



**WORLD Policy  
Analysis Center**

## SRI LANKA: A BRIEF ON THE IMPLEMENTATION OF CEDAW COMMITMENTS FROM ARTICLES 2, 5, 11, 16

*Information for the Committee on the Elimination of Discrimination Against Women  
86th<sup>th</sup> Pre-Session Working Group, February/March 2023*

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**TABLE OF CONTENTS**

**INTRODUCTION** .....2

**Summary of Findings and Recommendations**.....3

    1. Non-Discrimination in Work and Employment (Article 11) .....3

    2. Paid Maternity and Paternity Leave (Articles 11, 5) .....3

    3. Child Marriage (Articles 16, 2).....4

**Detail of Legislative Findings** .....4

    1. Non-Discrimination in Work and Employment (Article 11) .....5

    2. Paid Maternity and Paternity Leave (Articles 11, 5) .....6

    3. Child Marriage (Articles 16, 2).....7



## INTRODUCTION

The WORLD Policy Analysis Center, based at the University of California, Los Angeles, captures quantitative policy data on more than 2,000 indicators that matter to equality, health, and well-being. We strive to improve the quantity and quality of globally comparative data available to policymakers, citizens, national governments, intergovernmental organizations, civil society, and researchers for all 193 UN member states. We submit the following brief in advance of the 86<sup>th</sup> Pre-Sessional Working Group of the Committee on the Elimination of Discrimination against Women.

This brief will focus on the following areas:

1. Non-discrimination in Work and Employment (Article 11)
2. Paid Maternity and Paternity Leave (Articles 11, 5)
3. Child Marriage (Articles 16, 2)

We have collected and analyzed information on rights, laws, and policies in these areas for all 193 UN member states using a variety of sources, including primary national legal sources (e.g. original legislation and constitutions), national reports on policies and laws to the United Nations and official global and regional bodies, and secondary sources where clarification or corroboration of primary data is needed. Using a rigorous double-coding process, we create original databases which distill thousands of pages of text to highlight the essential features of each right, law, or policy. These original databases are the reference for the following brief. When drafting each brief, we perform a series of additional verifications to ensure the data provided reflects the current constitutional and legal landscape of a country.

In this report we first provide a summary of our constitutional and legislative findings, as well as suggested questions for the Committee to ask Sri Lanka and topics we hope the Committee will address in its concluding observations. This summary is followed by detailed constitutional and legislative excerpts documenting our findings. We hope the Committee will recommend that Sri Lanka address any gaps in consultation and collaboration with relevant stakeholders, including civil society organizations. We also recognize that while having strong laws and policies in place are necessary first steps, implementation is also of paramount importance. In areas where we have commended Sri Lanka for having provisions in place, we hope the Committee will recommend that Sri Lanka work with stakeholders to overcome any obstacles in implementing these provisions.



## SUMMARY OF FINDINGS AND RECOMMENDATIONS

### 1. Non-Discrimination in Work and Employment (Article 11)

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While we recognize there may be other policies governing discrimination at work, our systematic review of national legislation did not identify any national legislative provisions that specifically protect women from workplace discrimination in Sri Lanka.

**We hope the Committee will:**

In its list of issues, ask Sri Lanka: Can Sri Lanka demonstrate if the country has any legislation in force that protects women against workplace discrimination?

If Sri Lanka does not have any legislation in place, recommend that Sri Lanka:

- Amend its legislation in the near term to explicitly protect women from direct and indirect discrimination at work in:
  - employment opportunities or hiring
  - equal pay for work of equal value
  - promotions or demotions
  - job security or terminations
  - training
- Ensure that this legislation:
  - Includes effective enforcement mechanisms, such as protection from retaliation.
  - Comprehensively recognizes the discrimination women face based on marital status, pregnancy, or family status.

### 2. Paid Maternity and Paternity Leave (Articles 11, 5)

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Our systematic review of national legislation found that Sri Lanka provides 12 weeks of paid maternity leave to new mothers. However, we did not identify any legislative provisions that provide any paternity leave to new fathers in Sri Lanka.

**We hope the Committee will:**

- In its list of issues, ask Sri Lanka: Can Sri Lanka outline any concrete, near-term plans to pass legislation that increases maternity leave duration to at least 14 weeks, consistent with widely accepted standards set and endorsed by global institutions such as the ILO and UNICEF?
  - If Sri Lanka does not have concrete, near-term plans to increase maternity leave duration to at least 14 weeks, recommend that Sri Lanka pass and implement legislation that does so.



- Also recommend that this legislation be implemented to be inclusive of all female workers, including workers who often lack social protection such as part-time or self-employed women, as well as women working within the informal economy.
- In its list of issues, ask Sri Lanka: Can Sri Lanka outline any concrete, near-term plans to pass legislation that provides paid paternity leave to fathers?
  - If Sri Lanka does not have concrete, near-term plans to provide paid paternity leave to fathers, recommend in its concluding observations that Sri Lanka pass and implement legislation that does so.

### 3. Child Marriage (Articles 16, 2)

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Sri Lankan civil law sets the minimum age of marriage at 18 for both girls and boys. However, customary and religious law allows for earlier marriage in Muslim and Kandyan marriages, with no minimum age specified if certain conditions are met. Although the State Party Report describes plans to remove the exceptions for marriage under 18, to our knowledge this has not been formally implemented as of this writing and thus remains an active issue.

According to the latest available data from UNICEF (2016), 6% of girls aged 15-19 were married at the time of survey, 1% of women aged 20-24 at the time of survey had been married before age 15, and 10% of women aged 20-24 at the time of survey had been married before age 18.<sup>1</sup>

#### **We hope the Committee will:**

- In its list of issues, ask Sri Lanka: Can Sri Lanka update the Committee on the current status of any plans to pass legislation that removes all exceptions that allow children under the age of 18 to be married, including under customary and/or religious law, as described in paragraphs 5 and 24 of the State Party Report?
  - If plans are not currently advancing, or if these plans continue to make exceptions for some communities, recommend in its concluding observations that Sri Lanka pass legislation in the near term that establishes 18 years as the minimum age for marriage without any exceptions.

## DETAIL OF LEGISLATIVE FINDINGS

While the following review is systematic and rigorous, we recognize that there may be laws or policies governing these areas that we have not captured, including new legislation or policies that have not yet been published globally.

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<sup>1</sup> UNICEF data – Child Marriage. Retrieved November 15, 2022 from <https://data.unicef.org/topic/child-protection/child-marriage/>



## 1. Non-Discrimination in Work and Employment (Article 11)

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Article 11 of the Convention outlines specific measures States Parties shall undertake in order to eliminate discrimination in the field of employment.

We systematically reviewed national labor codes, gender equality, and other relevant legislation available through the International Labour Organization’s NATLEX database for all 193 UN member states to determine whether national legislation prohibited gender discrimination in employment. We examined legal protections across five areas covered by CEDAW:

- employment opportunities or hiring
- equal pay for work of equal value
- training
- promotions or demotions
- job security or terminations

We assessed whether women were explicitly protected from discrimination at work in each of these areas and whether the definition of discrimination included both direct and indirect discrimination.

We also examined whether there were explicit protections from discrimination in terminations on the grounds of pregnancy and marital status, in line with Article 11.2.a) of the Convention, which prohibits “dismissal on the grounds of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status”. We further examined whether explicit protections from terminations on the basis of family status were in place, because of the intersection of family status with both marital status and pregnancy.

Finally, although the Convention focuses only on protecting from dismissal on these grounds, we nevertheless further examined whether discrimination on the grounds of pregnancy, marital status, or family status was prohibited in other stages of employment because of the centrality of these protections from preventing sex discrimination at work, which the convention protects against more broadly.

*SRI LANKA’S LEGISLATIVE PROVISIONS: No protections from workplace discrimination on the basis of sex*

While we recognize there may be other policies governing discrimination at work, our systematic review of national legislation did not identify any national legislative provisions that specifically protect women from discrimination at work in Sri Lanka.



| <b>Table 1: Does Sri Lanka have legislative provisions in place explicitly guaranteeing non-discrimination for women in the following key areas of employment?</b> |                     |
|--|---------------------|
| Employment opportunities and hiring  | No provisions found |
| Equal pay for work of equal value  | No provisions found |
| Training   | No provisions found |
| Promotions and/or demotions  | No provisions found |
| Terminations   | No provisions found |
| Discrimination on the basis of marital status, family status, and pregnancy  | No provisions found |
| Indirect discrimination  | No provisions found |
| Retaliatory action   | No provisions found |

## 2. Paid Maternity and Paternity Leave (Articles 11, 5)

Article 11.2 of the Convention states that:

*In order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work, States Parties shall take appropriate measures:*

*(a) To prohibit, subject to the imposition of sanctions, dismissal on the grounds of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status;*

*(b) To introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances;*

Further, Article 5(b) of the Convention emphasizes the importance of including men in the upbringing of children:

*To ensure that family education includes a proper understanding of maternity as a social function and the recognition of the common responsibility of men and women in the upbringing and development of their children, it being understood that the interest of the children is the primordial consideration in all cases.*

Research evidence indicates that paid paternity leave can increase gender equality in caregiving responsibilities and gender equality in employment; it is therefore important to ensure fathers have access to adequate paid paternity leave.

We systematically reviewed national labor codes and social security laws to assess the availability of paid maternity and paternity leave. We relied primarily on legislation downloaded through the International Labour Organization’s NATLEX database. Additionally, for confirmation or clarification on



legal provisions, we consulted trusted secondary sources including the Social Security Programs throughout the World (SSPTW) database, and the International Review of Leave Policies.

*SRI LANKA'S LEGISLATIVE PROVISIONS: Insufficient maternity leave and no paid leave for fathers*

Based on our systematic review of national legislation and country reports, Sri Lanka provides 12 weeks of paid maternity leave to mothers, according to the Maternity Benefits Ordinance, as amended by the Maternity Benefits (Amendment) Act of 2018.

**Maternity Benefits Ordinance, amended to 2018**

*(1) The period for which any woman worker shall be entitled to the payment of maternity benefits shall be—*

*(a) twelve weeks, that is to say two weeks up to and including the day of her confinement and ten weeks immediately following that day, if the confinement results in the issue of a live child; and*

*(b) six weeks, that is to say two weeks up to and including the day of her confinement and four weeks immediately following that day, if the confinement does not result in the issue of a live child:*

*Provided however, that where such woman worker has worked in her employment for any number of days during the aforesaid period of two weeks referred to in paragraphs (a) and (b) she shall be entitled to the payment of maternity benefits for such number of days immediately after her confinement commencing from the day immediately after the date on which the aforesaid period of ten weeks or four weeks as the case may be, ends.*

**However, we found no provisions that provide paid paternity leave to fathers in Sri Lanka.**

### 3. Child Marriage (Articles 16, 2)

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Child marriage disproportionately affects girls, often leading to social, economic, educational, and health inequalities, which States Parties have committed to eliminating. Article 16.2 of the Convention calls on States Parties to legislate a minimum age of marriage and prohibit the marriage of children. Additionally, disparities in the legal minimum age of marriage between girls and boys contravenes Article 2(a) of the Convention, which commits States Parties to “embody the principle of the equality of men and women” in their “national constitutions or other appropriate legislation”.

We systematically reviewed national civil codes and child-related legislation for all 193 UN member states to determine whether national legislation established a minimum age of marriage for both girls and boys generally, with parental consent, and under religious and customary law. We reviewed all legislation available through the Lexadin World Law Guide, Foreign Law Guide, International Labour Organization’s NATLEX database, regional sources, and official country websites.





*SRI LANKA'S LEGISLATIVE PROVISIONS: Early marriage prohibited by the courts, but allowed through religious and customary law*

Based on our systematic review, Sri Lanka's Marriages Ordinance prohibits marriage under the age of eighteen in section 15. However, section 22 of the same law describes who may give consent to the marriage of anyone under 18; this section was not removed after raising the minimum age of marriage to 18. In a 2001 ruling, *Gunaratnam v. Registrar-General*, the appeals court clarified that section 15 prevails over section 22, and that the prohibition on marriage under 18 is therefore absolute.

**Marriages Ordinance, amended to 2001**

(Prohibited age of marriage [§ 2,18 of 1995])

15. No marriage contracted after the coming into force of this section shall be valid unless both parties to the marriage have completed eighteen years of age.

(Who may give consent to marriage of a minor. [§2,12 of 1997])

22.

(1) Provided that no such consent shall be required in the case of a widow or widower or a person who shall have been previously married, and whose marriage shall have been legally dissolved.

(a) The father of any person under eighteen who may years of age ; or

(b) if the father be dead or under legal incapacity, or in parts beyond Sri Lanka and unable to make known his will, the mother ; or

(c) if both father and mother be dead or under legal incapacity, or in parts beyond Sri Lanka and unable to make known their will, the guardian or guardians appointed over the party so under age by the father, or if the father be dead or under legal incapacity, by the mother of such party or by a competent court, shall have authority to give consent to the marriage of such party, and such consent is hereby required for the said marriage :

(2) If there be no person authorized as aforesaid to give consent, or if the person so authorized unreasonably withholds or refuses his or her consent, the Judge of the District Court within whose jurisdiction the party so under age resides, may, upon the application of any party interested in such marriage, and after summary inquiry, give consent to the said marriage, and such consent is hereby required for the said marriage.

**Gunaratnam v. Registrar-General, Court of Appeal, 2001**

I find that there is nothing ambiguous about this prohibition which needs no interpretation. Therefore, on a simple reading of the section, from the date on which the amending section became operative, no party under the age of 18 years could contract a valid marriage in Sri Lanka. Parental authority or consent to such marriage would be invalid in law as this was an absolute prohibition to marriage.

However, despite the provisions of the Marriages Ordinance, customary law for both the Kandyan and Muslim communities allows marriage under the age of 18. There is no specific minimum age of marriage



for Muslims, although girls under 12 need authorization from the Quazi to marry; Kandyan of either gender may marry below the lawful age of marriage given certain conditions, and no minimum age of marriage is specified if those conditions are met.

**Marriage and Divorce Act (Muslim), amended to 1975**

17. (l) Save as otherwise hereinafter expressly provided, every marriage contracted between Muslims after the commencement of this Act shall be registered, as hereinafter provided, immediately upon the conclusion of the Nikah ceremony connected therewith. (...)

23. Notwithstanding anything in section 17, a marriage contracted by a Muslim girl who has not attained the age of twelve years shall not be registered under this Act unless the Quazi for the area in which the girl resides has, after such inquiry as he may deem necessary, authorized the registration of the marriage.

**Marriage and Divorce Act (Kandyan), amended to 1995**

4. Lawful age of marriage

(1) No Kandyan marriage contracted after the coming into force of this subsection, shall be valid if, at the time of marriage-

- (a) either party thereto is under the lawful age of marriage; or
- (b) both parties thereto are under the lawful age of marriage.

(2) Notwithstanding anything in subsection (1), a Kandyan marriage shall be deemed not to be or to have been invalid under that subsection by reason of one party and one party only thereto being, at the time of marriage, under the lawful age of marriage-

(a) if both parties thereto cohabit as husband and wife, for a period of one year after the party aforesaid has attained the lawful age of marriage ; or

(b) if a child is born of the marriage before the party aforesaid has attained the lawful age of marriage.

(3) Notwithstanding anything in subsection (1), a Kandyan marriage shall be deemed not to be or to have been invalid under that subsection by reason, of both parties thereto being, at the time of marriage, under the lawful age of marriage-

(a) if both such parties cohabit as husband and wife for a period of one year after they both have attained the lawful age of marriage ; or

(b) if a child is born of the marriage before both or either of them have attained the lawful age of marriage.

We acknowledge Sri Lanka's description in paragraphs 5 and 24 of the State Party Report of the steps it is taking to repeal discriminatory provisions "in the Muslim Marriage and Divorce Act among other law reforms". However, as of this writing, the provisions described above that apply to Muslims and Kandyans have not been amended, thus this remains an active issue.