination against Women and Girls issued a communication²³ to the Sri Lankan government regarding the regressive amendments, expressed strong concern that the MMDA in its current state and the adoption of the Muslim MPs recommendations **“would significantly restrict women's and girls' rights and put Sri Lanka in violation of its obligations under international law”**. The Sri Lankan Government was urged to reform the MMDA in line with Sri Lanka's obligation to fulfil international human rights standards.

***Positive Developments from Other Countries in Muslim Contexts:** It is important to note that significant reforms have been made in Muslim Family Laws in other Muslim contexts through progressive religious interpretations or international human rights standards.²⁴ For instance, Maldives and Pakistan (Sindh province), and Egypt have raised the minimum age of marriage to 18.²⁵ Legal frameworks are in place for the protection of women's financial rights through the division of matrimonial property assets in multiple States including Indonesia, Malaysia, and Singapore. Moreover, many countries allow adult Muslim women to enter into marriages without the guardian/wali's consent, including Pakistan, Bangladesh, Egypt, and Morocco. In addition, polygamous marriages are required to be authorized by the court or other officials upon the permission of existing*

²³ Communication issued by the UN Working Group on discrimination against women and girls and endorsed by 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.
<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=28377>

²⁴ Positive Developments in Muslim Family Laws (2019), Musawah,
https://www.musawah.org/wp-content/uploads/2019/02/Positive-Developments-Table-2019_EN.pdf

²⁵ Children's Rights Protection Act, 2019, (Act No. 19/2019), Maldives;
The Sindh Child Marriages Restraint Act, 2013 (Sindh Act No. XV of 2014), Pakistan;
Persons and Family Law No. 126 of 2008, and Egyptian Child Law No. 126 of 2008, Egypt

wife/wives in countries including Indonesia, Pakistan, and Bangladesh. These examples demonstrate the necessity as well as the possibility of reform within Muslim contexts.

4. Marital Rape and FGM/C

Reforms processes: Marital Rape

A Bill to amend Chapter 19 of the Penal Code was gazetted on the 13th of February 2024. The bill provided for a revised mitigated sentence for statutory rape, extended the definition of rape to male victims, expanded the definition of ‘sexual penetration’, and included marital rape (by removing the term ‘judicially separated’ in section 363(a)).²⁶ Due to concerns regarding the statutory rape provision and the change of the age of consent to 14 for girls, the Bill was withdrawn in March 2024.²⁷ Since then, there have been no updates on reforms to the Penal Code.

Reforms processes: Female Genital Mutilation/Cutting (FGM/C)

In 2017 the report on FGM/C compiled by several women activists and survivors was submitted to the National Child Protection Authority (NCPA), the Human Rights Commission and Parliamentary Committees, after which a confidential hearing was held at the Parliamentar Sectoral Oversight Committee on Women and Gender. Subsequent to the hearing, in 2018, the Ministry of Health issued a circular to doctors in the public health sector requesting that they do not engage in the practice of FGM/C.²⁸ Conservative Muslim groups responded with opposition to the circular. Since then, there have been no updates on the criminalization of the practice, or any form of regulation or policy guidance to that effect.

SUGGESTED RECOMMENDATIONS

1. Prioritise the reform of discriminatory family laws with urgency including:

- ***Reforming the General Marriage Registration Ordinance (GMRO) to:***
 - Ensure that Muslims too have the choice to marry under the general law;
 - Include the ground of irretrievable breakdown of marriage for divorce;
 - Include provision for matrimonial orders - alimony pending action in Court, payment of costs of litigation of spouse without means, orders (and interim orders) upon dissolution/judicial separation (and during the subsistence of the marriage) in the interest of spouse and children (includes - regulation of behaviour to the other party, exclusion of the other party from the matrimonial home whether or not the other party has an interest in the matrimonial home (on the grounds of *inter alia* domestic violence), custody and access to children, making of conveyance or settlement of any property);

²⁶ See full text of the Bill at: http://documents.gov.lk/files/bill/2024/2/454-2024_E.pdf

²⁷ See <https://www.parliament.lk/en/news-en/view/3969?category=6> . See also ‘Rape Bill’ Eliminates Concept of Consent’, *Ceylon Today* (16 March 2024), <https://ceylontoday.lk/2024/03/16/rape-bill-eliminates-concept-of-consent/>

²⁸ See ‘Health Ministry Circular against female circumcision comes under flack’, *Daily FT* (11 July 2018), <https://www.ft.lk/Healthcare/Health-Ministry-Circular-against-female-circumcision-comes-under-flack/45-658798>

- Ensuring representation of the interests of children involved in any action provided for in the Act.
- Introduce and emphasize the importance and beneficial value of timely orders in matrimonial actions
- **Reforming the Muslim Marriage and Divorce Act (MMDA) to:**
 - Establish eighteen as the minimum age of marriage without exceptions;
 - Allow adult women to marry without requiring the consent of the guardian/wali and to sign their marriage registration documents;
 - Grant equal rights of divorce to both men and women, including fair and just procedures for divorce;
 - Take progressive steps towards the banning of polygamy and at minimum establish strict conditions including requiring the husband to obtain consent of the existing wife before taking a second wife.

2. Ensure that all Sri Lankan women (regardless of the family law they marry under or the land and inheritance laws that apply to them) have a right to their share of marital property:

- Introduce a general egalitarian marital property regime that applies to all citizens of Sri Lanka married under any of the country's family laws;
- Ensure that unpaid care work and non-monetary contributions are recognised within the marital property regime;
- Reform the Thesawalamai to ensure that women have equal right to access and dispose of immovable property (separate property) owned by her, without the consent of her husband.

3. Prioritise access to justice through significant reform of the family courts

- Introduce an effective and efficient family court system for family law related matters which center the welfare of families and ensures the best interest of the child;
- Introduce State sponsored legal aid for family law related cases;
- Ensure regular training and effective monitoring and accountability mechanisms of all administrators including Quazis implementing the MMDA.

4. Address harmful practices pertaining to family through legislative reform and policy reinforcements

- Amend Section 363 of the Penal Code to remove the exception of statutory rape for married girls and women;
- Ensure the Penal Code is amended to make marital rape (irrespective of judicial separation) an offence;
- Explicitly prohibit FGM/C through a specific legislation, or Penal Code amendment making FGM an offence;

- Maintain up to date data on child marriage including in Muslim communities to enable child protection policies to address driving forces and provide equal access to protection to all children regardless of ethnic, religious or other difference;
- Ensure progressive policy measures including the health sector to take a more proactive role in identification and mitigation of harmful practices, including trainings to identify individuals vulnerable to or who have undergone FGM/C, understanding how to address the issue among vulnerable communities; including sensitively facilitating conversations with families from targeted communities - to explain the potential harms of the practice.