

REPORT OF THE MANNAR WOMEN'S DEVELOPMENT FEDERATION
for the EXAMINATION OF THE FIFTH AND SIXTH
COMBINED PERIODIC REPORT OF SRI LANKA,
77TH SESSION OF THE COMMITTEE ON THE RIGHTS OF THE CHILD

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Table of Contents

I.	INTRODUCTION.....	2
II.	CLUSTER I: GENERAL MEASURES OF IMPLEMENTATION: NCPA..	2
III.	CLUSTER 5. VIOLENCE AGAINST CHILDREN	3
	A. Female Genital Cutting (FGC).....	3
	B. Sexual Exploitation and Sexual Abuse and Other Child Abuse	5
IV.	CLUSTER 7. DISABILITY, BASIC HEALTH, AND WELFARE	9
	A. Mental and Physical Health, and the Rise of Suicide.....	9
	B. Early and Forced Marriages.....	11
V.	CLUSTER 9. SPECIAL PROTECTION MEASURES	13
	A. Child Soldiers and Other Disappeared Children.....	13
	B. Continuing Violence	14
	C. Unmet Needs and Demands for Reparations.....	14
	D. Military running primary schools.....	15
	E. Special Protection Measures Conclusions and Recommendations	15
VI.	SUMMARY OF RECOMMENDATIONS	16
	A. General Measures Of Implementation	16
	B. Female Genital Cutting	16
	C. Violence Against Children.....	16
	D. Disability Health And Welfare	17
	E. Special Protection Measures.....	17

I. INTRODUCTION

This report on behalf of the Mannar Women's Development Federation, based in the North and East of Sri Lanka, will focus on continuing violations of the Convention on the Rights of the Child related to Violence Against Children including sexual violence and the continued practice of female genital cutting, Mental and Physical Health Issues including disturbing rates of suicide among adolescents, Discriminatory Laws and Practices including provisions allowing child marriage, and Post-conflict Issues including the continuing disappearance of child soldiers and other children, continuing and escalated violence among youth, and the lack of reparations for missing children, and primary schools run by the military. This submission follows up issues identified in the 2010 Concluding Observations released by this Committee, the Committee's List of Issues, Sri Lanka's Combined Fifth and Sixth Periodic Report, and additional information from grassroots organizations based in the North and East. Recommendations are listed in the final section.

II. CLUSTER I: GENERAL MEASURES OF IMPLEMENTATION: NCPA

A. Situation Analysis

Sri Lanka has had a very good Child Protection Act and established the Child Protection Authority as an independent body in 1998 through an Act of Parliament, No. 50.¹ The National Child Protection Authority (NCPA) was given a lot of power and the authority to be independent in its work just like the National Human Rights Commission of Sri Lanka. However, in 2015, the current president Mithiripala Sirisena brought the NCPA under the Ministry of Women and Child Affairs (MWCA) by issuing a Gazette notification. With this change, bureaucratic inertia set in and NCPA's independent function was curtailed. The NCPA is now unable to function as per the 1998 Act, which complies with international best practice and has been praised by many UN bodies. Currently the NCPA is unable to exercise some of its vital powers like monitoring and regulating child protection and detention centres, having transit centres, and searching for places where abuses are taking place including religious schools and correction centres. The NCPA can also take video testimony of sexually abused children to avoid exposure in open court. For all these functions, the NCPA needs resources and independence; the MWCA lacks the ability and willingness to let the NCPA function with its full strength.

B. Comments on State Report

The State Report presents the assignment of the NCPA to the MWCA as enabling better coordination.² The Report highlights the many functions the NCPA is assigned: developing policy

¹ National Child Protection Act, Act No 50. ref. http://www.childprotection.gov.lk/Child_Related_ACTs/National%20Child%20Protection%20Act,%20No.%2050%20of%201998.pdf.

² Sri Lanka, Consideration of reports submitted by States parties under article 44 of the Convention. Combined fifth and sixth periodic reports of States parties due in 2015 to the Committee on the Rights of the Child. CRC/C/LKA/5-6, 1 March 2017 (State Party's Report), ¶¶ 17-18.

guidelines,³ keeping a database of complaints related to child abuse,⁴ preventing and addressing child abuse,⁵ raising awareness of the CRC and on child protection, child rights and child development for the benefit of medical, educational, police officers and transporters of children,⁶ combatting suicide,⁷ consultations,⁸ helplines,⁹ monitoring standards in orphanages,¹⁰ criminal investigations of child labour, child trafficking and commercial sexual exploitation (25 police officers and other district child protection officers),¹¹ and protection of victims of child labour.¹² The range of these important functions cannot be carried out with insufficient resources.

The State asserts that the NCPA budget has increased annually.¹³ However, of the Rs. 1,233 million allocated for the year of 2017, only 242 million has been spent which is only 19.63% of the budget. This is due to bureaucratic failures and MWCA control over the work of NCPA, which has prevented emergency responses.

C. Conclusions and Recommendations

The Government should

- 1) cancel the 2015 Gazette notice issued by the President to weaken the NCPA Act and
- 2) implement the NCPA Act 50 of 1998 to allow the NCPA full power to protect the nation's children. The NCPA should be an independent body separate from regulation by any Ministry.

III. CLUSTER 5. VIOLENCE AGAINST CHILDREN

A. Female Genital Cutting (FGC)

1. Situation Analysis

Female Genital Cutting affects girls from a few months old to seven years old and is practiced exclusively by the Muslim community in Sri Lanka.

³ State Party's Report, ¶ 26 (on children's home); ¶ 19 (policies on discrimination and disadvantaged groups); ¶ 75 (media guidelines); ¶ 79 (guidelines and standards for childcare institutions).

⁴ State Party's Report, ¶ 36.

⁵ State Party's Report, ¶ 143.

⁶ State Party's Report, ¶ 38-39 (mentions action plans of 2014-15).

⁷ State Party's Report, ¶ 67.

⁸ State Party's Report, ¶ 26, ¶ 81 (on children with disabilities).

⁹ State Party's Report, ¶ 90 (migrant workers); ¶¶ 205-207 (child abuse).

¹⁰ State Party's Report, ¶ 98,

¹¹ State Party's Report, ¶ 197, 203-204.

¹² State Party's Report, ¶ 200.

¹³ State Party's Report, ¶ 19.

In December 2017, Jamila Hussain, community spokesperson for the Dawoodi Bohra, a small Muslim sect present in Sri Lanka, acknowledged that members of her community continue to commonly practice khatna (“circumcision”). Further, within the Dawoodi Bohra, it is common for future in-laws to ask for a certificate of “circumcision” before marriage. According to Dawoodi Bohra members, this practice is distinct from genital mutilation as there is no removal of the clitoris and is usually described as "just a nick". This ritual is performed without the child’s consent, but according to Jamila Hussain, girls are informed that a small procedure will be performed “for their own good”. Testimonies of experiencing the procedure in childhood have been submitted to various Sri Lankan State authorities including the National Child Protection Authority, Human Rights Commission and Parliamentary Sectoral Oversight Committee on Women and Gender. The testimonies speak of being held down, undergarments being removed and pain experienced in a clinical medical environment. Testimonies also speak of psychological impacts and in some cases irreversible painful physical impact.

FGC is practiced in an alternative form in other parts of the Sri Lankan Muslim community. When female babies are 40 days old, a medically untrained female "osthi maami" (a barber woman) performs a ritual that entails the shaving or slitting the tip of the clitoris. In some cases the blade used is not sterilized and has been found to be corrosive. There have been cases of subsequent illness due to the lack of hygiene. Wealthier families perform the 'cutting' in private hospitals, within a more hygienic environment. This practice has also been promoted by religious bodies such as the All Ceylon Jamayathul Ulema by issuance of a Fatwa in 2008.

The Dawoodi Bohras are only about 3000 people and mostly live in Colombo. Half of the 8.5 Muslim population are women and girls. But the number undergoing female genital cutting is unknown since it is a taboo and often done in the homes secretly.

The Parliamentary Sectoral Oversight Committee on Women and Gender is deliberating law reform and circulars to medical professionals towards criminalizing and addressing this practice. A proposal to ban this through a law was also submitted to the Minister of Justice Thalatha Atukorala on 6 December 2017.

The World Health Organization has not concluded any effects of the specific kind of genital cutting that the Dawoodi Bohra perform. However, forcing children to undergo the cutting without consent violates Article 12 of the CRC, the right to be heard.

2. Comments on the State Report

FGC is not mentioned in the State Report. The Government does include a discussion of the National Action Plan to address gender-based violence and amendments to the penal code covering a wide range of issues. FGC could fall under reform of the penal code recognizing FGC as a punishable crime.

3. Conclusions and Recommendations

The Sri Lankan state must

- (1) without any delay enact legislation criminalizing the practice of female genital cutting.
- (2) issue a direction to all medical professionals, especially the private practitioners, to stop engaging in this practice and that such procedures will be treated as child abuse. Because FGC is not practiced in State hospitals, the direction should focus on private practitioners and private hospitals.

B. Sexual Exploitation and Sexual Abuse and Other Child Abuse

1. Situation Analysis

Sexual abuse of children is on the rise. In the North and East it is high. For 2016, according to Government sources, the confirmed number of complaints included for Rape: 347; Sexual harassment: 713; Trafficking: 159; Soliciting a child: 11; Grave Sexual Abuse: 196, and Domestic Violence: 64.

Recent reports have indicated that child rape is on the rise.¹⁴ The Women's Action Network has been handling the gravest forms of children being sexually abused especially in the North and East. In Trincomalee district (Muttur town), three girls, age 8 and 7, were dragged into a construction site when they were returning from school and sexually abused but the accused identified by the girls has been granted bail due to delay in DNA testing. In 2016, in Puttalam district, another 8 year old school girl was continuously raped by a three-wheeler driver to the extent that the girl had to have three stitches to her vagina. To date the case is pending for judgment and irrespective of a positive DNA test the accused was released on bail. The raped girl and her family had to flee the area due to threats posted by the accused. Another attack involving multiple assaults was the alleged sexual abuse of at least nine young girls who were in a six-month camp to study for school examinations in Hanthana in the Kandy district.¹⁵ On 29 July 2016, a tourist hotel owner and five others were charged with repeated gang rape of an under-age girl.¹⁶

Yet another recent example was the sexual abuse of eighteen girls residing in the Darun Nusra Orphanage who were abused by a male staff member. The administration of the Orphanage and the State authorities refused to take action.¹⁷ After an inquiry, police put the girls back in the same orphanage while there is an ongoing court case against the abuser. On 15 December 2017, the United Nations Working Group on Arbitrary Detention issued its preliminary report about its

¹⁴ *Child Sexual Abuse in Sri Lanka May Be a Bigger Problem Than You Imagined*, ROAR reports, 10 August 2016.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ Walter Wuthmann and Nushka, Nafeel, *Teenage orphans report violations at Darun Nusra*, Daily News, 15 November 2017.

December mission to Sri Lanka. It found that “Some children detained in some care homes have reportedly been beaten and sexually abused, particularly in understaffed and under-resourced centres where staff are not receiving appropriate training or clear guidelines on appropriate disciplinary methods for children under their care. It is not clear whether the children, as survivors of abuse, are receiving any psychiatric assessment or counselling and appropriate medical care.”¹⁸

It was reported that in the Government-run facilities for sexually abused girls, often accused young boys are also sheltered. Examples are Hikkaduwa Remand home, Pallansena Negombo, Senenhasa Galle. The Working Group on Arbitrary Detention stated that the detention of “children in need of care” with “children in conflict with the law” is contrary to international standards that require “strict separation.”¹⁹

Multiple factors still cause problems for girls seeking redress for sexual assault, including the length of the prosecutions and revictimisation during the prosecution.

For children who have been placed in State and private institutions, “the deprivation of liberty of children in these institutions must be subject to a clearly defined legal basis, regularly reviewed by an independent judicial authority, and only undertaken as a last resort and for the shortest time possible. The courts must take a proactive role in considering the necessity of detaining children, and must seek alternatives whenever possible.”²⁰

The Working Group on Arbitrary Detention also noted that “the National Child Protection Authority must receive the necessary staffing and financial resources to regularly monitor all centres where children are deprived of their liberty, including those operated by non-government groups, and to ensure that reintegration plans are put in place for children after they leave the centres. It is important that a child protection policy and guidelines are in place for every institution at which children are deprived of their liberty, in line with the National Child Protection Policy.”²¹

2. Comments on the State Report

The Government fails to fully address the rate of sexual exploitation and sexual abuse of children in Sri Lanka. Problems persist regarding low levels of prosecutions and convictions for gender and sexual based violence, and law enforcement are not well-equipped to properly engage with victims of sexual abuse. Although the Government reports to have trained “more than 900

¹⁸ Working Group on Arbitrary Detention: Preliminary Findings from its Visit to Sri Lanka (4 to 15 December 2017), <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22543&LangID=E> (15 December 2017).

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

police officers and other authorities” on specific procedures related to domestic violence,²² more expansive training is needed to include procedures related to sexual and gender-based violence to avoid secondary victimization. Delay in police reports in many investigations of child sexual abuse causes the accused to get bail and later to threaten the victim and witnesses to withdraw cases. Often the police has mishandled cases of sexual abuse and lost track of the victims, or police delay in collecting evidence and medical report has denied the child access to justice.

Most of the complaints are only registered in the books without rapid action. Government statistics indicate that there are approximately 18,000 cases of child abuse files pending because in these cases the police has not gathered proper evidence and there is no way to move forward. This means more than 18,000 alleged perpetrators are on the street and there is a culture of impunity. In December 2017, one juvenile court was closed in Anuradhapura District; in Jaffna and Colombo, only two juvenile courts remain. In other places child abuse cases, including rape cases, will be taken up in open court.

Additionally, the Government failed to disclose national budgetary allocations regarding child protection as requested in the List of Issues, in particular, the establishment of village-level committees on the prevention of child abuse.²³ As noted above, only 19% of allocated funds for children has been spent by the Women and Children Affairs Ministry in 2017. The total allocated in 2017 for child protection was Rs. 1,233 million; at the end of 2017, the Government has spent Rs. 242 million.

The State Report contains an extensive discussion about children in institutions, and acknowledges that unlike other areas of the country, all children’s homes in the North and East are not registered and closely monitored.²⁴ The State Report does not address sexual abuse in the institutions.²⁵

In 2005, the Government passed the Prevention of Domestic Violence Act (PDVA). Very rarely, the PDVA is used to protect a child who is abused in their homes by relatives; in fact, it is not even talked about. In the worst cases, the abusive relatives are charged for cruelty, but psychological and other forms of invisible abuse in home are not even discussed. Children are not educated on the measures that they have to be free from domestic abuse and violence. The Government also implemented a 24-hour helpline operated in Sinhala, Tamil, and English to accept complaints regarding child abuse.²⁶ However, as discussed above, not much action can be taken without the NCPA having sufficient resources. The women and children’s desk of the police is not adequately resourced to handle cases and there is a shortage of Tamil speaking officers; for domestic child abuses to be taken under PDVA, the police desks need be strengthen and educated.

In the 2010 Concluding Observations, the Committee expressed concern about the lack of awareness and understanding by law enforcement of the Prevention of Domestic Violence Act No.

²² State Party’s Report, ¶ 204 (a).

²³ List of Issues, Part III, ¶15 (e).

²⁴ State Party’s Report, ¶ 97.

²⁵ State Party’s Report, ¶¶ 91-108.

²⁶ State Party’s Report, ¶ 205.

34.²⁷ The Committee also noted a lack of temporary shelters for victims of domestic violence.²⁸ While the Government notes that three safe houses have been established, this is insufficient given the rates of domestic violence.²⁹ As noted above, the Working Group on Arbitrary Detention also found that abused children placed in institutions were vulnerable to abuse; issues included detention with children in conflict with the law, understaffed and under-resourced centres where staff did not receive appropriate training, and it was unclear whether survivors of abuse received psychiatric assessment or counseling or adequate medical care.

3. Conclusions and Recommendations

The Government should

- 1) institute gender sensitivity training at all levels of the government—such as the police, the judiciary, and *Quazi* courts; the Government should expand training to law enforcement personnel to include specific procedures related to sexual and gender-based violence to prevent secondary victimization.
- 2) equip police stations with personnel trained on matters related to sexual violence, private rooms, sufficient female translators and officers, and improve access to legal aid and counseling while the NCPA officers are trained to reintegrate the children in the society and do regular follow ups.
- 3) Ensure enforcement of court orders under the Prevention of Domestic Violence Act
- 4) Ensure the 1929 emergency response number is working and includes staffing by Tamil speaking operators.
- 5) Police must act quickly in the cases of child sexual abuse in obtaining medical records and evidence gathering and produce this evidence to court before the accused is granted bail.
- 6) All child abuse cases must be heard in closed court rooms or the chambers of magistrates or judges and video testimony should be made adequate so that the abused child may avoid testimony in open court rooms.

²⁷ 2010 CRC Concluding Observations, ¶ 48.

²⁸ *Id.*

²⁹ State Party's Report, ¶ 204(c).

IV. CLUSTER 7. DISABILITY, BASIC HEALTH, AND WELFARE

A. Mental and Physical Health, and the Rise of Suicide

1. Situation Analysis

a. Mental health

The conflict exposed children to a wide range of traumas including loss of loved ones, lack of food and water, repeated displacement and disrupted school time.³⁰ The range of harm includes “shattering and toxification...of social environments, the lack of access to basic necessities and security, and the loss of important sources of social support for their well-being.”³¹ Scholars have identified “collective trauma” that includes the disruption of family and community structure and social networks and cohesion.³²

One study found that child combatants suffered from psychological issues including somatization, post-traumatic stress disorder, depression, anxiety, and behavioural and conduct disorders.³³ Consequences of this harm to mental health has included “poorer psychological outcomes and school absenteeism.”³⁴

A 2015 article concluded that there were significant gaps in mental health care for returning internally displaced persons and that to address these issues there should be a broad-based approach across sectors that is “firmly based on a public health approach rather than a traditional psychiatric care approach.”³⁵ Among youth, drug addiction is on the rise. In the North and East, there are inadequate facilities to rehabilitate addicted children.

b. Physical health

One study showed a ‘significant physical health deficit’ in young adolescent Tamils in Kilinochchi town, reaffirming previous studies of the ‘harmful consequences of conflict on the

³⁰ Jeavana Sritharan and Ashvinie Sritharan, *Post-Conflict Sri Lanka: The Lack of Mental Health Research and Resources among Affected Populations*, International Journal of Humanities and Social Science 4(3) 151, 153 (Feb. 2014).

³¹ Michael G. Wessells, *Children and Armed Conflict: Introduction and Overview*, Peace and Conflict: Journal of Peace Psychology, Vol. 22:3 (2016).

³² Chesmal Siwardhana and Kliitha Wickramage, *Conflict, forced displacement and health in Sri Lanka: a review of the research landscape*, Conflict and Health 8:22 (2014), citing D. Somasundaram, *Recent disasters in Sri Lanka: Lessons Learned*. Psychiatr. Clin. N. Am. 36(3): 321-338 (2013).

³³ Siwardhana and Widkramage, citing Somasundaram, *Child Soldiers: Understanding the Context* (2002).

³⁴ Siwardhana and Widkramage, citing Siriwardhana C, et al, *Impact of exposure to conflict, Tand mental disorders on school absenteeism: findings from a national sample of Sri Lankan children aged 12-17 years*, BMC Pub. Health 2013, 13 (1): 560.

³⁵ Chesmal Siriwardhana, *Mental health of displaced and returnee populations: Insight from the Sri Lankan post-conflict experience*, Conflict and Health (2015) 9:22.

nutritional status of young adolescents.”³⁶ This is compounded by inadequate health care facilities, particularly in the North and East.

c. Rise of suicide

Over the past few years, the number of suicide attempts have been high with some hospitals seeing 30 to 60 cases of deliberate self-harm each month. One 2013 study found that after 2000 while there was a relative decline in suicide in general, “an alarming trend was the high rate of suicide among youths and teenagers.”³⁷ For the past two years, the highest rates of suicides have been clustered in adolescents and young adults. The State Report cites 2011 statistics, and main reasons for suicide in adolescent group being frustration from intimate relationships followed by mental disorders and problems with elders.³⁸

2. Comments on State Report on Health and Health Services

The State Report discussed the National Health Master Plan (2012-2017) to increase human and financial resources³⁹ and detailed actions to increase the number of public health midwives, immunization, infant mortality rate, nutrition levels, adolescent health, teenage pregnancy, reproductive health, protecting children from substance abuse, social security and childcare services and facilities, HIV/AIDS, and the right to adequate standard of living.⁴⁰ The lack of coordination is an issue between authorities irrespective of the national master plan.

Another critical problem is maintaining confidentiality of the abused child, especially in sexual abuse cases, and treatment at the hospital is an issue. When a complaint is made of sexual abuse, a child is admitted in the general ward; staff members of the hospital need to safeguard the identity of the child, but there is no strict such code of conduct.

3. Conclusions and Recommendations on Mental and Physical Health and Suicide:

The Government should

Deploy competent and Tamil speaking professionals and more resources as part of the reparation to be allocated to hospitals and other centres that are hosting and counseling young and vulnerable war affected children.

³⁶ Alexander Hamilton, et al, *Psychosocial wellbeing and physical health among Tamil schoolchildren in northern Sri Lanka*, Conflict and Health (2016) 10:13, 18.

³⁷ Professor Karunatissa Atukorala, University of Peradeniya, “Current Trends of Suicide in Sri Lanka. Proceedings at Senate Hall, University of Colombo, 21-22 March 2013, Suicide in Sri Lanka: Past, Present and Future Transformations (World Health Organization, National Science Foundation, Forum for Suicide and Cultural Research).

³⁸ State Party’s Report, ¶ 66.

³⁹ State Party’s Report, ¶ 123.

⁴⁰ State Party’s Report, ¶¶ 123-154.

B. Early and Forced Marriages

1. Situation Analysis

Currently, the legal rights of girls differ based on ethnicity and religion. As the Government noted in its Report to this Committee, Article 16 of the Sri Lankan Constitution protects Muslim Personal law, Kandyan law, and Tesawalamai law.⁴¹ Article 16(1) exempts the Muslim Marriage and Divorce Act (MMDA) from having to comply with fundamental constitutional rights. Under these laws Muslim girls are second-class rights holders; for example: there is no minimum marriage age for Muslims and male guardians are permitted to give girls away in marriage and a Quazi can allow a child under the age of 12 to be married; married women and girls who seek a divorce often must testify about abuse before all-male panels that lack legal training and gender-sensitivity; and the “right” to practice polygamy is unrestricted. This applies to child brides and teenage mothers who go before Quazis due to mental and physical abuse.⁴²

The 66th Session of CEDAW Concluding Observations reiterated its prior concern about the Government’s preservation of marital laws that: have a discriminatory impact on women, enable polygamy, fail to establish a minimum age of marriage, require that Tamil women obtain their husband’s consent in order to “appear in court or undertake any transaction,” and that no-fault divorce is not recognized. The Committee expressed concern that the Muslim Marriage and Divorce Act does not establish a minimum age of marriage (allowing girls under 12 to marry) and that statutory rape laws do not apply to girls under 16 years old who are legally married under the Muslim Marriage and Divorce Act. Additionally, the Committee recommended that the law be amended to allow women to opt out from the Muslim Personal Law and into the general marriage law, the minimum age of marriage be increased to 18 years, and that article 363 of the Penal Code be amended so that the crime of statutory rape applies to all girls under 16, without exception.⁴³

The 61st Session of CESCR Concluding Observations mirrored the concerns of CEDAW. The Committee noted its concern that child and early marriages were permitted under the Muslim Marriage and Divorce Act and recommended the Muslim Marriage and Divorce Act and the Marriage Registration Ordinance be amended to prohibit child marriages and that practices that encourage child marriage be eliminated, including through engagement with religious leaders. Additionally, the Committee noted its concern that “only around 20 percent of Veddah children attend school, which is a consequence of early marriages.”⁴⁴

In 2009, the Government established a committee to recommend amendments to the MMDA. This committee is appointed only to reform MMDA by the justice minister. The women’s affairs ministry has come up with the reform of Kandyan law and Tesawalamai law. Even in previous reform attempts it is the Muslim politicians and male leaders who blocked any reform to the MMDA; thus, other personal law reforms also were derailed.

⁴¹ State Party’s Report, ¶¶ 145-48.

⁴² See “Scrap Sri Lanka’s Archaic Underage Muslim Marriage Law: WAN,” *Colombo Telegraph*, 3 April 2016.

⁴³ Committee for the Elimination of Discrimination Against Women, CEDAW/C/LKA/CO/7, ¶ 44 (March 2017).

⁴⁴ Committee on Economic Social and Cultural Rights, E/C.12/LKA/CO/5 (June 2017).

2. Comments on the State Report

As noted in the State Party Report, Article 16 of the Sri Lankan constitution protects customary and personal laws in Sri Lanka. The State Party deflects responsibility for the application of customary and personal laws by referencing the historical application of these laws.⁴⁵ Additionally, the State claims that the “application of personal laws to any particular individual is not automatic, but a matter of individual choice.”⁴⁶ However, this assertion is not true. Presently, women and girls are not allowed to “opt out” of Muslim Personal Law (MPL) because the General Marriage and Registration Ordinance (GMRO) of Sri Lanka clearly indicates that two Muslims cannot get married under the GMRO; therefore Muslims have to marry using the Muslim Marriage and Divorce Act (MMDA). In practice, the MMDA does not set a minimum age of marriage and women and girls cannot opt out of the MPL, so women and girls lack the legal rights necessary to reject early and forced marriages and when married, women and girls are not given equal legal rights. In contrast to the assertions in their report, unfortunately, the Government’s “efforts to reach a consensus with the Sri Lankan Muslim community on reforming” the MMDA and MPL have “not yielded positive results.”⁴⁷

These findings fall short of the Committee on the Rights of the Child’s request in the Concluding Observations after the last CRC review, that the Government “take immediate measures to prohibit early and forced marriages and teenage pregnancies and raise the age of marriage to 18 years for both boys and girls in accordance with its national legislation.”⁴⁸

3. Conclusions and Recommendations

The Government should

- 1) create a unified family code that increases the minimum age of marriage to 18.
- 2) amend the penal code on statutory rape to ensure that the crime of statutory rape applies to all girls under 16, without exception.
- 3) address concerns over the MMDA as a human rights issue, not a religious issue, and partner with Muslim women to reform the MMDA and repeal Article 16(1) to allow all personal law reforms to be in line with Article 12 of the constitution that ensures non-discrimination and equality before law for all.

⁴⁵ State Party’s Report, ¶ 146.

⁴⁶ State Party’s Report, ¶ 147.

⁴⁷ State Party’s Report, ¶ 148.

⁴⁸ 2010 Concluding Observations ¶ 57.

V. CLUSTER 9. SPECIAL PROTECTION MEASURES

Children in armed conflict (art. 38), including physical and psychological recovery and social reintegration (art. 39)

A. Child Soldiers and Other Disappeared Children

During the conflict the LTTE recruited child soldiers.⁴⁹ The State Report extensively discusses this practice, and the State practice of “rehabilitation.”⁵⁰ The State asserts that “All children who were forcibly recruited by the LTTE during the war and who underwent rehabilitation by the State were released to their families upon completion of rehabilitation.”⁵¹ The State also notes that it has been removed from the list of the UN Security Council Working Group on children in armed conflict.⁵² However, according to family members who have contacted MWDF, some families of child soldiers who were handed over to the State military by their family members or went missing during the last bit of the war still have no information about what happened to them. In addition, after the war, some of these child soldiers surrendered with other members of the LTTE and were taken into custody by the Sri Lankan military for rehabilitation, but are now also missing or may have been killed. There are many mothers who still believe that their children are with military. To date nothing on this front -- to find out the truth about what happened to these children -- has moved forward.

The State also stated that “Efforts directed at monitoring and reporting grave child rights violations, as per UN Security Council Resolution 1612 ended soon after the conclusion of the war” but family tracing work continued through other agencies; currently there are 739 open cases delegated to the provincial department of DPCCS in the Northern Provincial Council.⁵³

In 2010, the Committee made recommendations about children deprived of a family environment.⁵⁴ This carries special importance because enforced disappearances are a large factor in children being deprived of a family life. Specifically, the Committee recommended that Sri Lanka ends its emphasis on the placement of children in institutions and work to deinstitutionalize and reintegrate children into society.⁵⁵ However, in the State Report, the Sri Lankan Government made no mention of efforts to deinstitutionalize children. Instead the Government dedicated nine paragraphs and two charts to explain their system of institutionalizing children.⁵⁶

Sri Lanka has ratified the International Convention for the Protection of All Persons from Enforced Disappearances (ICPAPED).⁵⁷ The State Report says, “In December 2015, the Cabinet

⁴⁹ See, e.g., P.K.M. Dissanayake, *A study of social consequences of ethnic conflict in the North-East of Sri Lanka*, Proceedings of the Second Academic Session 108, 110-111 (2004) (citing Law and Society Trust 1996 Study, Perera, 1998, UTHR 1991).

⁵⁰ State Party’s Report, ¶¶ 45, 215-222.

⁵¹ State Party’s Report, ¶ 45.

⁵² State Party’s Report, ¶ 201.

⁵³ State Party’s Report, ¶ 140.

⁵⁴ State Party’s Report, ¶ 46.

⁵⁵ State Party’s Report, ¶¶ 47(b)-(c).

⁵⁶ State Party’s Report, ¶¶ 91-100.

⁵⁷ State Party’s Report, ¶ 228.

approved the decision to enact comprehensive legislation to incorporate the provisions of the ICPAPED into Sri Lanka's domestic law".⁵⁸

In August 2015, the Government promised to establish an Office of Missing Persons (OMP), an Office of Reparations, Truth, Justice Reconciliation, and Non-Recurrence Commissions, and a Judicial Mechanism consisting of a special Court and special counsel's office. Although the OMP Act was passed in August, 2016, the President did not sign the OMP into law or call for the nomination of OMP commissioners until October 2017. For over 300 days, family members of the disappeared have been protesting on street in the North and East. On July 5, 2017, instead of debating the International Convention for the Protection of All Persons from Enforced Disappearance Bill which would criminalise disappearances, the Parliament issued an indefinite postponement.

None of the other Transitional Justice mechanisms have been established. Existing legislation such as the Prevention of Terrorism Act, which led to many disappearances, must be repealed, and any law that replaces it must comply with international standards.

B. Continuing Violence

There is growing culture of violence among the youth. One study found a relationship between war violence, family violence and PTSD.⁵⁹ Youth-organized violence includes physical violence including attacking people with swords. Recently, members of a group called Awa was arrested for carrying out violence in Jaffna.

C. Unmet Needs and Demands for Reparations

Mothers who know their children have been recruited by the LTTE and died in battle have not been provided proper compensation. They are even scared to talk about it since there is no space and acknowledgement of such loss.

The State Report does not adequately address the affects that armed conflict has on non-combatant children. This includes children who have been orphaned by enforced disappearances and general violence. Sri Lanka generally acknowledges the physiological effects of war and the educational needs of children. It proclaims to solve these problems with scholarships⁶⁰ and counseling.⁶¹ However, the Government fails to address the ways in which the Government and the conflict are responsible for these problems. Additionally, the Government lumps all economically needy children into one group, without addressing the unique needs of children, who are economically needy because State sanctioned violence killed, injured, or disappeared their parents. All children affected by enforced disappearance and missing due to war should have comprehensive social security to continue their studies and obtain State jobs as part of the Government's reparation program.

⁵⁸ *Id.*

⁵⁹ Siwawrdhana and Widkramage, citing Catani et al, *Family violence, war, and natural disasters: a study of the effect of extreme stress on children's mental health in Sri Lanka*, BMC Psychiatry (2008)

⁶⁰ State Party's Report, ¶ 86.

⁶¹ State Party's Report, ¶ 223.

While the State Report does not comment on monetary reparations, it does seem to comment on alternative forms of reparations. The Government recognizes that “involvement in violent conflict and the loss of loved ones cause trauma and other psychological effects which could severely hamper children’s growth and education.”⁶² In response to this, the Government offers community and society groups, professional counseling, and the education system.⁶³ These services are ad hoc and some Government officers are gender insensitive and are not proactive, instead waiting until victims come to the office for counseling. Often even the cases referred by women’s groups are mishandled. Especially in relation to children, these officers are not trained properly. There is very low quality and unprofessional service.

D. Military running primary schools

One particular effect on children of continuing militarization in Killinochchi and Mullaitheevu is that the Sri Lankan military unit called the Civil Service Division (CSD) runs primary schools for war affected children. In the post war period, the military has penetrated into civil administrative services and run farms, hotels, restaurants and primary schools. This is only in the North and it was the strategy of Sri Lanka’s former defense secretary to have more State forces deployed in the North and to keep the community policed. In other parts of the country, primary schools come under the Ministry of Education. All military-run primary schools must be brought under the education department. The State Report gives an extensive discussion of education but does not discuss the role of the military in education in primary schools.⁶⁴ This violates the rights of the child to freedom of thought, conscience and religion under CRC Article 14, and education directed to develop cultural identity, language and values under Article 29, and the rights of ethnic, religious or linguistic minorities under Article 30.

E. Special Protection Measures Conclusions and Recommendations

The Government should:

- 1) Set up the Office of Missing Persons and start inquires specially in the cases of missing children who have been handed over to the military for rehabilitation.
- 2) Provide all children affected by enforced disappearance and missing due to war with comprehensive social security to continue their studies and obtain State jobs as part of the Government’s reparation program.
- 3) Transfer all military run primary schools to the Government department of education; the Military should stop engaging in any civil administration.

⁶² State Party’s Report, ¶ 223.

⁶³ *Id.*

⁶⁴ State Party’s Report, ¶¶155-189.

VI. SUMMARY OF RECOMMENDATIONS

A. General Measures Of Implementation

The Sri Lankan Government should

- 1) cancel the 2015 Gazette notice issued by the President to weaken the NCPA Act and
- 2) implement the NCPA Act 50 of 1998 to allow the NCPA full power to protect the nation's children. The NCPA should be an independent body separate from regulation by any Ministry.

B. Female Genital Cutting

The Sri Lankan Government must

- 1) without any delay enact legislation criminalizing the practice of female genital cutting (FGC)
- 2) issue a direction to all medical professionals, especially the private practitioners, to stop engaging in this practice and that such procedures will be treated as child abuse. Because FGC is not practiced in State hospitals, the direction should focus on private practitioners and private hospitals.

C. Violence Against Children

The Government should

- 1) institute gender sensitivity training at all levels of the Government—such as the police, the judiciary, and *Quazi* courts; the Government should expand training to law enforcement personnel to include specific procedures related to sexual and gender-based violence to prevent secondary victimization.
- 2) equip police stations with personnel trained on matters related to sexual violence, private rooms, sufficient female translators and officers, and improve access to legal aid. Most importantly officers must talk the community language in the North and East (Tamil).
- 3) Ensure enforcement of court orders under the Prevention of Domestic Violence Act
- 4) Ensure the 1929 emergency response number is working and includes staffing by Tamil speaking operators.
- 5) Police must act quickly in the cases of child sexual abuse in obtaining medical records and evidence gathering and produce this evidence to court before the accused is granted bail.

- 6) All child abuse cases must be heard in closed court rooms or the chambers of magistrates or judges and video testimony should be made adequate so that the abused child may avoid testimony in open court rooms.

D. Disability Health And Welfare

The Government should

- 1) Deploy competent and Tamil speaking professionals and more resources as part of the reparation to be allocated to hospitals and other centres that are hosting and counseling young and vulnerable war affected children
- 2) Create a unified family code that increases the minimum age of marriage to 18.
- 3) Amend the penal code on statutory rape to ensure that the crime of statutory rape applies to all girls under 16, without exception.
- 4) Address concerns over the MMDA as a human rights issue, not a religious issue, and partner with Muslim women to reform the MMDA and repeal Article 16(1) to allow all personal law reforms to be in line with Article 12 of the constitution that ensures non-discrimination and equality before the law.

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- 3) Transfer all military run primary schools to the Government department of education; the Military should stop engaging in any civil administration.