

***Critical issues and questions to be raised with the Sri Lankan government at CEDAW  
Constructive Dialogue  
July 2016***

***Join Submission by the Women's Action Network (WAN) and its member organisations***

**The North East Women's Action Network (WAN)** is a network of 8 women's organizations based in the Northern and Eastern provinces of Sri Lanka. The network was started in 2009 as the lobby wing of three women's organisations that have been operating in the war affected districts of North for many decades. Later it spread to cover 08 districts where the country's ethnic minority communities form a majority of the population in the two provinces and which has been the most affected areas by the war. The WAN has been working in building the capacity of women's rights activists and addressing issues that women face at the ground level through local mechanisms and activism in the north and the east. It currently involved in national and international advocacy to improve women's access to justice.

**MUSLIM PERSONAL LAW REFORM – SPECIAL REFERENCE TO MUSLIM MARRIAGE AND DIVORCE ACT 1951 (Para 16, 17, 18, 19, 127)**

**1. Setting a standard minimum age of marriage for all citizens**

The Muslim community in Sri Lanka is subject to the Muslim family law on matters of marriage and divorce in the form of the Muslim Marriage and Divorce Act (MMDA) 1951, which includes many discriminatory provisions with grave impacts on women. The MMDA for instance does not set a minimum age of marriage for the Muslim community and therefore legally allows for child/early marriage of Muslims girls. Despite lobby and advocacy from women's organizations for the past many decades for the reforms of the MMDA including raising the age of marriage – there has been no concrete effort taken on part of the government to do so. There are also different opinions about what the minimum age of marriage should be for Muslims. **Therefore, WAN [is calling for the minimum age of marriage to be removed](#) from the discretion and jurisdiction of the Muslim family law and mandate a standard age of 18 for all citizens regardless of gender or religion.** This is a priority issue and as age of marriage cannot be left to the arbitrary decision of male religious leaders or interlocutors, in the name of cultural sensitivity and religious rights.

***Critical questions:***

- ***Why is this issue not a girl-child rights concern? Who are being allowed to decide on what the minimum age of marriage should be for the Muslim community?***
- ***When there is a difference of opinion about minimum age of marriage within the Muslim community and strong calls for reform why is the government allowing for this issue to be under the discretion of Muslim family law?***

## **2. Amendment of the Muslim family law needs to ensure consensual marriage and equality in marriage for all citizens**

Adult Muslim women are considered minors in the eyes of the law, unable to enter a marriage of their own free will and requiring the permission of a male guardian. The concept of wali is so deeply rooted in cultural and religious practice that it restricts women's agency and autonomy in familial matters. These provisions are entrenched in the patriarchal notion that women's decision-making ability in marriage is controlled by male members of her family and by extension - community. The MMDA should be amended to reflect women as equal partners in a marriage, with full capacity to consent, formulate and negotiate a marriage contract and make decisions regarding her partner and her marriage. Muslim women as Sri Lankan citizens are entitled to equal autonomy and decision-making with regard to their own marriages. Muslim women should also be able to be Quazi (judges) in a Quazi court – which is a state funded position and as such cannot be discriminated on the basis of gender.

**Sri Lankan government must ensure and follow through with the process of reforms of the MMDA and ensure foremostly that any and all reforms to the MMDA protects the fundamental rights of Muslim women under the Constitution.**

### ***Critical questions:***

- ***Why despite strong calls for reforms for over two decades, is the government choosing to ignore the demands of women for a state remedy to issues affecting the Muslim community?***
- ***What is happening to the reforms process at the moment? When is the report of the MPL Reforms Committee due?***
- ***How will government ensure that reforms will occur in line of state commitments for gender equality?***

## **3. Constitutional reforms must ensure equality and protection of fundamental rights**

MMDA inhibits Muslim women from enjoying full citizenship rights by confiscating fundamental rights and violating the human rights of Muslim women and girls. Despite this, a special provision 'Article 16' exists in the Constitution, which protects pre-existing laws such as the MMDA regardless of inconsistencies to the fundamental rights chapter. A provision that has granted the Sri Lankan government almost explicit permission to ignore concerns with regard to the MMDA as a "Muslim issues" that must be dealt with within the community rather than at the government or national level. The Government of Sri Lanka has repeatedly placed the onus of responsibility for MMDA reforms on the Muslim community demanding for reforms. This is despite many individual Muslim women and women's groups going before the People Representation Committee (PRC) for Constitutional Reforms to demand for equal and non-discriminatory laws and practices and specially reforms of personal and customary law. The PRC has recommended in its final report (page 95- 96 ref. Article 16):

*"Revise Article 16 of the current Constitution as it enables laws that contravene principles in the Constitution to remain in force. The Committee recommends appointing a representative high level committee to go into the question of traditional laws and customs with a view to engaging in a consultative process with all communities in terms of revising/repealing some elements within the customary and traditional laws which may be considered discriminatory."*

**It is therefore the state's responsibility to also ensure that Article 16 is progressively amended and that the new Constitution MUST supersede any and all personal laws and guarantee protection of fundamental rights of all citizens, particularly those most vulnerable to violations, applicable across religion, minority status or gender.**

#### **4. Amending the Penal Code to protect all girls under the age of 16 from rape**

According to the Sri Lankan Penal Code<sup>1</sup> sexual intercourse with a girl below 16 years of age, with or without consent, amounts to statutory rape. However, pushback from mainly Muslim religious leaders and politicians, during the time the Penal Code was being amended in 1995 to include statutory rape provisions meant that the provision does not apply to married Muslim girls under the age of 16 and above the age of 12, unless judicially separated<sup>2</sup>. As a result, in case of Muslims, the relevant age for statutory rape is 12 years<sup>3</sup>. Furthermore, because there is no provision of judicial separation in the event of a talaq<sup>4</sup> divorce and the wife is required to stay at the husband's residence for a period of up to 3 months (*iddat* period) after the first pronouncement of divorce, women are not protected by the Penal Code provision even in the event that forced sexual intercourse (marital rape) occurs during this time. **In addition to a state mandated age of marriage for all citizens, WAN calls for a priority amendment to the Penal Code to ensure that the statutory rape provision applies to all girls equally regardless of marital status, religion or ethnicity.**

#### **Critical questions:**

- ***Why has perceived 'religious and minority rights' been allowed to trump equality and human rights which the state must guarantee?***
- ***How is the Sri Lanka government going to ensure that minority Muslim women are also equally protected under the state laws and able to access the civil court system for redress?***
- ***How is the government going to ensure that the constitutional reforms process will ensure that the Constitution guarantees equal protection of rights from being violated by discriminatory laws and practices?***

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<sup>1</sup> Section 363 of Penal Code

<sup>2</sup> In 1995 after extensive lobby by civil society organizations including women and child rights groups, the Penal Code (Section 363) was amended for statutory rape to mean sexual intercourse with any girl below the age of 12, with or without her consent "...unless the woman is his wife of who is over twelve years and not judicially separated from the man." Thereby applicable only to Muslim girls.

<sup>3</sup> [http://www.unicef.org/srilanka/2013\\_Child\\_Marriage\\_Case\\_Studies.pdf](http://www.unicef.org/srilanka/2013_Child_Marriage_Case_Studies.pdf)

<sup>4</sup> Divorce initiated by husband.