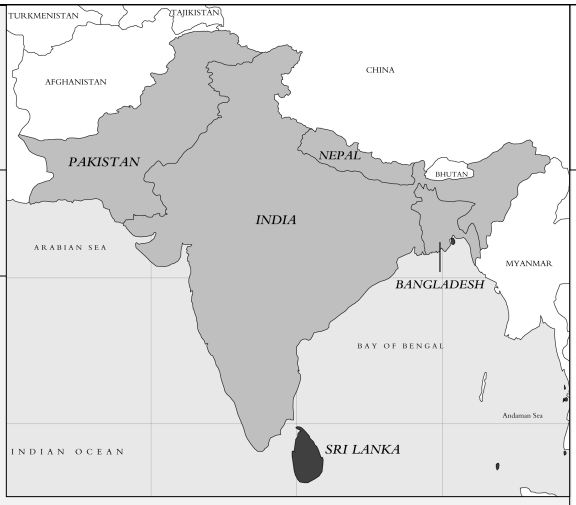
5. Sri Lanka



Statistics

GENERAL

Population

- Total population: 19,100,000.[1]
- Population by sex: 9,406,580 (female) and 9,880,490 (male).[2]
- Percentage of population aged 0–14: 26.0.[3]
- Percentage of population aged 15–24: 19.1.[4]
- Percentage of population in rural areas: 77.[5]

Economy

- Annual percentage growth of gross domestic product (GDP): 5.0.[6]
- Gross national income per capita: USD 840.[7]
- Government expenditure on health: 1.8% of GDP.[8]
- Government expenditure on education: 2.9% of GDP.[9]
- Population below the poverty line: 25.0% (below national poverty line); 6.6% (below USD 1 a day poverty line); 45.4% (below USD 2 a day poverty line).[10]

WOMEN'S STATUS

- Life expectancy: 75.9 (female) and 69.9 (male).[11]
- Average age at marriage: 24.4 (female) and 27.9 (male).[12]
- Labor force participation: 41.6% (female) and 82.4% (male).[13]
- Percentage of employed women in agricultural labor force: 48.8.[14]
- Percentage of women among administrative and managerial workers: 15.[15]
- Literacy rate among population aged 15 and older: 89% (female) and 94% (male).[16]
- Percentage of female-headed households: Information unavailable.[17]
- Percentage of seats held by women in national government: 4.[18]

CONTRACEPTION

- Total fertility rate: 2.01 lifetime births per woman.[19]
- Contraceptive prevalence rate among married women aged 15–49: 66% (any method) and 44% (modern methods).[20]
- Prevalence of sterilization among couples: 27.2% (total); 23.5% (female); 3.7% (male).[21]
- Sterilization as a percentage of overall contraceptive prevalence: 41.1.[22]

MATERNAL HEALTH

- Lifetime risk of maternal death: 1 in 610 women.[23]
- Maternal mortality ratio per 100,000 live births: 92.[24]
- Percentage of pregnant women with anemia: 39.[25]
- Percentage of births monitored by trained attendants: 94.[26]

ABORTION

- Total number of abortions per year: Information unavailable.[27]
- Annual number of hospitalizations for abortion-related complications: Information unavailable.[28]
- Rate of abortion per 1,000 women aged 15-44: 8.3.[29]
- Breakdown by age of women obtaining abortions: 5.0% (under 20); 26.0% (between 20–24); 28.0% (between 25–29); 26.0% (between 30–34); 15.0% (between 25–39).[30]
- Percentage of abortions that are obtained by married women: 98.0.[31]

SEXUALLY TRANSMISSIBLE INFECTIONS (STIs) AND HIV/AIDS

- Number of people living with sexually transmissible infections: Information unavailable.
- Number of people living with HIV/AIDS: 4,800.[32ss]
- Percentage of people aged 15–24 living with HIV/AIDS: 0.04 (female) and 0.03 (male).[33]
- Estimated number of deaths due to AIDS: 250.[34]

CHILDREN AND ADOLESCENTS

- Infant mortality rate per 1,000 live births: 20.[35]
- Under five mortality rate per 1,000 live births: 16 (female) and 30 (male).[36]
- Gross primary school enrollment ratio: 104 (female) and 107 (male).[37]
- Primary school completion rate: 102% (female) and 98% (male).[38]
- Number of births per 1,000 women aged 15–19: 22.[39]
- Contraceptive prevalence rates among married female adolescents: 10.7% (modern methods); 9.5% (traditional methods); 20.2% (any method).[40]
- Percentage of abortions that are obtained by women younger than age 20: 5.0.[41]
- Number of children under the age of 15 living with HIV/AIDS: <100.[42]

ENDNOTES

1. *See* United Nations Population Fund (UNFPA), The State of World Population 2003, at 75 (2003) [hereinafter The State of World Population 2003]. Estimates for 2003.
2. *See* United Nations Population Fund (UNFPA), UNFPA Country Profiles, *available at* http://www.unfpa.org/profile/default.cfm (last visited Aug. 12, 2003) [hereinafter UNFPA Country Profiles]. Estimates for 2001.
3. *See* The World Bank, World Development Indicators 2003, at 40 (2003) [hereinafter World Development Indicators 2003]. Estimates for 2001.
4. *See* UNFPA Country Profiles, *supra* note 2.
5. *See* The State of World Population 2003, *supra* note 1, at 75. Estimates for 2001.
6. *See* World Development Indicators 2003, *supra* note 3, at 188. Estimates for 1990-2001.
7. *See* The World Bank, World Development Indicators 2003, Data Query, *available at* http://devdata.worldbank.org/data-query/ (last visited Feb. 24, 2004). The statistical figure was obtained through the Atlas method. Estimates for 2002.
8. *See* The World Bank, World Development report 2004, at 257 (2003). Estimates for 2000.
9. *See* United Nations, Infonation, Government Education Expenditure, *available at* http://www.un.org/Pubs/CyberSchoolBus/infonation/e_infonation.htm (last visited Dec. 18, 2003). Estimates for 1990-99.
10. *See* World Development Indicators 2003, *supra* note 3, at 60. The statistical figures were based on 1995-96.
11. *See* The State of World Population 2003, *supra* note 1, at 71.
12. *See* UNFPA Country Profiles, *supra* note 2.
13. *See id*.
14. Information on file with the Center for Reproductive Rights.
15. *See* United Nations, The World's Women 2000, at 147 (2000).
16. *See* The State of World Population 2003, *supra* note 1, at 71.
17. While The World's Women 2000 provides statistics for other countries, the information for Sri Lanka is unavailable in the report.
18. *See* Save the Children, State of World's Mothers 2003, at 41 (2003) [hereinafter State of World's Mothers 2003]. This indicator represents the percentage of seats in national legislatures or parliaments occupied by women.
19. *See* The State of World Population 2003, *supra* note 1, at 75.
20. *See id*.
21. *See* EngenderHealth, Contraceptive Sterilization: Global Issues and Trends, tbl. 2.2, at 47 (2002). Estimates for 1993.
22. *See id.*, tbl. 2.5, at 56.
23. *See* WHO et al., Maternal Mortality in 1995: Estimates Developed by WHO, United Nations Children's Fund (UNICEF), UNFPA 46 (2001). Estimates for 1995.
24. *See* The State of World Population 2003, *supra* note 1, at 71.
25. *See* State of World's Mothers 2003, *supra* note 18, at 41.
26. *See* The State of World Population 2003, *supra* note 1, at 75.
27. While the article, *The Incidence of Abortion Worldwide* in International Family Planning Perspectives, provides statistics for Bangladesh and India, the information for Sri Lanka is unavailable.
28. While the article, *The Incidence of Abortion Worldwide* in International Family Planning Perspectives, provides statistics for Bangladesh, the information for Sri Lanka is unavailable.
29. *See* World Health Organization South-East Asia Region (WHOSEA), Women's Health in South-East Asia, Women's health and development indicators- Sri Lanka, *at* http://w3.whosea.org/women/srilanka_1.htm (last visited Aug. 19, 2003). Estimate for 1995.
30. *See* Akinrinola Bankole et al., *Characteristics of Women Who Obtain Induced Abortion: A Worldwide Review,* 25 Int'l Fam. Planning Persp. 68-77 (1999) [hereinafter Akinrinola Bankole et al.], *available at* http://www.agi-usa.org/pubs/journals/2506899.html (last visited Aug. 21, 2003). The statistical figures were obtained through ad hoc surveys and hospital records. The statistic for age-group 40 and older is included in the age-group 35-39. Estimate for 1991-1992.
31. *See id*. The statistical figures were obtained through ad hoc surveys and hospital records. Estimates for 1991-1992.
32. *See* UNAIDS & World Health Organization (WHO), Epidemiological Fact Sheets on HIV/AIDS and Sexually Transmitted Infections Updated 18 August 2003: Sri Lanka 2 (2003) [hereinafter UNAIDS], *available at* http://www.who.int/GlobalAtlas/home.asp (last visited Aug. 18, 2003). Estimates for 2001.
33. *See* The State of World Population 2003, *supra* note 1, at 75.
34. *See* UNAIDS, *supra* note 32, at 2.
35. *See* The State of World Population 2003, *supra* note 1, at 71.
36. *See* UNFPA Country Profiles, *supra* note 2.
37. *See* The State of World Population 2003, *supra* note 1, at 71. The ratios indicate the number of students enrolled per 100 individuals in the appropriate age group. The ratio may be more than 100 because the figures remain uncorrected for individuals who are older than the level-appropriate age due to late starts, interrupted schooling or grade repetition.
38. *See id.*, at 70.
39. *See id.*, at 71.
40. *See* Saroj Pachauri & K.G. Santhya, *Reproductive Choices for Asian Adolescents: A Focus on Contraceptive Behavior*, 28 Int'l Fam. Planning Persp. 186-195 (2002), *available at* http://www.agi-usa.org/pubs/journals/2818602t.html (last visited Aug. 21, 2003). Estimates for 1987.
41. *See* Akinrinola Bankole et al., *supra* note 30. The statistical figures were obtained through ad hoc surveys and hospital records. The statistic for age-group 40 and older is included in the age-group 35-39.
42. *See* UNAIDS, *supra* note 32, at 2.

The first inhabitants of Sri Lanka were ethnic Sinhalese who arrived from northern India around 500 B.C. A rich civilization flourished in the north-central region of the country between 300 B.C. and 1200 A.D., and became known for its state sponsorship of Buddhism.[1] The political support for Buddhism led to its entrenchment and dominance within Sri Lankan society, marking a contrast to the diminution of the religion in neighboring India.[2] During this era, Sinhalese kingdoms moved south due to internal conflicts and invasions from predominantly Hindu Tamils in southern India.[3] Although precisely when the Tamils began settling on the island is unclear, historical evidence clearly shows that they were a part of Sri Lanka's earliest multiethnic civilization.[4]

Portuguese traders captured much of the island in the early sixteenth century when Sri Lanka was still known as Ceylon.[5] In the mid-seventeenth century, the Dutch arrived with the advent of the Dutch East India Company.[6] The British followed in the late eighteenth century and, like their predecessors, ruled for nearly 150 years.[7] On February 4, 1948, Ceylon gained its independence from the British as a self-governing state.[8]

Postindependence politics have been dominated by communal tensions between the Sinhalese and the Tamils. While the first prime minister after independence, Stephen Senanayake, tried to steer the country toward a multiethnic, secular state, his vision did not last.[9] Communal tensions erupted in 1956 when the government of prime minister S.W.R.D. Bandaranaike declared Sinhala the sole official language.[10] Communal riots ensued and Bandaranaike was assassinated in 1959.[11] One year later, the deceased prime minister's widow, Sirimavo Bandaranaike, won the general election and became the country's seventh prime minister and the world's first female one.[12] The following four decades saw an escalating cycle of communal violence that was marked by terrorist attacks, political assassinations, internal displacement, and human rights atrocities by Tamil separatist groups and government military forces.[13]

In 1972, a new constitution was adopted under the government of Sirimavo Bandaranaike and the country became a republic with a largely ceremonial president who was appointed by the prime minister.[14] In addition, Buddhism acquired constitutional protection, as Sri Lanka abandoned the principle of a secular state.[15] Meanwhile, there were widespread calls for a separate Tamil state, some made forcefully by groups such as the Liberation Tigers of Tamil Eelam (LTTE).[16] A new government came to power following elections in 1977 and promulgated a new constitution in 1978.[17] This document replaced the former British model of parliamentary government with a new system of government, modeled after France, with a strong presidency.[18] The new constitution also addressed Tamil concerns through several important changes, such as the recognition of Tamil as a "national language." However, as in the previous constitution, Sinhala remained the sole official language, Buddhism retained the "foremost place" under the law, and Tamil areas were denied federal autonomy.[19] Tamil political disillusionment grew after the 1977 elections and gained momentum after anti-Tamil riots in 1981 and 1983.[20] Since the 1980s, both Tamil and Sinhalese extremist groups have been a growing threat to political stability and the power of the government.[21]

In 1995, peace negotiations between the government and the LTTE led to a formal cease-fire under President Chandrika Bandaranaike Kumaratunga, daughter of Sirimavo Bandaranaike.[22] However, the LTTE unilaterally broke the cease-fire and fighting resumed several months later.[23] Offensive fighting on both sides of the conflict have continued ever since. On May 3, 2000, Kumaratunga declared a state of war, invoked an ordinance that endowed the government with expansive powers of arrest and confiscation, banned strikes and political rallies, and imposed censorship of news reporting.[24] Peace negotiations began again in 2002, resulting in a cease-fire and political agreement between the government and the LTTE in late 2002.[25]

Sri Lanka has a population of 18,732,000 and is composed of three major ethnic and religious groups: Sinhalese (74.0%), Tamils (18.2%), and Moors (7.1%), most of whom are Buddhist, Hindu and Muslim, respectively.[26] Buddhism is the most common religion (69.3%), followed by Hinduism (15.5%), Islam (7.6%), and Christianity (7.5%).[27] Sinhala is the official language, although Sinhala and Tamil are both national languages.[28] English is also widely used as a third unofficial language.[29]

Sri Lanka has been a member of the United Nations (UN) since 1955.[30] It also belongs to the South Asian Association for Regional Cooperation (SAARC) and the Commonwealth of Nations, an organization of countries formerly part of the British Empire.[31]

I. Setting the Stage: The Legal and Political Framework of Sri Lanka

Fundamental rights are rooted in a nation's legal and political framework, as established by of a nation is established by its

constitution. The principles and goals enshrined in a constitution along with the processes it prescribes for advancing them, determine the extent to which these basic rights are enjoyed and protected. A constitution that upholds equality, liberty and social justice can provide a sound basis for the realization of women's human rights, including their reproductive rights. Likewise, a political system committed to democracy and the rule of law is critical to establishing an environment for advancing these rights. The following section outlines Sri Lanka's legal and political framework.

A. THE STRUCTURE OF NATIONAL GOVERNMENT

The constitution of September 7, 1978, establishes Sri Lanka as a republic and a unitary state.[32] Its preamble assures "… to all peoples freedom, equality, justice, fundamental human rights and the independence of the judiciary … for the creation and preservation of a just and free society."[33] The constitution establishes three branches of government: executive, legislative and judicial.

Executive branch

The president of Sri Lanka serves as head of state, head of the executive branch and commander in chief of the armed forces.[34] He or she holds substantial powers and duties that far exceed those of the prime minister.[35]

The president appoints the prime minister, who usually leads the ruling party in parliament.[36] The president consults with the prime minister to appoint a cabinet of ministers from the parliament, and determines the number and functions of the ministers.[37] The president, who is a member of the cabinet, also heads the body, which is collectively responsible to parliament.[38]

The president makes the Statement of Government Policy at the commencement of each parliamentary session.[39] This address broadly outlines the government's policy positions and future activities, and gives parliament an opportunity to contest the statement and make recommendations.[40] The president also has the power to summon, prorogue and dissolve parliament, though parliament may not be dissolved for rejecting the president's Statement of Government Policy.[41] The president has the discretion to submit for popular referendum any bill that is rejected by parliament or is of national importance to the public.[42] Other presidential powers include the authority to declare war and peace, grant pardons or respites, and commute or remit sentences for anyone convicted of any crime in any Sri Lankan court.[43] The president also has broad emergency powers, which include the discretion to issue emergency regulations to preserve national security, public order or the maintenance of essential public supplies.[44] These powers override all other laws aside from the constitution.[45]

The president is elected by popular vote for a six-year term and may serve a maximum of two terms.[46] While in office, he or she is immune from lawsuits for acts performed in an official or private capacity.[47] The president may be removed from office by a two-thirds parliamentary vote and the approval of the Supreme Court.[48] Grounds for impeachment include mental or physical infirmity, intentional constitutional violations, treason, bribery, abuse of powers, and moral offenses.[49] The president may appoint the prime minister to assume the functions of the presidency if the president is unable to discharge them due to absence, illness or other causes.[50]

Legislative branch

Sri Lanka has a unicameral parliament of 225 members.[51] There are no seats reserved in the body for any particular group, including women.[52] Parliamentary members are elected for six-year terms by popular vote.[53] The entire body is dissolved at the end of each six-year term, unless the president dissolves it first.[54]

Although the president has the power to dissolve parliament, he or she may not dissolve parliament a second time, unless the body has been in session for one year since new elections and did not itself request the dissolution.[55] New parliamentary elections must be held and the newly elected parliament must meet within three to six months from the date of the president's dissolution of the former body.[56]

The constitution vests parliament with the power to make laws. Parliament may not vote on any matter unless a quorum, or 20 members of parliament, is present.[57] Bills or resolutions are passed by a majority of present members.[58] For a bill passed by parliament to become law, the speaker of parliament must endorse the bill once the legislation has passed.[59] Bills passed by popular referendum require the endorsement of the president to become law.[60] Once a law is duly endorsed, no court or tribunal can inquire into or question the validity of such a law on any ground; lawsuits challenging the constitutionality of laws in force are thus not permitted.[61]

Parliament also has the power to repeal, amend or add to any provision of the constitution, provided that the body does not suspend the operation of the constitution or repeal it without providing a replacement.[62] Constitutional amendments require a two-thirds vote of all members of parliament.[63]

B. THE STRUCTURE OF LOCAL GOVERNMENTS

Sri Lanka is subdivided into nine provinces and 25 administrative districts.[64]

Provincial councils are the principal bodies of local governance; these were established by the Thirteenth Amendment to the constitution and the Provincial Councils Act,

both of which were enacted in 1987.[65] There are currently seven functioning councils, which are autonomous bodies not under the authority of any ministry.[66] They consist of a governor, legislative body, chief minister, four provincial ministries, the Provincial Public Service Commission, and the chief secretary.[67]

The powers of the councils are subject to national policies and are enumerated in the ninth schedule to the constitution. They include:

- maintaining public order and exercising police powers within the province;
- implementing provincial economic plans;
- monitoring educational systems, including the supervision of all preschools and most state schools;
- identifying local authorities to maintain local government and village administration in accordance with the law;
- implementing, coordinating, supervising and monitoring housing development programs and projects;
- instituting social services to rehabilitate destitute persons; physically, mentally and socially handicapped persons; and those who are "disabled and unemployable";
- improving agriculture and agrarian services;
- encouraging rural development;
- establishing and maintaining public and rural hospitals and maternity homes; providing public health services, such as health education, nutrition services, family health, environmental health, maternity and child care, and food and food sanitation; and formulating and implementing health plans for the province;
- establishing Ayurvedic dispensaries and hospitals;
- managing provincial food supply and distribution within the province;
- administering matters relating to land rights, transfers, use, settlement and improvement; and
- promoting, establishing and engaging in income-generating projects, subject to national policies.[68]

Executive branch

The president appoints a governor, who serves a five-year term, to head each provincial council.[69] The governor must act in accordance with the advice of a board of ministers, which is made up of a chief minister and four other ministers, and is collectively responsible to the council.[70] The governor appoints the chief minister from members of the council.[71] If more than half of council members come from one political party, the governor must appoint the leader of that party to the post of chief minister.[72] The governor, in consultation with the chief minister, appoints other board ministers from the remaining members of the council.[73]

The governor's powers include the authority, subject to the advice of the chief minister, to summon, prorogue or dissolve the council.[74] He or she must endorse statutes passed by the council before they become law.[75]

Legislative branch

The number of members elected to each council is proportional to the area and population of each province.[76] Members serve five-year terms, after which the entire council is dissolved.[77] There are no seats reserved for women or any other specific group.[78]

The council may enact laws concerning any matter for which it is given authority under the constitution.[79] Laws passed by parliament take precedence over provincial statutes whenever any inconsistency arises between the two.[80]

C. THE JUDICIAL BRANCH

The constitution provides for the creation of a Supreme Court, a Court of Appeal, High Courts, and other courts and tribunals that parliament deems necessary.[81] The Supreme Court and Court of Appeal collectively form the Superior Court.[82] Parliament has the power to create, replace, amend or abolish all courts other than the Supreme Court, and to determine their powers, duties, procedures, and jurisdiction.[83]

The Supreme Court is the highest court in the country. The court exercises jurisdiction in the following areas: constitutional matters; protection of fundamental rights; final appellate jurisdiction in civil and criminal matters; consultative jurisdiction; election petitions; breach of the privileges of parliament; and other matters that parliament may ordain according to law.[84] The right to seek redress from the court for violations of fundamental rights is limited to persons who have actually suffered a violation; individuals may not invoke the court's jurisdiction by raising issues that affect the interest of the general public, as is possible in judicial systems that permit "public interest litigation."[85] The court generally has exclusive jurisdiction to determine whether any bill or provision thereof is inconsistent with the constitution.[86] When the cabinet of ministers certifies a bill, the court may decide only whether the bill should be submitted for a popular referendum or requires a special majority vote in parliament.[87] In cases involving a bill to amend, repeal or replace the constitution, the court's jurisdiction is limited to deciding if the bill should be submitted for a popular referendum.[88] The court has no jurisdiction when the cabinet of ministers certifies a bill to amend, repeal or replace the constitution.[89] The president appoints a chief justice and six to ten other judges to serve on the court.[90] Supreme Court judges may serve until the age of 65, and may be removed from office for misbehavior or incapacity on an order of the presi-

dent and a majority vote of all members of parliament.[91]

The Court of Appeal is an intermediate appellate court with a limited right of appeal to the Supreme Court.[92] The president of Sri Lanka appoints a president to head the court and six to eleven judges; judges may serve until the age of 63 and may be removed from office on the same grounds as Supreme Court judges.[93]

Below the Court of Appeal are eight provincial high courts with original jurisdiction over major crimes, including crimes against the state, public tranquility, the body and property, as well as crimes relating to religion. Like judges on the Supreme Court and Court of Appeal, high court judges are appointed by the president.[94] The president also has the power to remove and discipline high court judges on the recommendation of a judicial service commission, which is made up of the chief justice and two Supreme Court judges appointed by the president.[95] The commission also has authority over the appointment, dismissal and discipline of judicial officers other than those on the Superior and High Courts, and may establish rules governing these procedures.[96]

Below high courts are district courts in each of the 25 administrative districts that act as civil courts of general jurisdiction.[97] District courts also have jurisdiction over matters relating to family law.[98] Primary and magistrate's courts occupy the lowest rung of the formal court hierarchy.[99] Primary courts, of which three are functioning in Sri Lanka, have both civil and criminal jurisdiction.[100] Magistrate's courts have only criminal jurisdiction.[101]

In addition to the traditional hierarchy of courts, there are local courts with jurisdiction over matters involving Muslim personal law, such as divorce, maintenance, *mahr* (in Muslim personal law, a sum of money or property given to a bride by the bridegroom in consideration of marriage), and *kaikuli* (bride price).[102] These courts, known as *Quazi* courts, were established under the 1951 Muslim Marriage and Divorce Act.[103] Decisions of *Quazi* courts may be appealed to the board of *Quazis*, and board decisions may be appealed to the Court of Appeal, and ultimately to the Supreme Court.

Labor and agricultural tribunals and mediation boards are other judicial bodies established by statute through which local disputes can be resolved.[104]

Customary forms of alternative dispute resolution

There are no customary or extra-legal tribunals in Sri Lanka for settling local disputes.

D. THE ROLE OF CIVIL SOCIETY AND NON-GOVERNMENTAL ORGANIZATIONS (NGOS)

The National Secretariat for Non Governmental Organizations under the Ministry of Social Welfare is a regulatory body that aims to mobilize and coordinate the efforts of NGOs in Sri Lanka in order to advance national policies and development.[105] Its functions include registering NGOs and monitoring their activities, as well as serving as a general clearinghouse of information for NGOs in Sri Lanka, donor agencies and members of the public.[106]

NGOs in Sri Lanka work independently and in coordination with government programs in providing a range of services and advocating for legal reform and equality on behalf of marginalized groups on various issues. The Family Planning Association of Sri Lanka, established in 1953, is the oldest and largest NGO in the country in the field of sexual and reproductive health.[107] It is recognized as the "mother NGO" and works closely with several smaller NGOs in Sri Lanka, as well as with the Ministry of Health and decentralized government agencies.[108] It provides a comprehensive range of services, with an emphasis on meeting the needs of underserved groups, including factory workers, internally displaced persons, and adolescents and youth.[109]

E. SOURCES OF LAW AND POLICY

Domestic sources

Sri Lanka's legal system is based on British common law and Roman-Dutch, statutory, personal and customary law.[110]

The constitution is the supreme law of the land. It guarantees certain fundamental rights, including the rights to equality before the law and equal protection of the law, and to nondiscrimination on grounds of race, religion, language, caste, sex, political opinion, or place of birth.[111] It also guarantees the rights to freedom of thought, conscience, religion, speech, peaceful assembly, association, and movement; and freedom from torture, cruel, inhuman or degrading punishment, and arbitrary deprivation of personal liberty.[112] The constitution allows restrictions on certain fundamental rights in the interests of national security or "racial and religious harmony."[113] In addition to enforceable fundamental rights, the constitution issues several Directive Principles of State Policy that are intended to guide the government in discharging its duties, but do not confer enforceable legal rights.[114] One such principle directs the state to ensure equality of opportunity for all citizens, so that no citizen suffers discrimination on the basis of sex.[115] Other instructive but unenforceable constitutional provisions are contained in an article on fundamental duties of citizens; one such duty is to respect the rights and freedoms of other citizens.[116]

Second to the constitution, legislation is the most important source of domestic law, followed by case law, which operates on the basis of precedent, *stare decisis*.[117] Major codifications of law include the 1883 Penal Code, the 1889

Civil Procedure Code and the 1979 Code of Criminal Procedure.[118] British common law is the primary source of criminal and administrative law, while Roman-Dutch law has a heavy influence on matters of personal relations.[119] Specifically, Roman-Dutch law applies to family law, property, succession, obligations, delicts, and noncommercial contracts.[120]

Sri Lanka's colonial past and varied ethnic makeup have yielded a system that is marked by laws with differing applicability. There are, however, two general systems of law: the general law and customary laws.

The general law is the "residuary law of the land" and is made up of statutes, jurisprudence and Roman-Dutch law.[121] The general law applies to the entire country, although parliament may pass legislation specific to certain communities or territories.[122]

The three major bodies of customary law are Kandyan law, Muslim law and Tesawalamai law. These laws lack uniform application and have varying degrees of influence on family law.[123] Customary laws apply either as personal laws (e.g., religious-based laws that deal with matters of personal status, such as marriage, divorce, custody, and inheritance) or as an amalgam of personal and territorial laws.[124] The areas of marriage, divorce and inheritance are especially influenced by customary laws.[125]

Kandyan law applies only to Sinhalese people in the Kandy region of Sri Lanka and has the characteristics of both personal and territorial law.[126] Kandyan law applies mostly in the area of personal law and is now consistently recognized by Sri Lankan courts as a system of personal law.[127]

Muslim law is purely personal law, applicable to all persons professing the Muslim faith, whether by birth or conversion. In determining the applicability of Muslim law to an individual, courts require at a minimum a belief in the essential doctrine of Islam as articulated in the Indian court case, Narantakath v. Parakkat, which characterized that doctrine as belief in one God whose prophet is Muhammed.[128] A significant feature of Muslim law in Sri Lanka is the Quazi courts, which were established by the Muslim Marriage and Divorce Act to deal specifically with disputes involving Muslim law.[129] (See "The Judicial Branch" for information on *Quazi* courts.)

Tesawalamai law is a mixture of personal and territorial law and is applicable to the Malabar inhabitants of the Jaffna province of Sri Lanka.[130] "Malabar" has been judicially recognized as meaning "Tamil," and the province of Jaffna as denoting the Jaffna peninsula, its surrounding islands and the district of Mannar.[131] Tesawalamai law applies mostly in the area of property.[132]

International sources

Sri Lanka is a state party to several international conventions. These include the following: the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW); the Convention on the Rights of the Child (Children's Rights Convention); the International Convention on the Elimination of All Forms of Racial Discrimination (Racial Discrimination Convention); the International Covenant on Civil and Political Rights (Civil and Political Rights Covenant) and the Optional Protocol to the Civil and Political Rights Covenant; and the International Covenant on Economic, Social and Cultural Rights (Economic, Social and Cultural Rights Covenant).[133] The government made no reservations to any of these conventions.[134]

The government of Sri Lanka has also participated in several key international conferences and endorsed the development goals and human rights principles contained in the resulting consensus documents. International consensus documents the government has adopted include the 1993 Vienna Declaration and Programme of Action; the 1994 International Conference on Population and Development (ICPD) Programme of Action; the 1995 Beijing Declaration and Platform for Action; and the 2000 United Nations Millennium Declaration.[135]

Sri Lanka is also a signatory to the SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution, and the SAARC Convention on Regional Arrangements for the Promotion of Child Welfare in South Asia.[136]

II. Examining Reproductive Health and Rights

In general, reproductive health issues are addressed through a variety of complementary, and sometimes contradictory, laws and policies. The manner in which these issues are addressed reflects a government's commitment to advancing reproductive health. The following section presents key legal and policy provisions that together determine women's reproductive rights and choices in Sri Lanka.

A. GENERAL HEALTH LAWS AND POLICIES

The National Health Policy, formulated by the Ministry of Health in 1996, provides the general policy framework for the development and delivery of public health programs and services in Sri Lanka.

Objectives

The National Health Policy has two broad goals aimed at raising the health status of the people of Sri Lanka:

- to increase life expectancy by reducing preventable deaths due to both communicable and noncommunicable diseases; and
- to improve the quality of life by reducing preventable diseases, health problems and disabilities, and by emphasizing the positive aspects of health through health promotion.[137]

The policy identifies the following areas of health as requiring focused government attention:

- maternal and child health;
- adolescent health;
- malnutrition and micronutrient deficiencies;
- emerging health issues caused by a fast-aging population;
- malaria;
- oral health;
- bowel disease;
- respiratory disease;
- mental health problems;
- physical disabilities;
- deliberate self-harm and intentional and accidental injuries;
- traffic accidents;
- rabies;
- coronary heart disease;
- diabetes;
- hypertension and cerebrovascular disease;
- renal disease;
- malignancies;
- sexually transmissible infections (STIs) and HIV/AIDS;
- substance abuse; and
- problems related to the family unit.[138]

The policy also proposes several strategies to raise the health status of the population in general, and to minimize the impact of the above-mentioned diseases and health problems. They are the following:

- improve existing preventive health programs and develop more comprehensive, coordinated and focused programs to reduce the burden of disease in the community; to enable early detection of preventable diseases, health problems and their complications; and to focus on promoting positive health behavior;
- improve existing medical facilities and develop additional institutional- and community-based services to meet a wider range and higher level of medical needs (including rehabilitation and continuing care);
- make health care more accessible to the community on an equitable basis with provisions for meeting specific health needs;
- improve the quality of health care to a level acceptable to both the community and service providers;
- ensure respect for the dignity of the individual at all times in providing health-care services and patient care;
- continue the government's commitment to providing free basic health care in public health facilities;
- ensure the rights of men and women to information about and access to their choice of safe, effective, affordable, and acceptable methods of family planning;
- make health care more efficient and cost-effective;
- develop and implement a national drug policy for the rational use and distribution of drugs;
- promote the involvement of the community in health care;
- allocate resources to provinces and districts on the basis of their health needs and national priorities;
- integrate the efforts of the Ministry of Health with other governmental and non-governmental agencies to facilitate greater coordination for better health care;
- facilitate the development and regulation of the private health sector and promote better coordination between the public and private sectors;
- encourage health systems research and its application;
- support and strengthen human resource development;
- introduce services and programs to meet the emerging health needs of the elderly, displaced populations, and those affected by physical disabilities and mental health disorders;
- encourage the development of indigenous systems of medicines and homeopathy; and
- allocate additional funds from government and other sources for priority health needs, particularly in the areas of health promotion and prevention.[139]

In 1997, the president appointed a presidential task force to formulate strategies to tackle some of the major health problems in Sri Lanka such as inequities in the provision of health services, substance abuse, malnutrition, care of the elderly and disabled, accidents and suicides, noncommunicable diseases, and others as identified in the National Health Policy.[140] On the basis of the recommendations of the task force, the follow-

ing strategies were identified as priorities for implementation:

- improvement of one hospital in each district to reduce inequities in the distribution of health-care services and to provide high-quality health-care facilities to people living in remote areas;
- expansion of services to special groups, such as the elderly, disabled, victims of war and conflict, and those with occupational or mental health problems, and expansion of health-care services in the estate sector;
- development of health promotion programs with a special emphasis on revitalizing school health programs;
- reform of the health bureaucracy to improve efficiency and effectiveness; and
- improved resource mobilization and management through greater resource sharing between private and public sectors and increased focus on professional development of health-care personnel.[141]

Infrastructure of health-care services

Government facilities

Almost 60% of Sri Lanka's population relies on the public health-care system.[142] Some 95% of inpatient health care is provided by the public sector.[143] Health care in the public sector comprises both Western and Ayurvedic systems of medicine, though the majority of the population seeks treatment from Western medicine.[144]

RELEVANT LAWS AND POLICIES

- National Health Policy, 1996

The constitution charges the central government with primary responsibility for the formulation of national policies on primary health care and "population control and family planning."[145] Pursuant to the Thirteenth Amendment to the constitution, the provinces are responsible for the delivery of services related to these subjects.[146]

Within the central administration, the Ministry of Health is the apex body responsible for protecting and promoting the health of the people of Sri Lanka.[147] Government health services function under a cabinet minister.[148] The responsibilities of the ministry include formulating policy guidelines, regulating medical and paramedical education, managing teaching and specialized medical institutions, and purchasing medical supplies.[149] The ministry also oversees the management of the Family Health Bureau, the Health Education Bureau and special programs on malaria, tuberculosis, and STIs and HIV/AIDS, among others.[150] The Family Health Bureau is the main body in the central government charged with responsibility for monitoring the country's maternal and child health and family planning programs; the bureau also works closely with the National Cancer Control Programme and the National STD/AIDS Control Programme.[151] The main activities of the Health Education Bureau include education and training; distribution of health information, education and communication materials; and health advocacy.[152]

The Department of Health Services, a separate body within the central health bureaucracy, was established as a result of restructuring of the Ministry of Health in 1999.[153] A director general of health heads the department and is responsible for the management of health services at the central level. He or she answers to the secretary of the Ministry of Health.[154] The director general is supported by deputy directors general, each of whom is responsible for a special program area.[155]

Each province has its own ministry of health, which is responsible for health care planning and service provision in the province.[156] A provincial director of health services heads each provincial ministry of health and is responsible for the management and implementation of health services in the province.[157] He or she reports to the secretary of health of the provincial ministry of health.[158]

At the district level, there are 25 deputy directors who assist the provincial directors.[159] District health institutions report to deputy directors.[160] Each area served by a deputy director is further staffed with medical officers of health, each of whom is responsible for the provision of comprehensive health care (preventive and curative) in a defined area with a population of 60,000–80,000.[161] Each medical officer is assisted by trained staff working at the field level.[162]

Three tiers of public medical institutions provide curative health care.[163] District hospitals, peripheral units, rural hospitals, central dispensary and maternity homes, and central dispensaries provide primary health care.[164] District hospitals are typically the largest of these facilities.[165] Central dispensary and maternity homes are the smallest facilities with inpatient services, whereas central dispensaries are the smallest outpatient facilities.[166] There are some 156 157 district hospitals, 102 peripheral units, 167 173 rural hospitals, 65 83 central dispensary and maternity homes, and 404 385 central dispensaries.[167] Within the category of rural hospitals, there are some 15 estate hospitals, most of which do not function effectively because they lack adequate facilities and equipment.[168]

Provincial and base hospitals provide secondary health care.[169] There are some seven provincial hospitals and 39 base hospitals.[170] These facilities are located in large towns and most are managed by the provincial ministries of health, though the central Department of Health Services

manages a few of these hospitals.[171]

Teaching and specialty hospitals provide tertiary health care.[172] There are some 18 teaching hospitals, including one specializing in Ayurvedic medicine, which is managed by the central Ministry of Indigenous Medicine.[173] The largest hospital in the country is the National Hospital of Sri Lanka in Colombo, which provides specialized health care not including pediatrics, obstetrics, ophthalmology, and dental surgery.[174] For these services, there are separate children's, maternity, eye, and dental hospitals also located in Colombo.[175]

There is currently no functioning medical referral system.[176]

In addition to the three-tiered public health-care system of curative health services, there are 26,552 health units headed by medical officers that deliver preventive health services.[177]

The estate sector has its own health-care system and provides health-care services including maternal and child health care and family planning services, under the purview of the Ministry of Health.[178] The Plantation Housing and Social Welfare Trust coordinates health and welfare activities in 466 estates that employ a total population of 870,000, and maintains liaisons with NGOs and donor agencies.[179] The trust collects data and health statistics, monitors health services on the estates and helps train health personnel.[180]

Privately run facilities

Private health practitioners provide mostly curative care.[181] At least half of outpatient curative health care in urban and suburban areas is provided by the private sector.[182]

Although there are some full-time, private general practitioners, the majority of doctors in the private sector are also government doctors who work from home, clinics or private hospitals.[183] There are also a number of traditional practitioners in the private sector, mostly in Ayurvedic medicine, and a small number of homeopathic practitioners.[184]

Financing and cost of health-care services

Government financing

Total expenditure on health is about 3.2% of GDP, or USD 26 per capita.[185] Government expenditure currently accounts for about half of this amount, at 1.6% of GDP (Rs 24,946 million), an increase from 1.3% (Rs 18,772 million) in 2001.[186] The central government—the Ministry of Health, specifically—accounts for more than two-thirds of public-sector expenditures, with the provincial councils accounting for the remaining third.[187] The public sector funds the majority of preventive health expenditures and inpatient expenditures.[188]

There is no specific tax that finances the public health-care system; rather, general revenues of the public sector are the primary sources of government financing of health-care services.[189]

Private and international financing

Private sources account for half of the total expenditure on health.[190] The largest share of private spending on health comes from household out-of-pocket spending, accounting for 43% of total spending on health.[191] Most private expenditure on health is for outpatient primary care services and purchases of medicines from pharmacies and shops.[192] Employer-based schemes and private insurance expenditures make up less than 5% of total spending.[193]

In 2001, international aid accounted for 3.6% of total expenditure on health (Rs 501 million), which represented a decrease from previous years.[194] International financing constituted 10% and 5% of total health expenditures in 1998 and 1999, respectively.[195]

In 2002, the United Nations Population Fund (UNFPA) began a joint project with the government of Sri Lanka called "Support to Advocacy for Reproductive Health and Gender." Contributions from the government and UNFPA amounted to Rs 1,600,000 (USD 33,200) and USD 499,990, respectively.[196] The project is due to end in 2006.

Costs

The public health-care system provides health care free at the point of use through a network of national and base hospitals around the island.[197] There is no imposition of user fees.[198]

Although the government provides health care free of charge, substantial costs in the health-care system are still privately borne.[199] Private health-care facilities provide services for a fee. As previously noted, almost half (43%) of total health expenditure comes from household out-of-pocket spending on health, mostly for outpatient services and drugs.

Regulation of health-care providers

There are several laws and corresponding statutory bodies that regulate health-care providers in Sri Lanka, including their education, qualifications, registration, and professional conduct.

The 1927 Medical Ordinance regulates medical practitioners, pharmacists, midwives, dentists, apothecaries, and paramedical assistants.[200] Although the ordinance formerly applied to nurses, the 1988 Sri Lanka Nurses Council Act has regulated the nursing profession since its enactment.[201] The Medical Ordinance sets forth certain degree, training and character requirements for medical practitioners to be registered in Sri Lanka.[202] A registered medical practitioner may lose his or her approved status on grounds set forth in the ordinance, including conviction for an offense that "shows him to be unfit to practisse as a medical practitioner," conviction under provisions of the 1951 Births and Deaths Registration Act, or guilt of "infamous conduct in any professional respect."[203]

The ordinance also provides for the creation, duties and powers of the Sri Lanka Medical Council.[204] The council is charged with maintaining minimum standards of medical education with regard to courses of study, examinations, staff, equipment, and training and facilities; also, it may authorize investigations of universities and medical institutions to ascertain conformity with prescribed educational standards.[205] In 2003, the council issued ethical guidelines for registered medical and dental practitioners. (See "Patients' rights" for information on the guidelines.)

Ayurvedic practitioners and institutions are regulated by the 1961 Ayurveda Act.[206] The act provides for the creation of an Ayurvedic Medical Council to register Ayurvedic practitioners, pharmacists and nurses, and deal with matters relating to their professional conduct.[207] The registration of such individuals may be cancelled or suspended upon conviction of an offense that "shows him to be unfit" to practice his or her trade, or for any professional misconduct.[208]

The 1970 Homeopathy Act similarly provides for the establishment of a Homeopathic Council that is charged with registering homeopathic practitioners and regulating the importation, sale and distribution of their medicines.[209] The act provides for the suspension or cancellation of these practitioners' registrations on similar grounds as those for Ayurvedic practitioners.[210]

Regulation of reproductive health technologies

Assisted reproductive technologies

Existing Sri Lankan law does not regulate the use and management of assisted reproductive technologies, including in vitro fertilization and embryo transfer.[211] There is also no apex body in Sri Lanka that oversees the introduction and practice of assisted reproductive technologies in research and clinical settings, which contributes to a general lack of regulation in this area.[212] However, a 1995 amendment to the penal code does have a bearing on surrogate motherhood, prescribing penalties for the act of recruiting women or couples to bear children.[213] Also, a study group commissioned by the National Science and Technology Commission of Sri Lanka formulated a policy on biomedical ethics that is currently before the legislature.[214] The study makes recommendations for the use and regulation of assisted reproductive technologies, including in vitro fertilization and embryo transfer.

In vitro fertilization is available only in the private sector. Advisory services on assisted reproductive technologies are provided at a few private centers in Colombo and Kandy, a major city in Central Province. These centers also provide in vitro fertilization services.

Sex determination techniques

No data is available on how sex determination techniques are regulated in Sri Lanka.

Patients' rights

There is no specific legislation on the rights of patients and remedies for medical malpractice. However, the penal code and some actions available under the civil law of negligence provide recourse for breaches of medical duty. The National Health Policy calls for the government to adopt a health strategy that ensures "respect [for] the dignity of the individual at all times" in the provision of health-care services.[215]

Under the penal code, provisions relating to offenses against the body may apply in cases of bodily injury caused by a medical practitioner. Such offenses include grievous hurt, negligent homicide, culpable homicide, murder, and inducing miscarriage.[216] Consent of the patient and acts done in good faith for the benefit of the patient are available defenses.[217] Consent is not a defense if it has been obtained through fear or misunderstanding or if it was given by a person of unsound mind or by a child under the age of 12 who is unable to understand the nature and consequences of consenting to a medical procedure.[218]

Under civil law, doctors owe a duty of care to their patients in providing diagnosis and treatment, and informing them of the risks involved.[219] In determining the precise standard of care that a practitioner owes a patient, judges consider the expert opinions of similar practitioners and make the final determination as to what constitutes the standard given the circumstances of the case. A "delictual" action, or an action for damages arising from a breach of legal duty, is the only civil remedy available to a patient for medical negligence under Sri Lanka's civil law of negligence.[220]

In such an action, a plaintiff may recover:

- actual expenses (i.e., medical bills);
- damages for pain and suffering;
- expenses incurred in the future as a result of any disablement;
- loss of earnings during the period of incapacity; and
- loss of future earnings if disability is permanent.[221]

To date, only one case of medical negligence has been in Sri Lankan courts. In *Priyani Soysa v. R. A. F. Arsecularatne*, a 1999 Supreme Court case involving a young patient's death as a result of a doctor's alleged negligence in her treatment, the court found that the doctor was indeed guilty of medical negligence, but that the plaintiff had failed to prove that the doctor's negligence had caused or materially contributed to the patient's death.[222] Although many reported incidents of medical malpractice followed the decision, the impact of the court's ruling and its revelation led to a drop in public confidence in litigation for remedying medical malpractice. As the case highlighted,

solely establishing a doctor's negligent conduct without proving causation may not necessarily lead to a favorable ruling for the patient or injured party.[223]

Another source of patients' rights is the Guidelines on Ethical Conduct for Medical and Dental Practitioners Registered with the Sri Lanka Medical Council. Key rights set forth in the guidelines include those to dignity, privacy, information, informed consent, confidentiality, and nondiscrimination.[224]

The guidelines provide that individuals above age 18 are presumed to have the capacity to give consent in the absence of evidence to the contrary.[225] For minors, the "central test" for determining capacity is whether the minor has "sufficient understanding and intelligence to understand fully what is proposed."[226] When the minor lacks capacity, a parent or other authority may give consent on behalf of the minor.[227] When the minor has capacity but refuses treatment, doctors may override the minor's decision if a parent or other authority provides consent.[228]

The guidelines specifically provide for a patient's right to confidentiality of information obtained during the course of "a medical consultation, investigation, or treatment."[229] Although there are no specific statutory protections with regard to the right to confidentiality, the guidelines provide that "confidentiality is implied in the contract between doctor and patient and any unauthorized disclosure . . . would constitute a breach of contract, with grounds for civil proceedings against the doctor."[230] The issue of confidentiality has never been contested in any Sri Lankan court.[231] The conduct specifications also provide that ordinary principles of ethics apply to information about patients with HIV/AIDS.[232] (See "Policies for the prevention and treatment of STIs and HIV/AIDS" for information on the provisions of the guidelines relating to HIV/AIDS.)

Several patients' rights and civic action groups recently formed the National Association for the Rights of Patients. The association's mandate includes the following goals:

- empowerment of patients;
- formulation of a patients' charter;
- provision of quality drugs at affordable prices;
- monitoring of the quality of health-care services provided by the private sector;
- provision of legal aid with medical advice in cases of medical negligence; and
- provision of health services based on the welfare of the patient.[233]

B. REPRODUCTIVE HEALTH LAWS AND POLICIES

The Population and Reproductive Health Policy, formulated by the Ministry of Health and approved by the government in 1998, is Sri Lanka's main policy on reproductive health. The ICPD Programme of Action was a guiding source for the policy, which sets forth a holistic definition of reproductive health as "a state of complete physical, mental and social well-being in all matters relating to the reproductive system, its functions and processes."[234] Implicit in that definition is the ability of couples "to have a satisfying and safe sex life, … the capability to reproduce and the freedom to decide responsibly on the number of children they may have."[235]

There are eight goals that constitute the Population and Reproductive Health Policy in the medium term.[236] Each goal is accompanied by a rationale and a set of strategies to achieve the expected outcome. The goals are the following:

- maintain current declines in fertility to achieve a stable population by the middle of the twenty-first century;
- ensure safe motherhood and reduce reproductive health–related morbidity and mortality;
- achieve gender equality;
- promote responsible adolescent and youth behavior;
- provide adequate health care and welfare services for the elderly;
- promote the economic benefits of migration and urbanization and alleviate their adverse social and health effects;
- increase public awareness of population and reproductive health issues; and
- improve population planning and the collection of quality population and reproductive health statistics at the national and local levels.[237]

Within the goal of ensuring safe motherhood and reducing reproductive health–related morbidity and mortality, the policy identifies several reproductive health problems that it pledges to address with "increasing vigor." They are the following:

- anemia;
- "subfertility";
- unwanted pregnancies;
- induced abortion;
- reproductive tract infections;
- STIs and HIV/AIDS; and
- breast, pelvic and prostate cancers.[238]

In 1999, the Ministry of Health formulated an action plan to implement the Population and Reproductive Health Policy for 2000–2010. The plan outlines the specific roles and responsibilities of various governmental, civil society and private-sector actors and contains specific strategies for the policy's integration in local-level plans and policies.[239] The provinces are charged with primary

responsibility for the policy's implementation, while the Family Health Bureau and population division of the Ministry of Health are responsible at the central level for monitoring and evaluating activities under the policy.[240]

In addition to the Population and Reproductive Health Policy and its implementing action plan, there are several other national policies that include provisions addressing women's reproductive health. They are the Six Year Development Programme on Family Health, the National Plan of Action for Women and the Women's Charter.

The Six Year Development Programme on Family Health, formulated by the Ministry of Health and Indigenous Medicine and operative in 1999–2004, outlines long-term goals and specific strategies and programs in maternal health and nutrition, health education, adolescent health care and family planning services.[241] (See "Family Planning," "Maternal Health" and "Focusing on the Rights of a Special Group: Adolescents" for specific strategies.)

The 2002–2007 National Plan of Action for Women, formulated by the Ministry of Women's Affairs, identifies specific goals and strategies to advance women's rights in the areas of education, health care and violence against women.[242] Within the area of health care, the plan addresses maternal health and nutrition, adolescent sexual and reproductive health, people with physical and mental disabilities, STIs and HIV/AIDS, and breast and cervical cancers.[243] (See "Maternal Health," "Sexually Transmissible Infections (STIs) and HIV/AIDS" and "Focusing on the Rights of a Special Group: Adolescents" for specific strategies.)

The Women's Charter, formulated by the Ministry of Women's Affairs and approved by the government in 1993, enjoins the government to take specific actions to advance women's rights in several areas, including health care and nutrition. The charter specifically calls on the government to ensure women's rights and access to services with respect to family planning, maternal health and STIs. Among other things, it highlights the need for programs that promote and protect the mental and physical health of women, and the needs of specific groups, such as women with physical disabilities and the elderly. (See "Family Planning," "Maternal Health," and "Sexually Transmissible Infections (STIs) and HIV/AIDS" for specific strategies related to reproductive health. See "Legal Status of Women" for specific strategies related to other women's rights.)

Family Planning

There are no laws or policies that require individuals to accept family planning measures.[244] However, the National Health Policy, the Population and Reproductive Health Policy, the Six Year Development Programme on Family Health, and the Women's Charter contain specific provisions that promote the right to family planning.

The National Health Policy calls for the government to ensure the right of men and women to be informed about and have access to their choice of safe, effective, affordable, and acceptable methods of family planning.[245]

The Population and Reproductive Health Policy outlines several family planning–related strategies to stabilize the population by at least the middle of this century, one of the policy's eight medium-term goals.[246] The strategies are as follows:

- continue to provide comprehensive family planning information, education, communication, and services through government, NGO and private-sector sources;
- improve the quality of family planning service delivery, which includes offering a wide range of contraceptive methods, to enable couples to decide freely and responsibly the number and spacing of their children;
- focus attention on pockets of unmet need, such as the urban slums, estates, internally displaced populations, factory labor and underserved rural areas; and
- effectively reach out to youth as they come of reproductive age (estimated to be 500,000 young people over the next ten years).[247]

Specific programs proposed in the policy's implementing action plan aim to improve the quality of family planning services by providing "user-friendly services" at locations and times that suit the needs of clients in different communities, and follow-up care in homes and clinics, including home visits by field staff.[248]

The Six Year Development Programme on Family Health lists a number of activities to improve family planning services. These include training nonspecialist medical officers in female and male surgical sterilization; training providers in IUD services; and improving family planning facilities and contraceptive provision.[249]

The Women's Charter issues several directives to the state with regard to women's right to family planning. It enjoins the state to ensure:

- women's right to control their reproduction and their equal access to information, education, counseling, and services in family planning, including the provision of safe family planning devices and the introduction and enforcement of regulations relating to their safety; and
- family planning policies are equally focused on men and women.[250]

Contraception

The contraceptive prevalence rate among married women of reproductive age for any method was 70% in 2000, up from about 66% in 1993.[251] Nearly one-half of currently married women use modern methods, while about one-fifth rely on traditional methods.[252] The injectable is the most widely used modern temporary method (10.8%).[253] Among traditional methods, the "rhythm/safe period" method is the most prevalent (11.9%).[254] Nearly all currently married women know about modern methods of contraception, while a little over three-fourths know about traditional methods.[255]

Contraception: legal status

The 1980 Cosmetics, Devices and Drugs Act, an act of general application to all drugs, governs the manufacture, importation, sale, and distribution of contraceptives.[256] The act defines "device" as "any article, instrument, apparatus or contrivance, including any component, part or accessory thereof, manufactured or sold for use in … the care of human beings or animals during pregnancy and at and after birth of the offspring, including care of the offspring and includes a contraceptive device but does not include a drug."[257] "Drug" is defined as "any substance or mixture of substances manufactured, sold, offered for sale or represented for use in the diagnosis, treatment, mitigation or prevention of disease, abnormal physical state or the symptoms thereof … [and] restoring, correcting or modifying organic functions in man or animal.…"[258]

Only licensed persons may manufacture or import contraceptive drugs or devices.[259] Contraceptives must be registered with a government regulatory body prior to sale and distribution.[260]

Dedicated products for emergency contraception are available in Sri Lanka.[261] The first such products were registered in April 1997.[262] In the *Handbook on Contraceptive Technology* issued by the Family Health Bureau, the government advocates the use of emergency contraception to prevent an unwanted pregnancy after unprotected sex, contraceptive failure or in the event of rape.[263]

RELEVANT LAWS AND POLICIES

- Population and Reproductive Health Policy, 1998
- Population and Reproductive Health Policy Action Plan, 2000–2010
- Six Year Development Programme on Family Health, 1999–2004
- National Plan of Action for Women, 2002–2007
- Women's Charter, 1993
- National Health Policy, 1996
- Cosmetics, Devices and Drugs Act, 1980
- Eligibility for Sterilization, Government Circular, 1988
- Penal Code, 1883
- Venereal Disease Ordinance, 1938
- National Strategic Plan for Prevention and Control of HIV/AIDS, 2002–2006

UP AND COMING POLICIES:

- National HIV/AIDS Policy

Regulation of information on contraception

The Cosmetics, Devices and Drugs Act regulates the advertisement of approved contraceptives. The act provides that "no person shall … advertise any device in a manner that is false, misleading, deceptive or likely to create an erroneous impression regarding its composition, merit or safety."[264] A similar provision regulates the advertisement of drugs.[265]

Sterilization

The number of male and female sterilizations has declined significantly over the past two decades.[266] There were less than 21,000 sterilizations performed in 1997.[267] There are currently some 14,000–15,000 women who undergo sterilization per year.[268] This decline is attributable by some to the increasing average age at marriage in Sri Lanka as well as a shortage of sterilization services.[269]

Still, sterilization is currently the most widely used contraceptive method among married women of reproductive age; overall, 23.1% rely on the method—21.0% on female sterilization and 2.1% on vasectomy.[270] Use of female sterilization peaks at 34.3% among married women aged 40–44.[271]

Sterilization: legal status

The government does not regulate sterilization through any laws.[272]

Sterilization policies

The eligibility requirements for sterilization in the public sector are prescribed in a government circular and the *Handbook on Contraceptive Technology*.

As per the circular, clients seeking government sterilization services must be over age 26 with at least two living children, and the youngest child must be above the age of two.[273] Clients over age 26 with three or more living children are eligible for sterilization without restriction.[274] Where the client is under age 26 and his or her spouse insists on sterilization, the medical officer may exercise discretion in performing the procedure, provided that the couple has at least three living children and the officer has personally verified this information.[275] Where sterilization is required for medical reasons, the client should be referred to a specialist for a final decision.[276] The circular states that medical officers in the public and NGO sectors must

ensure that all requirements are met prior to performing sterilization.[277]

Spousal consent is also required for government sterilization services and both spouses must complete a prescribed form.[278] Prior court approval is required for the sterilization of minors and mentally incompetent adults.[279] Unmarried males and females are not sterilized.[280]

The government pays individuals who undergo sterilization a sum of Rs 500.[281]

The *Handbook on Contraceptive Technology* emphasizes the need for proper counseling of both parties prior to sterilization.[282] Such counseling should include information on issues such as operative procedure, permanence of the method, benefits, alternatives, failure rate, pre- and post-operative instructions, and the availability of an "out-of-pocket allowance" for clients who accept sterilization.[283]

NGOs such as the Family Planning Association of Sri Lanka have their own set of guidelines for sterilization. The association requires that clients have at least two children, and that the youngest child be at least one year old.[284] Spousal consent is not required for sterilization.[285] Discretion is used in deciding whether to provide sterilization services to those who request it.[286] The association also requires clients to complete a consent form attesting that they understand the implications of sterilization on their ability to have children in the future, and have been informed about temporary methods of contraception.[287] The signature of a witness of the same sex and who speaks the same language as the client is required where the client cannot read and understand the consent statement.[288]

Generally, clients who obtain sterilization in the NGO sector are paid a sum of Rs 500, as they are in the public sector.[289] The state reimburses the NGOs for this sum.[290]

Despite the requirement in both the public and NGO sectors that clients have at least two living children, this requirement is not strictly enforced in current practice, and women who have only one child may obtain sterilization services in both sectors.[291]

Government delivery of family planning services

The Thirteenth Amendment to the constitution devolves the responsibility for the delivery of family planning services to the provincial governments.[292] The central government retains responsibility for the formulation of national policy on family planning.[293] Within the central government, the Family Health Bureau is charged with the responsibility for planning, coordinating, directing, monitoring, and evaluating maternal and child health and family planning programs throughout the country.[294] It also oversees the distribution of contraceptives and related equipment and supplies.[295] The Health Education Bureau coordinates and implements health education programs in family planning.[296]

About 70% of current users of oral pills, injectables and condoms, and 88% of those who rely on IUDs and sterilization, obtain their method from government facilities and family health workers.[297] Unmarried youth are not directly targeted for contraceptive services under government programs, though contraceptives are provided on request.[298] Spousal information is not collected by government sources of family planning, although it was under a previous policy.[299]

There are about 850 registered family planning clinics in the government sector that offer temporary modern methods of contraception.[300] Family planning clinics and general practitioners also provide emergency contraception.[301] The government has also established method-specific clinics, such as 865 registered IUD clinics, although they do not appear to function effectively.[302] The Family Health Bureau and large hospitals have sterilization facilities and about 80 district hospitals have been upgraded to provide sterilization.[303]

Public-sector midwives are among the frontline health workers who provide family planning care in a community.[304] There are roughly 5,000 such workers in service, each serving a population of 2,000–4,000.[305] Their duties include offering family planning counseling, providing assistance at family planning clinics, distributing oral contraceptives and condoms, and providing follow-up to family planning users.[306]

The government provides family planning services, including sterilization, free of charge.[307] Oral pills and condoms are sold at highly subsidized prices.[308]

In the north and east, the government's ability to deliver family planning services has been severely restricted by civil conflict and unrest.[309]

Family planning services provided by NGOs and the private sector

Approximately 17% of current users of oral pills, injectables and condoms, and 6% of current users who rely on IUDs or sterilization obtain their method from private sources.[310] Emergency contraception can be obtained over the counter at pharmacies and from private practitioners.[311]

NGOs are a significant provider of family planning services, including sterilization. Almost 4% of current users obtain their contraceptives from the NGO sector.[312]

The Family Planning Association of Sri Lanka is the major source of contraceptives in the NGO sector and provides almost all forms of family planning.[313] It also operates a condom distribution program that sells condoms to retail outlets, which in turn sell them to the public.[314] Currently 8,000 such outlets sell condoms and 5,000–6,000 outlets sell oral pills.[315] Approximately 20,000 packets of condoms are sold each month.[316] The association no longer provides female steriliza-

tion services, though it continues to perform vasectomies.[317] On average, 3–4 operations are carried out daily.[318] The association charges a sum of Rs 350 for sterilization services.[319]

Between 1998 and 2000, the association conducted a general and reproductive health program for people living in refugee camps in the Anuradhapura, Polonnaruwa and Puttalam districts.[320] About 3,163 couples were inspired to practice family planning as a result, increasing the family planning prevalence rate in the camps from 41% to 69%.[321]

Other NGOs that provide family planning services include Sarvodaya, Lanka Mahila Samithi, Saukyadana, the Social and Economic Development Center, the Sri Lanka Association for Voluntary Surgical Conception, and Population Services International.[322]

Maternal Health

The maternal mortality rate in Sri Lanka is about 26 maternal deaths per 100,000 live births.[323] In the conflict areas of the north and east, the rate is about three times the national average.[324]

Most pregnant women receive prenatal care, either at a maternity clinic or through a home visit by a family health worker. However, the proportion is significantly lower among pregnant women in the estate sector than among those in the urban or rural sectors.[325] Almost all pregnant women receive tetanus toxoid vaccination.[326]

A high percentage of women deliver in either government hospitals or maternity homes—95.9% in the rural sector and 75.8% in the urban sector, excluding Colombo.[327] Although few women in general deliver at home, the proportion who do so is highest among women in the estate sector (12.6%) and among women under age 20 (3.6%).[328] A small proportion of women rely on traditional birth attendants for assistance during delivery.[329]

Screening tests for STIs are conducted, but not among all pregnant women. Colombo has the highest rate of such screening (71% of pregnant women), compared with 56% of pregnant women in other urban areas, 46% of women in rural areas and 26% of women in the estate sector.[330]

Policies

The Population and Reproductive Health Policy, the Six Year Development Programme on Family Health, the National Plan of Action for Women, and the Women's Charter provide the policy framework for the development and delivery of maternal health programs and services.

One of the goals of the Population and Reproductive Health Policy is to "ensure safe motherhood and reduce reproductive health system related morbidity and mortality."[331] The policy lists the following strategies to achieve this goal:

- expand reproductive health–care services while improving their quality;
- provide affordable, accessible and acceptable family planning services to protect against unplanned pregnancy;
- promote family planning so that pregnancies do not take place too early or too late in life, are appropriately spaced, and are not too many;
- provide all men and women with information, education, communication, counseling, and access to safe and effective reproductive health care;
- empower women to make responsible decisions with regard to reproductive health care and ensure male participation in the process; and
- improve communication between men and women on issues of sexuality and reproductive health.[332]

The Six Year Development Programme on Family Health sets forth long-term objectives relating to maternal health, including the reduction of infant, childhood and maternal morbidity and mortality through higher quality maternal and child health services.[333] Proposed programs to improve the quality of maternal care, further reduce maternal mortality and raise the status of breast-feeding include:

- development of standard indicators and guidelines on the quality of maternal care;
- training of health staff, including workshops for hospital and other health staff in the public sector;
- provision of low-cost equipment to public health facilities;
- provision of comprehensive essential obstetric care in each district;
- strengthening of district and provincial health reviews;
- confidential inquiries into national maternal death rates, with a corresponding report;
- lactation management courses to train health staff; and
- development and printing of information, education and communication materials on breast-feeding.[334]

The National Plan of Action for Women identifies several key issues relating to maternal health and develops goals, strategies and activities on the basis of these concerns.[335] (See "Nutrition" for information on specific strategies to improve maternal health and nutrition.) To address women's lack of adequate information relating to pregnancy, the plan calls for the development of Management Information Systems on women's health and the publication of a women's health bulletin biannually by the central and provincial ministries of health.[336]

With regard to maternal health, the Women's Charter

enjoins the state to ensure the "provision of … quality services in connection with pregnancy, confinement and the post-natal period" and "sufficient rest during pregnancy and lactation."[337]

Nutrition

The Six Year Development Programme on Family Health specifically addresses nutrition in its long-term objectives related to maternal health. It aims "to improve the nutritional status of pregnant women, infants, preschool[ers] and adolescents through nutrition education, community-based interventions and supplementary feeding programs."[338] Specific programmatic activities to improve maternal nutrition and prevent anemia include:

- training of all public-sector health staff to implement a new strategy of prevention of anemia among pregnant women;
- development of indicators to monitor implementation of the anemia prevention program;
- development and printing of information, education and communication materials on prevention of anemia during pregnancy;
- distribution of scales to monitor weight gain during pregnancy;
- distribution of iron folate, calcium and mebendazole to pregnant women; and
- distribution of a megadose of vitamin A to all postpartum mothers.[339]

The National Plan of Action for Women identifies poor information about maternity and nutrition, inadequate nutrition (especially during pregnancy and lactation) and a high incidence of anemia as key health issues of concern.[340] Strategies and programs to combat these problems include implementation of community nutrition education programs and the provision of low-cost foods to low-income families.[341] Rural women and women in urban slums and in the estate sector are special target groups.[342]

Abortion

Abortion, which is illegal in Sri Lanka, is the single most important reproductive health problem in the country.[343] Unsafe abortion is a leading cause of maternal death among women in Sri Lanka.[344] An estimated 10% of maternal deaths are abortion related.[345] There are currently no national-level statistics on the incidence of induced abortion, although unofficial reports estimate that 500–1,200 induced abortions occur every day.[346] A study conducted at a government hospital reported that of 1,638 gynecological admissions over a six-month period, 25–30% involved cases of abortion complications.[347] Survey data shows that the incidence of induced abortion is highest among women in the Colombo metropolitan area.[348]

Abortion: legal status

Abortion is a criminal offense under the penal code, except to save the woman's life.[349] The penal code does not provide any procedural requirements for the legal termination of pregnancy, except that the woman's consent is necessary.[350] It also does not specify the qualifications of those authorized to perform abortions or the type of facilities in which abortions may be performed. As a matter of practice, however, the concurrence of two obstetrician-gynecologists is required in cases where an abortion is necessary to save the woman's life.[351]

No data is available on the legal status of medical abortion.

Under the penal code, any person who voluntarily causes a pregnant woman to miscarry may be punished with up to three years of prison, a fine or both, unless the miscarriage was caused in good faith in order to save the woman's life.[352] If the woman is "quick with child," punishment may be up to seven years of prison, a fine or both.[353] Under these penal code provisions, a woman who causes her own miscarriage is liable for the same punishment as a provider or other individual who causes her to miscarry.[354] An individual who causes a woman to miscarry without her consent, whether or not the woman is "quick with child," may be punished with up to 20 years of prison and a fine.[355]

According to the Guidelines on Ethical Conduct for Medical and Dental Practitioners Registered with the Sri Lanka Medical Council, a registered medical practitioner found guilty of performing an illegal abortion may additionally lose his or her medical registration.[356] If a medical practitioner learns that an illegal abortion has taken place, his or her obligations depend on the circumstances. When the woman has self-induced the abortion, the doctor's obligation is to treat her as a patient and provide all necessary medical care.[357] The guidelines state that it is "unethical" for the doctor to report the woman to the police, unless her life is in danger or death occurs.[358] However, the doctor may be compelled to report the woman to the police if she "seeks treatment repeatedly after illegal abortion." A doctor cannot be compelled to perform an abortion to save a woman's life if he or she objects on religious or moral grounds.[359]

A bill to amend some penal code provisions relating to abortion was introduced in parliament in 1995.[360] One amendment proposed to legalize abortion where pregnancy is a result of rape or incest, or where there is a risk of serious fetal abnormalities.[361] In the ensuing parliamentary debate, several members of parliament vehemently opposed decriminalizing abortion on religious grounds.[362] Those in support of the bill used concepts of gender equality and women's freedom of choice.[363] The proposed amendments on abortion were not

adopted as a result of the controversy. However, a few attempts have been made to revive the debate.

Regulation of information on abortion

No data is available on how information on abortion is regulated in Sri Lanka.

Abortion policies

The Population and Reproductive Health Policy identifies induced abortion as a "crucial emerging" reproductive health issue that must be addressed with "increasing vigor" in the future.[364] The policy does not include provisions relating to postabortion care.

The National Plan of Action for Women aims to eliminate unsafe abortion by legalizing the procedure, especially in cases of rape, incest, sever fetal impairment, and pregnancies to women below the statutory age of marriage.[365]

Government delivery of abortion services

Legal abortions are usually performed in the government sector.[366] The Family Health Bureau does not provide counseling services before or after an abortion.[367]

Abortion services provided by NGOs and the private sector

Abortions are carried out in the informal and private sector by private physicians or by clandestine abortion providers.[368] Providers can charge more than Rs 1,000 per abortion, depending on the gestational age of the fetus.[369]

The Family Planning Association of Sri Lanka offers counseling to women on the dangers of illegal abortion, but does not offer abortion services.[370]

The joint "Support to Advocacy for Reproductive Health and Gender" project between the government and UNFPA focuses on the prevention of unsafe abortion through improved reproductive health and family planning services.[371]

Sexually Transmissible Infections (STIs) and HIV/AIDS

STIs in Sri Lanka are highly stigmatized; accurate figures regarding their incidence and prevalence are not available because of underreporting. In 2001, a total of 7,345 new cases of STIs were reported to the National STD/AIDS Control Programme from all government STI clinics.[372] International sources of data on Sri Lanka indicate that some 200,000 STIs are contracted every year.[373]

Between 1987 and 2001, the government documented 405 cases of HIV.[374] In 2001, there were 47 new reported cases of HIV and 10 reported deaths from AIDS.[375] Of the new HIV cases, almost half were individuals aged 30–39, and none were in the 10–19 age-group.[376] A National Working Group on HIV Estimates convened by the government estimated that 4,700–7,200 people were living with HIV/AIDS in Sri Lanka by the end of 2001.[377] The government attributes the discrepancy between the reported and estimated cases of HIV/AIDS to underreporting, delays in reporting and underdiagnosis.[378] Available data on the prevalence of HIV/AIDS in Sri Lanka shows that the extensive spread of the virus had not occurred as of 2001.[379]

Heterosexual transmission is the predominant mode of HIV transmission.[380] Mother-to-child transmission, homosexual/bisexual transmission, and transmission through blood transfusions are also reported modes of transmission.[381]

Most of the Sri Lankan women diagnosed with HIV infection are migrant workers in the Middle East who, when home for a visit, underwent mandatory HIV screening as a condition for their return to their jobs overseas.[382]

Relevant laws

There is some specific legislation on STIs. The 1938 Venereal Diseases Ordinance prohibits unauthorized persons from providing treatment to persons infected with a venereal disease.[383] Under the ordinance, the definition of venereal disease includes syphilis, gonorrhea or soft chancre, and any related complication.[384] The definition does not include HIV/AIDS.

There is no specific legislation on HIV/AIDS. However, the penal code makes unlawful, negligent or malicious acts likely to spread the infection of a disease "dangerous to life" punishable with imprisonment, a fine or both.[385] In addition, the 1897 Quarantine and Prevention of Diseases Ordinance deals with the prevention and control of the plague and "any disease of a contagious, infectious, or epidemic nature" in Sri Lanka.[386] The ordinance authorizes the government to "make … revoke or vary" any necessary regulations to comply with the ordinance, including isolating infected persons; removing them from infected localities to places of observation, hospitals or other facilities for medical treatment; and detaining them "until they can be discharged with safety to the public."[387]

Pursuant to the ordinance, the government issued regulations in 1987 that included HIV/AIDS on a list of diseases requiring notification to specified government health officials. The regulations required every medical practitioner attending any person suffering from HIV/AIDS to report the nature of the disease and the patient's name, race, sex, age, and place of residence to the proper authority within 12 hours.[388] In May 2000, the government issued an amended list that omitted HIV/AIDS and notified all institutions of the revision by government circular.[389] Patients' rights and human rights groups had lobbied for this revision, in part because of the stigma attached to those infected with HIV.[390]

No specific legislation prohibits discrimination against persons living with STIs or HIV/AIDS.

Policies for the prevention and treatment of STIs and HIV/AIDS

Government efforts to prevent the spread of STIs and

HIV/AIDS in Sri Lanka have been underway since at least the mid-1980s.[391] In 1985, the government incorporated programs for the prevention and control of HIV/AIDS into its already well-developed STI control program to form the National STD/AIDS Control Program under the Ministry of Health.[392] The general objective of the program is to prevent and control STIs and HIV/AIDS and provide care to infected persons.[393] Its specific objectives are:

- provide care and counseling services for all persons with STIs or HIV/AIDS;
- conduct information, education and communication activities targeting the general public and specific risk groups;
- establish and maintain an effective surveillance system;
- promote the use of condoms in the prevention of STI and HIV infections;
- establish adequate laboratory facilities at central and provincial levels for the diagnosis of STI and HIV infections;
- ensure the safety of blood and blood production by mandatory testing for HIV;
- mobilize public participation through intersectoral and NGO participation;
- institute infection control measures and universal precautions in all medical institutions and in field services; and
- expand the clinical services to primary health care institutions by adopting the syndromic approach to management of STIs.[394]

There is currently no comprehensive national policy on STIs and HIV/AIDS.[395] However, the government has formulated several strategic plans for the prevention and control of STIs and HIV/AIDS in Sri Lanka. The current plan, which covers 2002–2006, emphasizes changing high-risk sexual behaviors among vulnerable groups, given that predominant mode of HIV transmission in Sri Lanka is heterosexual transmission.[396] The plan has the following objectives, each of which is accompanied by a series of proposed interventions:

- to prevent the sexual transmission of HIV;
- to prevent transmission of HIV through blood;
- to prevent mother-to-child transmission of HIV;
- to provide care and support to persons living with HIV/AIDS; and
- to reduce the social and economic impact of HIV/AIDS.[397]

The plan aims to achieve the following targets by 2006:

- 95% of the population will have knowledge of methods to prevent HIV transmission;
- 80% of acts of sexual intercourse between "non-regular partners" will involve the use of condoms;
- 95% of patients with STIs will receive treatment on the basis of the "syndromic management approach";
- all blood donations will be voluntary and remuneration will not be provided;
- all blood donations will be screened for HIV and syphilis;
- 80% of injecting drug users will use clean syringes and needles;
- 90% of pregnant women infected with HIV will receive antiretroviral therapy for the prevention of mother-to-child transmission; and
- all districts will have voluntary counseling and testing services.[398]

The plan aims to decentralize the implementation of prevention and control activities, which will be carried out by provincial- and district-level health authorities.[399]

In addition to these efforts, a draft national HIV/AIDS policy is currently under review.[400] A National Blood Policy has also been formulated and approved by the Cabinet of Ministers.[401]

The Guidelines on Ethical Conduct for Medical and Dental Practitioners Registered with the Sri Lanka Medical Council provide guidance on issues relating to confidentiality for health providers dealing with HIV/AIDS patients. Given that health providers do not currently have to notify authorities about a patient with HIV/AIDS, as they do with certain other diseases, the guidelines state that ordinary legal principles of ethics apply to disclosing information about patients with HIV/AIDS.[402] The guidelines emphasize that particular care is necessary in dealing with the issue of confidentiality because of the severe repercussions such disclosure may have on an HIV/AIDS patient.[403] If a doctor is the family physician for both husband and wife or sexual partners, one of whom is infected with HIV/AIDS, the doctor has an obligation to persuade that individual to disclose his or her HIV status to the other spouse or partner. The doctor may disclose such information him or herself with the patient's consent. If the patient refuses to make the disclosure, the doctor may disclose the patient's status to the spouse or partner after informing the patient, provided that the doctor is the physician for both parties.[404]

NGOs play a vital role in implementing government HIV/AIDS initiatives, in addition to carrying out their own prevention and support activities. The government's strategic plan for 2002–2006 provides for the active participation of the NGO sector in the implementation of public-sector

interventions. The Family Planning Association of Sri Lanka has carried out programs in some refugee camps to educate youth on STIs and HIV/AIDS.[405] The World Bank has helped fund a pilot project at the Kandy Teaching Hospital, located in the Central Province, to provide medication, counseling and information to pregnant women infected with HIV.[406] The aim of the project is the prevention of mother-to-child transmission of the virus.

Regulation of information on STIs and HIV/AIDS

The Venereal Diseases Ordinance restricts the advertisement of venereal disease treatments, remedies and advice, and prescribes penalties for contravention of its provisions.[407] However, print and electronic media are being used to disseminate information and educate people on how to prevent STIs and HIV/AIDS under the National STD/AIDS Control Programme.[408]

C. POPULATION

The annual population growth rate is 1.1%.[409] By 2010, the population is estimated to reach 20.7 million.[410] Women of reproductive age make up 54.6% of the current population.[411]

The country's total fertility rate has steadily declined over the past half century, from 6.0 births per woman in 1950 to 1.9 in 2001.[412] This decline is attributed to a number of factors, including government and NGO provision of family planning services beginning in the 1950s, state-sponsored incentives, women's greater understanding and acceptance of contraceptive methods, and their rising average age at first marriage, due largely to increased female participation in the labor force.[413] As a result of changing fertility and mortality patterns, a significant shift has occurred in the age structure of the population; the proportion of persons of working age has increased and that of young children and youth has declined.[414]

Since the 1950s, the government has adopted a policy of reducing the birth rate by introducing a wide range of family planning services in all regions.[415] To encourage the use of contraceptives, the state provided financial incentives to those who practiced family planning.[416] In 1965, family planning became a national program and was integrated into the maternal and child health program under the Ministry of Health.[417]

Population policy

Objectives

The operative government policy on population is the Population and Reproductive Health Policy.[418] In the policy, the government recognizes that despite declining fertility rates, Sri Lanka persists as "one of the most densely populated countries in the world."[419] The policy aims to "maintain current declining trends in fertility so as to achieve a stable population size at least by the middle of the 21st century."[420] To achieve this goal, the policy outlines several strategies relating to the provision of family planning. (See "Family Planning" for information on specific strategies.)

Current government policy on population favors a two-child family.[421] Noncompliance is not punished.[422]

Implementing agencies

The population division of the Ministry of Health is the main governmental body charged with formulation of population policies.[423] This division serves as the secretariat to the National Coordinating Council on Population, chaired by the secretary of the Ministry of Health, which facilitates the coordination and monitoring of the population and reproductive health program.[424]

Pursuant to the Thirteenth Amendment to the constitution, the provinces have responsibility for implementation of population activities. Although national policies provide guidance and direction to the provinces, the provincial councils may develop and enact their own statutes and plans for the implementation of population-related activities.[425]

Both the central and provincial governments provide funding for population programs.[426] International donors are also important sources of funding in this area. UNFPA is the main international donor.[427] The World Health Organization, World Bank and United Nations Children's Fund (UNICEF) also fund various population activities, including those relating to maternal and child health care, cancer control, HIV/AIDS, and reproductive health.[428]

The Population Division of the Ministry of Health conducts, and has commissioned, policy- and program-oriented research on population and reproductive health issues.[429] Population-related research topics include aging, female migrant workers and violence against women.[430]

III. Legal Status of Women

Women's health and reproductive rights cannot be fully understood without taking into account the legal and social status of women. Laws relating to women's legal status not only reflect societal attitudes that shape the landscape of reproductive rights, they directly impact women's ability to exercise these rights. Issues such as the respect and dignity a woman commands within marriage, her ability to own property and earn an independent income, her level of education,

and her vulnerability to violence affect a woman's ability to make decisions about her reproductive health-care needs and to access the appropriate services. The following section details the nature of women's legal status in Sri Lanka.

A. RIGHTS TO GENDER EQUALITY AND NONDISCRIMINATION

The constitution guarantees the rights to equality, equal protection of the law, and nondiscrimination on grounds of race, religion, language, caste, sex, political opinion, or place of birth, and grants them the status of fundamental rights.[431] The constitution also authorizes the state to make "special provisions … by law, subordinate legislation or executive action" for the advancement of women, children or "disabled groups."[432] The constitution's Directive Principles of State Policy enjoin the state "[to] ensure equality of opportunity to citizens, so that no citizen shall suffer any disability on the grounds of … sex."[433]

In addition to the constitution, a number of laws contain provisions promoting greater gender equality in matters of inheritance, employment, marriage, and citizenship.[434]

RELEVANT LAWS AND POLICIES

- National Plan of Action for Women, 2002–2007
- Women's Charter, 1993
- Citizenship Act, 1948; amended in 2003

Formal institutions and policies

The Ministry of Women's Affairs, statutory bodies created within the ministry, the Women's Bureau of Sri Lanka, and the National Committee on Women are the main institutional mechanisms charged with implementation of policies and programs for the promotion of gender equality.[435]

There are also specific national policies for the advancement of women's rights. The National Plan of Action for Women aims to implement the goals of the Beijing Declaration and Platform for Action. The plan identifies a number of issues of concern with regard to women's rights and sets forth goals, strategies and activities to advance its objectives within the time frame of 2002–2007. It addresses issues including access to education, health care and related issues, and violence against women. (See "Reproductive Health Laws and Policies", "Education" and "Focusing on the Rights of a Special Group: Adolescents" for specific goals, strategies and activities.)

The Women's Charter calls for gender equality and freedom from gender discrimination in recognition of Sri Lanka's obligations under its own constitution and international human rights law, notably CEDAW, although it has no enforcement mechanism. It enjoins the state to take certain measures to ensure women's rights within seven broad areas:

- political and civil rights;
- rights within the family;
- right to education and training;
- right to economic activity and benefits;
- right to health care and nutrition;
- right to protection from social discrimination; and
- right to protection form gender-based violence. (See "Reproductive Health Laws and Policies" and "Economic and Social Rights" for specific strategies.)

The charter provides for the establishment of a 15-member National Committee on Women to monitor progress and achievement of the charter's objectives.[436] Among other functions, the committee is charged with receiving and referring complaints of gender discrimination from the public to the relevant governmental or non-governmental organizations for redress, legal aid or mediation.[437] In May 1999, the committee established a Center for Gender Complaints. The Committee is also authorized to require annual progress reports from relevant governmental authorities, though it has never exercised this power. The committee is currently drafting a law on women's rights to replace the Women's Charter.[438] Legislation is being prepared to convert the committee to a National Commission on Women, a statutory body with much broader proposed powers.

B. CITIZENSHIP

The 1948 Citizenship Act is the primary central legislation on citizenship. The act was amended in 2003 to allow both parents to confer citizenship upon their children. Prior to the amendment, only a father could pass Sri Lankan citizenship to his children.[439] The amendment has retroactive effect, granting the right to Sri Lankan citizenship to all children born after November 15, 1948, even if only the mother is a citizen of Sri Lanka.[440]

Changes to regulations under the act have also been recently approved by the Cabinet of Ministers; these changes permit foreign spouses of Sri Lankan women to obtain citizenship on the same basis as foreign spouses of Sri Lankan men. Previously, foreign spouses of male citizens of Sri Lanka were able to obtain citizenship after meeting a one-year prerequisite of residency in the country, while the citizenship or visa applications of foreign nationals married to female citizens of Sri Lanka were considered on a case-by-case basis.[441]

C. RIGHTS WITHIN MARRIAGE

The body of law relating to marriage consists of the general law, customary law and personal law. Tamils are governed by

the general law in most marriage-related matters, whereas Kandyan Sinhalese can choose to be governed by the general law or their customary laws. Muslims are governed by Muslim personal law.

Marriage laws

The 1907 Marriage Registration Ordinance constitutes the general law on marriage in Sri Lanka. The ordinance applies to marriage between Tamils and between individuals of differing ethic and religious communities.[442] Kandyan Sinhalese may choose to be governed by the general law or Kandyan law.[443] The ordinance does not govern marriages contracted between Muslims.[444]

Pursuant to a 1995 amendment to the ordinance, the minimum age of marriage was raised to 18 for both men and women.[445] A subsequent provision, however, authorizes parents to consent to a marriage involving a minor.[446] If a parent unreasonably withholds consent, a court may authorize the marriage.[447] Courts have held, however, that a parent's refusal to give consent will only be overruled if the court is satisfied that the refusal is without cause and contrary to the interest of the minor.[448]

RELEVANT LAWS AND POLICIES

- Marriage Registration Ordinance, 1907; and Marriage Registration (Amendment) Act, 1995
- Kandyan Marriage and Divorce Act, 1952; and Kandyan Marriage and Divorce (Amendment) Act, 1995
- Muslim Marriage and Divorce Act, 1951
- Civil Procedure Code, 1889
- Maintenance Act, 1999
- Adoption of Children Ordinance, 1941; amended in 1992

UP AND COMING LEGISLATION:

- Matrimonial Causes Act

Despite the requirement of parental consent for a minor to marry, the ordinance provides that lack of proof of such consent does not render invalid marriages registered under the ordinance.[449] This exception does not apply to customary marriages because such marriages would not have satisfied the registration requirement.[450] However, courts have held in cases of unregistered marriages as well that want of consent would not invalidate such a marriage after it had been consummated.[451]

The ordinance renders marriage between two individuals within prohibited degrees of kinship void.[452] Marriage or cohabitation between such parties is punishable with imprisonment.[453] Provisions in the penal code regarding incest further enhance the penalty for such marriages.[454]

The ordinance prohibits polygamy.[455]

Registration of marriages is not mandatory under the ordinance. An entry made in the marriage register is simply the "best evidence" of the marriage.[456] Thus, customary marriages, including those solemnized according to Hindu, Buddhist and Christian rites and rituals, have been accepted as valid despite the fact that they are unregistered.[457]

The law recognizes a rebuttable presumption of marriage by habit and repute. Thus, upon proof that a man and woman have cohabited as husband and wife, the law presumes that they are living together in a valid marriage, unless the contrary is proved.[458] Courts have emphasized that cohabitation does not conclusively prove the fact of marriage, thus emphasizing the rebuttable nature of the presumption.[459]

Laws governing Kandyan Sinhalese

Persons subject to Kandyan law may be married under the Marriage Registration Ordinance or the 1952 Kandyan Marriage and Divorce Act.[460]

Pursuant to a 1995 amendment to the Kandyan Marriage and Divorce Act, the minimum age of marriage was raised to 18 for both sexes.[461] Marriages in violation of this age requirement are void unless the parties cohabit as husband and wife for one year after attaining the legal age, or if a child is born within marriage before either party has attained the legal age.[462] The act prohibits marriage between certain closely related individuals.[463] It renders a second marriage invalid if the first is not legally dissolved.[464] As opposed to the general law's lack of a registration requirement, registration is a crucial aspect of the act.[465]

The consequences flowing from a Kandyan marriage depend on whether the marriage is contracted in *diga* or *binna*. In a *diga* marriage, which derives from a patriarchal system, the bridegroom brings his bride to his own house or that of his parents, and she becomes a member of his family for the duration of the marriage.[466] In a *binna* marriage, which is perhaps older in origin and derives from a matriarchal system, the husband is brought to the house of his wife or her family.[467] Whether the marriage is *binna* or *diga* depends on the intention of the parties. A marriage is presumed to be *diga* if there is no evidence as to its character.[468]

The act specifies that a valid Kandyan marriage renders legitimate any children born to the parties prior to such a marriage.[469] This means that any premarital offspring are automatically legitimized if the parents subsequently enter into a valid Kandyan marriage. Children so legitimized are entitled to the same rights as those born subsequent to a marriage.[470]

Laws governing Muslims

The Muslim Marriage and Divorce Act governs marriage between Muslim parties. The act specifies some requirements for a valid marriage; those requirements left unspecified are governed by the law of the sect to which the parties belong.[471]

The act does not specify a minimum age for valid marriage. However, where a marriage involves a girl below age 12, the act requires consent of the *Quazi* (similar to a judicial officer, though legal training is not required) to register the marriage.[472] Also, under Islamic law, a minor girl has the right to repudiate the marriage upon attaining puberty.[473] Although courts have recognized this right, the issue of whether it is an unconditional right or available only when the marriage can be proved to be against the child's interest remains open to debate.[474] Furthermore, under the penal code, sexual intercourse with one's wife who is under age 12 constitutes rape, though this provision has not been consistently applied by the courts.[475]

In Muslim law, prohibited relationships in marriage include affinity, consanguinity and fosterage (i.e., if a woman has suckled another's child, that child cannot contract a marriage with the woman or her natural children).[476]

The Muslim Marriage and Divorce Act requires the consent of a *wali* (guardian) to the marriage for women of the *Shafi* sect, though the *Quazi* may dispense with the consent requirement if it is unreasonably withheld.[477] The act also requires that the *wali* communicate the bride's consent to the marriage to the *Quazi*, though it does not provide for a mechanism to actually manifest such consent.[478]

A woman of the *Hanafi* sect is permitted to enter into a marriage contract on her own, as she is freed from guardianship upon attaining puberty.[479]

Polygamy is permitted under the Muslim Marriage and Divorce Act. The act imposes an obligation on the husband to give notice to the *Quazi* of his intention to contract a subsequent marriage.[480] Courts have stressed that co-wives must receive equal treatment in relation to material goods, though the *Quazi* have no duty to determine the actual ability of the husband to provide for his wives equally and justly.[481]

In an attempt to curb the practice of non-Muslim males converting to Islam merely to circumvent stringent divorce laws under the general law, a 1998 landmark Supreme Court decision held that a second marriage upon such conversion would be void, unless the first marriage was legally dissolved.[482]

Non-registration of a marriage does not affect validity under the Muslim Marriage and Divorce Act.[483] However, the act does impose a duty to register a marriage on specified persons, the failure of which constitutes an offense.[484]

Laws governing Tamils

The Marriage Registration Ordinance governs marriage among Tamils.

Divorce laws

The Marriage Registration Ordinance and the Civil Procedure Code constitute the general law on divorce.[485] The provisions of the ordinance firmly establish divorce as fault-based and case law has reaffirmed this concept.

Grounds for divorce under the ordinance are the following:

- adultery;
- malicious desertion; and
- incurable impotence at the time of marriage.[486]

Cruelty is not a ground for divorce, although it may be a factor in determining malicious desertion.[487] Physical ill-treatment *per se* is also not a ground for divorce under the general law, but it is a cause for legal separation.[488]

In cases of adultery, courts have required proof beyond reasonable doubt as the standard of proof; they also have required the specification of the date and place of the act.[489] An aggrieved spouse may recover damages from the person with whom adultery is committed.[490]

Malicious desertion has been judicially defined as "the deliberate and unconscientious, definite and final repudiation of the obligations of the marriage state … and it clearly implies something in the nature of a wicked mind."[491] The intent to terminate the marital relationship and the actual termination of cohabitation are both necessary elements. The law also recognizes constructive desertion, whereby the innocent spouse is forced to leave because of the behavior of the other spouse.

In addition to the grounds for divorce under the Marriage Registration Ordinance, the Civil Procedure Code permits either spouse to petition for dissolution of marriage two years from the date of a decree of judicial separation or, notwithstanding such decree, where there has been a separation *a mensa et thoro* (from bed and board) for seven years.[492] However, courts have not been consistent in applying this provision, and the current law holds that separation alone is an insufficient ground for divorce.[493]

The general law on divorce as it stands is thus firmly fault based. However, the law is currently under scrutiny and a draft Matrimonial Causes Act, which explicitly introduces irretrievable breakdown of marriage as a new ground of divorce, is under consideration.

Laws governing Kandyan Sinhalese

The Kandyan Marriage and Divorce Act governs divorce among only those Kandyans married under the act. The act recognizes some differing grounds of divorce for men and women. Divorce may be sought on the following grounds:

- adultery by the wife;
- adultery by the husband, coupled with incest or gross cruelty;
- continued and complete desertion for two years;
- inability to live together, of which actual separation from bed and board for one year is the test; and
- mutual consent.[494]

Under the act, an application for divorce is made to the district registrar, who may use discretion in granting or refusing to grant the divorce.[495]

The Marriage Registration Ordinance governs divorce between Kandyans who choose to be married under the general law.

Laws governing Muslims

Muslim personal law recognizes different grounds of divorce for the husband and the wife; spouses do not have equal rights to divorce. It also recognizes grounds for divorce on fault- and non-fault–based grounds. The rights and duties of the parties are determined according to the sect to which the person belongs.[496]

Divorce by the husband is known as *talak*. This is the "repudiation of the marital tie by the unilateral act of the husband," by making a pronouncement that the marriage is dissolved.[497] The husband may pronounce *talak* without following any prescribed judicial procedures.[498] Furthermore, the pronouncement need not be made in the presence of or communicated to the wife.[499] The board of *Quazis* and the Supreme Court share the view that pronouncement of *talak* need not be communicated to the wife.[500]

The Muslim Marriage and Divorce Act specifies the procedure in the event of divorce by the husband. These rules are comparable to the most progressive legislation on *talak* in the Muslim world.[501] A significant feature of the procedure is the duty of the *Quazi*, who receives notice of the intention to pronounce *talak*, to attempt to reconcile the parties with the assistance of relatives and elders of the community.[502]

Divorce by the wife is known as *fasah* divorce in Muslim law, and although the term is not used in Sri Lanka, the Muslim Marriage and Divorce Act recognizes the right of the wife to divorce on the grounds identified with *fasah* divorce.[503] The availability and scope of *fasah* divorce depends on the sect to which the parties belong.[504] *Maliki* law, which applies to the *Maliki* sect, is the most liberal in this regard.[505] The grounds available to the wife for *fasah* divorce include:

- failure or inability of the husband to provide support;
- malicious desertion;
- cruelty and ill-treatment;
- "continued dissension and quarrels";
- husband's leprosy;
- husband's insanity; and
- impotence.[506]

Divorce on the ground of ill-treatment includes mental ill-treatment as well as slanderous and false accusations of adultery.[507] Courts have also noted that in assessing cruelty, factors such as social conditions and actual life circumstances will be considered.[508] The most common grounds upon which *fasah* divorce is sought are failure to maintain and desertion.[509]

In *fasah* divorce, the *Quazi* must serve notice of the hearing for divorce on the husband.[510] The wife's evidence must be corroborated by at least two witnesses, the failure of which may be fatal to the case.[511] Divorce is granted only after the maximum efforts at reconciliation have failed.[512]

Other forms of divorce under Muslim personal law include *khula* and *mubarat*. The former is initiated by the wife and generally involves a monetary payment by the wife to the husband for her release from the marriage; the return of the woman's *mahr* is usually considered sufficient.[513] The *mubarat* form of divorce is based on mutual consent and does not require such payment to the husband.

A woman who has been falsely accused of adultery by her husband has the right to a form of divorce called *lian*. However, if at a hearing the husband rescinds his statement, *lian* is no longer available.[514]

Laws governing Tamils

The Marriage Registration Ordinance and the Civil Procedure Code apply to Tamils in matters of divorce.[515]

Judicial separation

The Civil Procedure Code constitutes the general law on judicial separation.[516] The code provides that either party may petition for separation "on any ground on which by the law applicable to Sri Lanka such separation may be granted."[517] Thus, Roman-Dutch law grounds for separation are applicable, the essential feature of which is proof that further cohabitation has become dangerous or intolerable due to unlawful conduct by the defendant.[518]

Laws governing Kandyan Sinhalese

The Kandyan Marriage and Divorce Act does not include judicial separation as a matrimonial remedy. However, Kandyan Sinhalese married under the general law may seek judicial separation under the Civil Procedure Code.

Laws governing Muslims

The concept of judicial separation does not exist under Muslim law.[519]

Laws governing Tamils

The Civil Procedure Code applies to Tamils in matters of judicial separation.[520]

Maintenance and support laws

The 1999 Maintenance Act is the general law on maintenance during marriage. Instituting proceedings under the act does not preclude a person from also initiating a civil action for maintenance, in which case common law principles of maintenance would apply.[521]

The act requires any spouse with sufficient means to maintain the other spouse, if such individual is unable to maintain him or herself.[522] The law in place prior to the act imposed a duty of maintenance only on a husband.[523] An order for maintenance will not be awarded if the applicant spouse is living in adultery or both spouses are living separately by mutual consent.[524] This constitutes a departure from the common law, which provides that the obligation of support continues during a period of consensual separation.[525] In cases where a wife is precluded from receiving an award for maintenance under the Maintenance Act, she may still bring a civil action to enforce her husband's common law obligation of support for her personal necessaries.[526]

The Maintenance Act also imposes a duty on a parent to provide for the maintenance of all minor children, needy adult offspring (ages 18–25) and disabled offspring.[527]

The Civil Procedure Code recognizes the right of either spouse to enforce the other's obligation of support while an action for divorce is pending.[528] The primary objective of the action is to enable the spouse in need to live without hardship during the litigation, and proceed with the action.[529] The applicant-spouse need only prove financial need and the other spouse's ability to provide the required support.[530]

On the dissolution of marriage, courts have broad discretionary powers regarding maintenance awards under the Civil Procedure Code.[531] A court may issue any order it thinks fit with regard to conveyances of property or monetary payments of maintenance for the benefit of either spouse.[532]

Laws governing Kandyan Sinhalese

The Maintenance Act applies to Kandyans in matters of maintenance obligations during marriage.[533] The Kandyan Marriage and Divorce Act includes provisions on maintenance in cases of divorce. The act provides that a district registrar, in granting the dissolution of a marriage, may order the husband to pay a certain amount of money or provide other support for the maintenance of his wife, children or both.[534] The act does not stipulate what factors the registrar should take into account in making the award, although such factors generally include the husband's ability to pay, the wife's needs, the degree of fault attributed to each party, the duration of the marriage, and the couple's standard of living.[535]

Laws governing Muslims

The Muslim Marriage and Divorce Act provides that any claim for maintenance by or on behalf of a wife, legitimate child or illegitimate child (where both parents are Muslims) falls within the exclusive jurisdiction of the *Quazi*.[536] The act does not specify the principles pertaining to maintenance; instead, it provides that the law of the sect to which the parties belong should apply.[537]

A Muslim woman's right to maintenance during marriage is derived from the concept of *nafaqa*, which encompasses the provision of basic needs such as food, clothing and accommodation to the wife.[538] In contrast to the Maintenance Act, the husband has the primary obligation of providing support and a wife's own financial means are irrelevant in determining her claim for maintenance.[539]

Maintenance after divorce is not recognized under Muslim personal law. However, the Muslim Marriage and Divorce Act provides three situations in which a divorced wife may claim maintenance:

- until registration of the divorce;
- during *iddat* (the period of time that a divorced wife must remain unmarried); and
- if such woman is pregnant at the time of registration of the divorce, until she delivers the child.[540]

Laws governing Tamils

No data is available on maintenance and support laws governing Tamils.

Custody and adoption laws

The general law regarding custody in Sri Lanka has received little legislative attention. Those laws that do exist do not address the substantive rights of parents and deal primarily with the procedural aspects of custody cases.[541]

The principles of custody are thus governed by the residuary Roman-Dutch law. The predominant feature of the common law is the preferential custodial right given to the father, which may be denied only in instances of danger to the "life, health and morals" of the children.[542] A mother who seeks custody therefore has the onus of displacing the father's right.[543] It should be noted that the general law principles of fault-based divorce have carried over into the area of custody, tipping the scale in favor of the innocent spouse.[544]

However, case law has reiterated that the paramount concern in determining custody is the child's welfare.[545] There is lack of guidance, statutory or otherwise, with regard to what criteria should be considered in determining the best interests of the child. Courts have in the past emphasized the "Asiatic" value system, giving primacy to maintaining family links over enhancing the mental health of the child.[546] Recently, however, courts have also considered the child's sense of security as a factor.[547]

The general law on adoption is the 1941 Adoption of

Children Ordinance, which provides that adoption will only be permitted for the "welfare of the child."[548] The ordinance also takes into consideration the adoptee's wishes according to the child's age and level of understanding.[549] The ordinance was amended in 1992 to put an end to the commercialization of adoption by intermediaries who facilitate the adoption of young Sri Lankan children by foreign parents from high-income countries.[550] The amendments prohibit giving or receiving payments as consideration for an adoption, and provide that a child may be considered for adoption by a foreign family only if no local family is available to adopt the child.[551]

Laws governing Kandyan Sinhalese

No data is available on custody and adoption laws governing Kandyan Sinhalese.

Laws governing Muslims

Under Muslim personal law, the mother has preferential custodial rights to minor children. The duration of this right differs among sects and is also affected by the gender and age of the child in question. Under *Shafi* law, a female child remains with the mother until she marries, whereas under *Hanafi* law, custody is with the mother only until the girl reaches puberty.[552]

Custody of male children in both *Shafi* and *Hanafi* sects is with the mother until the child reaches age seven.[553] Under *Shafi* law, the boy may choose which parent to live with after age seven until puberty.[554] Under *Hanafi* law, custody automatically passes to the father after the age of seven.[555]

Upon the mother's death or a determination of her unsuitability, custody devolves to the maternal relatives.[556]

Despite a mother's preferential custodial rights, a father's guardianship rights include the rights to visit the child, supervise upbringing, act as a marriage guardian, and control and manage the child's property.[557]

A mother may lose her preferential rights in special circumstances, which include the following events:

- her marriage to a complete stranger to her child, unless the man she marries is related to the child within certain close degrees of kinship;
- her misconduct, cruelty toward the child or both, which have been interpreted to include physical and moral harm;
- her apostasy or conversion of faith; or
- her change of residence, which prevents the father from supervising the children.[558]

Despite the jurisdiction of *Quazi* courts in the Muslim legal system, ordinary courts have exercised jurisdiction in custody matters. In this way, they have modified some principles of Muslim law on the basis of the "welfare of the child" standard derived from the general law.[559] The Supreme Court has held that although it would consider preferential rights in customary laws, such rights are not conclusive in custody determinations.[560] In departing from Muslim law, courts have recognized exceptions, based on the welfare of the child, to the principle that the mother loses custody upon remarriage to a nonrelative of the child.[561] These exceptions are:

- where it is in the interests of the child that he or she remain with the mother;
- where remarriage was motivated by the security and comfort of the minor; and
- where the father does not claim the child after the woman's second marriage.

Laws governing Tamils

No data is available on custody and adoption laws governing Tamils.

D. ECONOMIC AND SOCIAL RIGHTS

Property laws

Roman-Dutch law forms the bedrock of the general law on property in Sri Lanka. The 1923 Married Women's Property Ordinance constitutes the general law on matrimonial property rights. Under the ordinance, a married woman is capable of holding, acquiring and disposing of any movable or immovable property or of contracting as if she were a *femme sole*, without the consent or intervention of her husband.[562] This applies to all property belonging to her at the time of marriage and property acquired or devolved to her after marriage.[563] She also has the same remedies and redress by way of criminal proceedings for the protection and security of her separate property.[564]

The 1876 Matrimonial Rights and Inheritance Ordinance constitutes the general law on inheritance rights. The ordinance provides for equal rights to inheritance for male and female spouses: upon the death of either spouse, the surviving spouse inherits half of the deceased spouse's property.[565]

The extent of the general law's application has been limited by legislation, judicial decisions and the system of customary laws that are operative in the island. The matrimonial property and inheritance rights of Kandyan Sinhalese and Tamils are governed by their own systems. Muslims are governed by Muslim personal law.

Laws governing Kandyan Sinhalese

The 1938 Kandyan Law Ordinance as amended, commonly known as the Kandyan Law Declaration and Amendment Ordinance, applies to Kandyan Sinhalese in property matters.[566] Women do not have equal intestate rights with men under Kandyan law.[567]

Under the ordinance, legitimate sons and daughters inherit their parents' property in equal shares, although a daughter

who marries in *diga* after the death of her father must transfer any immovable property she inherited from him to her brothers or *binna*-married sisters, upon their request for such property.[568] (See "Marriage laws" for information on *diga* and *binna* forms of marriage.)

Laws governing Muslims

Under Muslim law, women are capable of independently acquiring, holding and dealing with property.[569]

The 1931 Muslim Intestate Succession Ordinance applies to Muslims in inheritance matters. The ordinance provides that the applicable law is that of the sect to which the party belongs.[570] With respect to almost all sects, female heirs inherit a lesser share than male heirs of the same degree of relationship to the decedent.[571] A widow inherits half the portion that a widower would inherit.[572] The mother of a decedent is entitled to half of the share of the father of the decedent.[573] Although daughters are not excluded from inheritance, their rights are diminished when sons are also present to inherit the property.[574]

RELEVANT LAWS AND POLICIES

- Married Women's Property Ordinance, 1923
- Matrimonial Rights and Inheritance Ordinance, 1876
- Kandyan Law Declaration and Amendment Ordinance, 1938
- Muslim Intestate Succession Ordinance, 1931
- Matrimonial Rights and Inheritance (Jaffna) Ordinance, 1911
- Land Development Ordinance, 1935

Laws governing Tamils

The 1911 Matrimonial Rights and Inheritance (Jaffna) Ordinance applies to Tamils in property matters.[575]

Under the ordinance, movable or immovable property a woman acquires during or before marriage remains her separate property after marriage.[576] A woman has the power to deal with her movable property during her lifetime without the consent of her husband. However, a married woman may deal with or dispose of any immovable property to which she is entitled at the time of marriage or acquires as her separate estate during marriage only with the written consent of her husband, except in the case of last wills.[577] The ordinance provides several instances where such consent could be waived, including:

- where the wife has been deserted by her husband;
- consent is withheld unreasonably; or
- it is in the interests of the wife, her children or both to waive consent.[578]

Property acquired by either spouse during marriage using the couple's shared funds or estate is called *thediatheddam*.[579] The underlying concept of *thediatheddam* is that both spouses are equally entitled to the property from the moment of acquisition.[580] An undivided half-share of *thediatheddam* vests automatically in the non-acquiring spouse.[581] Although a husband cannot donate the wife's share of *thediatheddam* under any circumstances, he may sell or mortgage it for consideration.[582] If either spouse dies intestate, the surviving spouse's share of *thediatheddam* remains his or her property.[583] Under an amendment to the ordinance, half of the deceased's share devolves to the surviving spouse, resulting in ownership of three-fourths of *thediatheddam* by the surviving spouse.[584] The other half of the deceased's share devolves to his or her heirs.

The ordinance provides that Tesawalamai law ceases to apply to a Tamil woman during the course of her marriage to a foreign man, but the law applies to both husband and wife in cases of marriage between a Tamil man and a foreign woman.[585]

Rights to agricultural land

The 1935 Land Development Ordinance as amended provides for the distribution of land to landless farmers and enables such farmers to ultimately acquire absolute title to land initially granted to them under a permit.[586]

The ordinance entitles the surviving spouse of a deceased permit holder to succeed to the alienated land and possess it under the terms and conditions of the permit.[587] The surviving spouse has this right even if she or he has not been nominated by the original permit-holder to be the successor, provided that she or he does not remarry.[588] Upon the remarriage of a spouse who was not nominated as the successor, the land devolves to the person who was nominated by the deceased or, if no person has been nominated, according to the third schedule of the ordinance.[589] The third schedule of the ordinance, which lists the order of inheritance, gives precedence to the male heir over the corresponding female heir.[590]

Draft amendments to discriminatory provisions in the Land Development Ordinance are currently being considered.[591]

Women's exclusive property

No data is available on laws governing women's exclusive property in Sri Lanka.

Labor and employment

Women's labor force participation rate is 35.9%, nearly half the rate for men.[592]

However, women's employment rates are increasing.[593] The manufacturing and service sectors are the largest source of female employment.[594] About 70% of workers in factories

overall are women, mostly in semiskilled and unskilled positions; moreover, some 90% of garment factory workers are women.[595] More than a quarter of female workers are employed in the informal sector as casual laborers, agricultural workers and workers in home-based industries.[596] Women also constitute 60% of Sri Lankans who obtain employment abroad, where the demand for Sri Lankan labor is largely for unskilled workers, particularly domestic workers.[597]

The constitution guarantees the right of every citizen to engage individually or in association in "any lawful occupation, profession, trade, business or enterprise."[598] Other related constitutionally protected rights include those to freedom of association and freedom to form and join a trade union.[599]

There are various laws that provide for paid maternity leave and other maternity benefits to female employees. The Establishments Code stipulates conditions of maternity leave for employees in the public sector.[600] Pursuant to government regulations passed in 1992 and amended in 1997, public-sector female employees are entitled to a 12-week maternity leave irrespective of marital status, cause of pregnancy or duration of employment.[601] Maternity benefits include two daily half-hour nursing breaks for a six-month period. Maternity leave is available for permanent, seasonal and part-time female workers in the public sector.

Two separate laws govern maternity benefits for female workers in the private sector. The 1957 Shop and Office Employees (Regulation of Employment and Remuneration) Act applies to workers in shops and offices and permits a 12-week maternity leave for the first two pregnancies and a six-week leave for subsequent pregnancies.[602] The 1939 Maternity Benefits Ordinance provides for similar leave, but applies to female workers in any "trade," excluding employees covered under the Shop and Office Employees (Regulation of Employment and Remuneration) Act and "those whose employment is of a casual nature."[603] The ordinance also provides for nursing breaks and the establishment of crèches for female workers with children under age five.[604] Both laws prohibit employers from terminating their female employees on the basis of pregnancy, confinement or any related illness.[605] Employers may also not give notice of termination to a woman while she is on maternity leave.[606]

RELEVANT LAWS AND POLICIES

- Establishments Code
- Shop and Office Employees (Regulation of Employment and Remuneration) Act, 1957
- Maternity Benefits Ordinance, 1939
- Mines (Prohibition of Female Labour Underground) Ordinance, 1937
- Factories Ordinance, 1942; and Factories (Amendment) Act, 2002
- Employment of Women, Young Persons and Children Act, 1956; and Employment of Women, Young Persons and Children, the Factories and the Shop and Office Employees (Regulation of Employment and Remuneration) (Amendment) Act, 1984
- Women's Charter, 1993

The Maternity Benefits Ordinance allows for employers in the estate sector to arrange for the provision of "alternative maternity benefits" to their female workers.[607] Women who refuse to accept the alternative benefits are not entitled to receive the standard benefits provided under the ordinance.[608]

Studies have revealed varying degrees of compliance with provisions on maternity benefits, with some showing significant noncompliance.[609] However, the government maintains that labor inspections have failed to reveal noncompliance and that it has not received complaints from any person.[610]

Certain labor legislation excludes or restricts women from some types of employment. Under the 1937 Mines (Prohibition of Female Labour Underground) Ordinance, women are excluded from working in underground mines, with some exceptions.[611] The 1942 Factories Ordinance was recently amended to increase the number of overtime hours women and young persons may work; however, such employment may be prohibited or restricted "if it appears that such overtime employment will prejudicially affect the health of such women or young person."[612] Until amendments were made in 1984 to the 1956 Employment of Women, Young Persons and Children Act and the Shop and Office Employees (Regulation of Employment and Remuneration) Act, women were prohibited from working at night, subject to certain exceptions.[613] Under the amended acts, the prohibition was lifted.[614]

The Women's Charter calls for women's equality in employment-related matters, both in the formal and informal sectors. The charter enjoins the state to take "appropriate measures" to ensure women's equal rights to:

- economic activities for financial benefits;
- opportunities in employment in the public, private and informal sectors at all levels of employment without gender-based discrimination in recruitment, placement, promotions, conditions of service, and job security;
- remuneration, including benefits;
- treatment with respect to the value of their work and in evaluating the quality of their work;
- social security, particularly in cases of retirement,

unemployment, sickness, old age, and other incapacity to work;
- leave and re-entry after a period of leave for child care and fulfillment of family obligations or any other reasons recognized by law;
- protection of health and safety in working conditions devoid of all health hazards, including the provision of safe and protective equipment in workplaces; and
- access to a healthy working environment, including safe drinking water, adequate sanitary facilities, and basic medical and welfare facilities.[615]

The charter also recognizes the problem of employment discrimination against women based on marriage or maternity. It calls upon the state to ensure women's *de facto* right to work through the following measures:
- ensure that the granting and enjoyment of maternity leave and benefits is considered a fulfillment of parental and community responsibility;
- work toward the granting of parental leave;
- encourage and implement legal provisions on maternity leave with pay or comparable social benefits without loss of existing or current employment, seniority or social allowances;
- make provisions for breast-feeding;
- prohibit and impose sanctions for dismissal on the grounds of marriage, pregnancy or maternity leave, and discrimination in dismissals based on marital status;
- encourage and implement legal provisions on necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of child care facilities;
- ensure whenever possible that both spouses are entitled to work in the same geographical location; and
- prohibit the employment of women during pregnancy in types of work proven to be harmful to them and the unborn child.[616]

The charter also calls for a minimum age for employment of 15 years and protections for migrant and industrial workers.[617] It also enjoins the state to ensure that employers directly pay a woman her salary and other benefits.[618]

Access to credit

There are no laws that prohibit financial institutions from granting credit to women. According to such institutions, gender is not a criterion for granting loans and women are not barred from existing credit schemes.[619] However, women often lack the collateral, namely land title, for obtaining credit because of land alienation policies that favor male heads of households.[620] In the case of married women governed by Tesawalamai law, banks sometimes require spousal consent before granting credit.[621]

In order to promote women's rights to economic activity and benefits, the Women's Charter enjoins the state to:
- ensure equal access to resources such as agricultural credit and loans, other forms of credit, marketing facilities, and extension services; and
- eliminate discrimination against women in other areas of economic and social life to ensure the same rights to women and men, in particular the right to bank loans, mortgages and other forms of financial credit.[622]

RELEVANT LAWS AND POLICIES
- Women's Charter, 1993
- National Plan of Action for Women, 2002–2007

As part of a national poverty-reduction program known as Samurdhi, microcredit and other financial services are provided to low-income individuals through Samurdhi Banking Societies.[623] By the end of 2001, 970 such societies had been set up in 278 divisional secretariat divisions.[624] Women make up a large number of the beneficiaries of this program.[625]

Education

The overall literacy rate in Sri Lanka is almost 92%.[626] Literacy rates by gender in 1996 were about 89% among women, compared with about 94% among men, with little variation by residence in the urban or rural sector.[627] However, the literacy rate among women in the estate sector was significantly lower, at about 67%.[628] Only 7% of women and 6% of men have received at least 12 years of schooling, and about 10% of women and 6% of men have not received any schooling.[629]

Although the fundamental rights guaranteed in the constitution do not include a right to education, state policy since 1945 has been to provide free primary, secondary and university education to all citizens.[630] According to the constitution's Directive Principles of State Policy, "the complete eradication of illiteracy and the assurance to all persons of the right to universal and equal access to education at all levels" are among the objectives of a "democratic socialist society," which the government pledges to establish.[631]

The Women's Charter enjoins the government to take measures to ensure males and females equal access to the following:
- the same educational opportunities in pre-schools

and primary, secondary, tertiary, technical, vocational and professional education, including co-educational, non-formal and continuing education, and training and extension programs;
- 10 years of compulsory education;
- the same opportunities to benefit from scholarships and study grants;
- the same curricula, examinations and, certification procedures;
- teaching staff with qualifications of the same standard and facilities in schools and training programs;
- equipment of the same quality;
- the same opportunities to participate actively in physical and aesthetic education; and
- career and vocational guidance and counseling programs.[632]

The charter also addresses the need to eliminate gender stereotyping in educational material.[633]

The National Plan of Action for Women also identifies several objectives relating to women and education. They include the following:

- equal access to all technical and, vocational, training programs and to skills in demand in the labor market;
- equal access to early childhood centers for parents who need such services; and
- reduction in female illiteracy countrywide and its elimination among the population below age 65.[634]

E. RIGHT TO PHYSICAL INTEGRITY

Incidents of violence against women have been on the rise over the past few years throughout the country, although there is a lack of systematic data collection in this area.[635] According to reports of incidents of violence against women in the conflict areas of the north and east, women and young girls have been raped by government security forces at checkpoints in several instances.[636] During the first half of 2001, the police reported a total of 36 rape cases, five of which involved security personnel.[637] Widespread protests took place in response to the gang rape of a 28-year-old Tamil woman in Colombo by police and army personnel at a security checkpoint. Another gang rape involved two women who were arrested and raped repeatedly by naval and police personnel in Mannar.[638]

Rape

Amendments to the penal code in 1995 radically changed provisions relating to rape and other forms of gender-based violence. As amended, the code defines rape as sexual intercourse between a man and woman under several specified circumstances; penetration is sufficient to constitute an act of sexual intercourse.[639] Sexual intercourse is considered rape when it occurs in the following circumstances:

- without the woman's consent, where such woman is the man's wife and she is judicially separated from him;
- with the woman's consent, while she was in lawful or unlawful detention or when her consent was obtained by use of force or intimidation, by threat of detention or by putting her in fear of death or hurt;
- with the woman's consent, where her consent was obtained when she was of unsound mind or in a state of intoxication induced by alcohol or drugs administered to her by the man or some other person;
- with the woman's consent, where the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is, or believes herself to be, lawfully married; or
- with or without the woman's consent when she is under age 16, unless she is the man's wife, is not judicially separated from him, and is over age 12.[640]

For a man to be accused of raping his wife, the couple must be judicially separated by court order. Living separately as a result of a breakdown in the marriage does not constitute the necessary separation. Where the spouses cohabit, the husband may not be accused of rape.[641]

The exception to statutory rape when the girl is the man's wife, above the age of 12 and not judicially separated from him was designed to cater to the views of a strong Muslim lobby at the time the 1995 amendments were introduced. Muslim law does not recognize a minimum age of marriage and the Muslim lobby was concerned that the statutory rape provision would preclude Muslim marriages where the girl was under the age of 16.[642]

Except in cases of statutory rape, the prosecution has the burden of proving beyond a reasonable doubt both the act of nonconsensual sexual intercourse and the defendant's intent to commit the act with knowledge of, or reckless or willful blindness to, the woman's lack of consent.[643] Physical evidence of struggle or resistance is not essential to prove that sexual intercourse took place without consent.[644]

In addition to imprisonment and a fine as punishment for rape, those convicted must also pay compensation of an amount determined by the court to the victim.[645] The code enhances punishment for custodial rape; rape involving a woman who is pregnant, under age 18, or mentally or physically disabled; gang rape; and rape of a woman under age 16 who is too closely related to the man (i.e., her relationship to him is within the prohibited degrees of kinship).[646]

Incest

The penal code criminalizes incest, defined as an act of sexual intercourse between persons who are related within certain degrees.[647] Sexual intercourse is prohibited between parents/grandparents and their children; brothers and sisters; aunts/uncles and nieces/nephews; and some in-laws.[648] Punishment ranges from imprisonment of 7 to 20 years and a fine.[649] Attempted incest is punishable with up to two years' imprisonment.[650]

Cases of incest may also be prosecuted under the Marriage Registration Ordinance, which criminalizes marriage or cohabitation between parties within certain prohibited degrees of relationship.[651] However, attempts for prosecution under the ordinance have not been successful. In *Dole v. Romanis Appu*, a man was charged with incest with his 15-year-old daughter, who gave birth to a child as a result of the relationship.[652] On appeal of the defendant's conviction by the magistrate judge, the Supreme Court found that the victim's evidence had not been corroborated by any independent source and acquitted the defendant.[653] The court likened the victim's testimony to the "uncorroborated evidence of an accomplice."[654] A similar verdict was reached in *Benedict Perera v. Siriwardena*, where a man was charged under the Marriage Registration Ordinance with incest with his stepsister's 14-year-old daughter.[655]

RELEVANT LAWS AND POLICIES

- Penal Code, 1883; and Penal Code (Amendment) Act, 1995
- Marriage Registration Ordinance, 1907
- Prohibition of Ragging and other Forms of Violence in Educational Institutions Act, 1998
- Women's Charter, 1993

UP AND COMING LEGISLATION:

- Law on Domestic Violence

Domestic violence

There is no separate legislation on domestic violence. However, acts of domestic violence may be prosecuted under provisions of criminal and civil law.

Under the penal code, provisions relating to murder, miscarriage, hurt, wrongful confinement, assault, sexual harassment, rape or grave sexual abuse, and criminal intimidation may be invoked to prosecute acts of domestic violence.[656]

Under the civil law, a victim may bring an action for injuria (loss of dignity) in district court. This is a personal action to recover damages for medical expenses, loss of earnings and "pain and suffering," among other things.[657] A victim may also seek an injunction against a perpetrator of domestic violence.

A proposed draft law, modeled largely on the South African Domestic Violence Act of 1998 and model legislation proposed by the UN Special Rapporteur on Violence against Women, defines domestic violence broadly; its definition covers physical, sexual, psychological, and economic abuse in a range of interpersonal relationships.[658] The relationships encompassed by the draft law, which offers broad remedies, include those between husband and wife, same- sex and unmarried persons, former spouses, parent and child, and extended family members living in the same household or sharing the same residence. Household workers are not included.

The draft law provides for broad remedies such as interim and permanent protection orders; emergency monetary relief and compensation; and an order of arrest where the protection order is breached by the abuser.[659] A magistrate may not refuse to issue a protection order on the basis that only a single threat or act of violence has been committed.[660]

An important feature of the draft law requires the inspector general of police to publish an annual domestic violence report.[661] The draft law specifically allows courts to use international and comparative law in interpreting its provisions.[662]

Sexual harassment

The penal code criminalizes sexual harassment, defined as assault or the use of criminal force, words or actions to cause "sexual annoyance or harassment" to another person.[663] The offense is punishable with imprisonment and a fine, and a defendant may additionally be ordered to pay compensation to the victim. The burden of proof rests on the prosecution, which must prove its case beyond a reasonable doubt.

Sexual harassment may also be prosecuted under the 1998 Prohibition of Ragging and other Forms of Violence in Educational Institutions Act.[664] Ragging that involves the sexual harassment of a student or staff member at an educational institution is punishable with up to ten years' imprisonment and payment of compensation to the victim.[665] Covered educational institutions include schools, universities, technical institutes, and *pirivenas* (places of instruction and teaching for ordained Buddhist priests and laymen).[666]

In the private sector or in cases of employment in certain statutory bodies, a woman who is compelled to leave her job because of sexual harassment may seek redress from a labor tribunal for constructive termination.[667] The employer has the burden of disproving sexual harassment. A lower standard of proof of "a balance of probability" applies in cases involving labor law.[668]

Commercial sex work

The penal code prohibits the act of procuring a person of

either gender and of any age to become a prostitute within Sri Lanka or in another country, regardless of whether such person's consent has been obtained.[669] Punishment for this offense is two to ten years' imprisonment and a fine.[670] The code also prohibits the acts of removing a person from Sri Lanka for purposes of prostitution, procuring a person for employment in a brothel, and detaining a person without consent in a brothel for purposes of sexual intercourse or sexual abuse.[671]

There are no specific government policies on commercial sex work.[672] However, the Women's Charter enjoins the government to take measures to eliminate all forms of exploitation of women and children, such as prostitution and trafficking.[673]

Sex-trafficking

Sri Lanka is a country of origin for the traffic of women and children for the purposes of sexual exploitation.[674]

The law prohibits trafficking in persons. Pursuant to 1995 amendments to the penal code, it is a crime to buy or sell a person for money or other consideration, or promote, facilitate or induce the buying, selling or placing for adoption of a person for money or any other consideration; these crimes are punishable with 2 to 20 years' imprisonment and a fine.[675]

The government of Sri Lanka expects to ratify the SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution, the first subregional treaty addressing trafficking in persons, in the year 2004.[676]

Customary forms of violence

The practice of female circumcision on newborns is fairly widespread among the Muslim community in Sri Lanka; the practice is not prohibited or regulated by law. A 1996 survey by the Muslim Women's Research and Action Forum confirmed that female circumcision is practiced in all parts of the country.[677] The practice involves a symbolic incision on the clitoris of the girl child on or before the 40th day after birth.[678]

IV. Focusing on the Rights of a Special Group: Adolescents

The reproductive rights of adolescents, particularly the girl child, are often neglected. Adolescents face many age-specific disadvantages that are not addressed through formal laws and policies. The ability of adolescents to access the health system, their rights within the family, their level of education, and their vulnerability to sexual violence together determine the state of their reproductive health and their overall well-being. The following section presents some of the factors that shape adolescents' reproductive lives in Sri Lanka.

A. REPRODUCTIVE HEALTH

Adolescents in Sri Lanka face several reproductive and sexual heath risks, including teenage pregnancies, illegal abortion, reproductive tract infections, and STIs.[679] However, information on these issues is largely anecdotal and based on small-scale studies.[680]

Most adolescents, both married and unmarried, have information on the different methods of contraception and their benefits, and contraceptive use is relatively high among married adolescents.[681] Prevalence rates are much lower among unmarried adolescents because of difficulties in obtaining contraception and cultural taboos.[682] Births to women aged 15–24 accounted for about one-fourth of all live births in 2000; fertility rates among this age-group are lower today than they were a decade ago and are expected to continue to decline in the future.[683] According to national-level data, most adolescent women who give birth receive prenatal care (95%) and deliver at a health-care facility with trained assistance (96%).[684] The incidence of unwanted pregnancies among adolescents is low compared to international standards.[685] However, studies show that many of those that occur among unmarried adolescents end in illegal abortion.[686] Almost 1 in 5 women seeking abortion interviewed in two sample surveys were aged 15–24.[687] According to national-level data, 70% of married adolescents aged 15–19 know about HIV/AIDS and other STIs, and can name at least one method of prevention.[688] However, only 20% are aware of the symptoms of STIs.[689]

The constitution's Directive Principles of State Policy enjoin the state to "promote with special care the interests of the children and youth, so as to ensure their full development, physical, mental, moral, religious and social, and to protect them from exploitation and discrimination."[690]

There is no organized program to provide reproductive health information and services to adolescents.[691] However, adolescent reproductive health concerns are incorporated into the country's primary health policies, including the Population and Reproductive Health Policy, Six Year Development Programme on Family Health and National Health Policy. Policies specifically for the advancement of women, including the National Plan of Action for Women, also address adolescent reproductive health issues.

One of the main goals of the Population and Reproductive Health Policy is to promote responsible behavior among adolescents and youth.[692] By working toward this goal, the policy hopes to mitigate the effects of pressing

"social problems" affecting young people such as adolescent pregnancies, STIs and HIV/AIDS, sexual harassment, child prostitution, drug abuse, and suicide.[693] Specific strategies to achieve this goal include:

- ensure that adolescents receive adequate information on population, family life (including ethical human behavior), sexuality, and drug abuse in school curricula at the appropriate levels;
- strengthen youth-worker education by including information about drug abuse and sex related problems at vocational training centers, institutions of higher learning, work places, and other venues; and
- encourage counseling on drug and substance abuse, human sexuality and psychosocial problems, especially by NGOs, community-based organizations and the National Youth Services Council.[694]

The policy's implementing action plan specifically aims to include reproductive health information in youth-worker education programs. Specific target groups for counseling and rehabilitation programs include out-of-school adolescents and youth.[695]

Raising awareness among adolescents about reproductive health issues is also a strategy for achieving the Population and Reproductive Health Policy's goal of maintaining declining fertility trends and stabilizing the population by mid-century. The policy's action plan proposes the following concrete actions to implement this strategy:

- strengthen reproductive health education programs in schools;
- provide information and services to out-of-school adolescents and youth; and
- provide information to youth in tertiary education and vocational training institutes.[696]

The government has initiated several programs to implement the policy's objectives. One specific program is aimed at adolescents and youth as well as adult men and women of reproductive age. The program aims to integrate adolescent health into the health delivery system, by providing counseling services for adolescents and youth on reproductive health and strengthening NGO capacity for service provision.[697] Specific activities include training 6,000 public-sector health and estate staff in counseling adolescents in reproductive health.[698] An output of the project has been the development of a training manual for counseling adolescents on reproductive health.[699]

One of the long-term objectives of the Six-Year Development Programme on Family Health is "[t]o educate adolescents for responsible parenthood on reproductive health, safe motherhood, substance abuse and sexually transmitted diseases."[700] Another objective is to improve the nutritional status of adolescents, along with several vulnerable groups, through nutrition education, community-based interventions and supplementary feeding programs.[701]

Adolescent health is also identified in the National Health Policy as a priority area requiring special government attention.[702]

The National Plan of Action for Women identifies adolescents' poor knowledge of sexual and reproductive health as a root cause of unwanted pregnancies. The plan's goals with respect to addressing this problem include:

- eliminate unsafe abortions by legalizing abortion, especially in circumstances of rape, incest, fetal abnormalities, and pregnancies to women who are below the statutory age of marriage;
- eliminate unwanted pregnancies and septic abortions; and
- make family planning services easily available at the community level.[703]

Existing family and reproductive health services are targeted toward married couples; no program provides reproductive health information and services to unmarried adolescents.[704]

RELEVANT LAWS AND POLICIES

- Code of Criminal Procedure, 1979; and Code of Criminal Procedure (Amendment) Act, 1998
- Children's Charter
- National Plan of Action to Combat Trafficking of Children, 2002

B. MARRIAGE

During the past century, women's median age at marriage in Sri Lanka increased by almost seven years.[705] In 1987, 3.4% of ever-married women reported that they were under the age of 15 at the time of their first marriage; by 2000, the proportion had dropped to 1.3%.[706] Similarly, the proportion of ever-married women who reported that they were aged 15–19 at the time of their first marriage was 24.4% in 1987 and 19.7% in 2000.[707]

The legal age of marriage under the Marriage Registration Ordinance, which constitutes the general law, is 18 years for both men and women.[708] The ordinance requires parental consent for the marriage of any person under 18 years of age.[709] The courts, however, have discretion to substitute their consent for that of a parent if consent is unreasonably refused.[710] There is no legal indication as to what would constitute an unreasonable refusal, thus, courts have discretion in interpreting the statute according to the circumstances of each case. Courts have held that a parental

decision to withhold consent will only be overruled if the court is satisfied that the refusal is without cause and contrary to the interest of the minor.[711] (See "Marriage laws" for more information on the general law on marriage.)

Laws governing Kandyan Sinhalese

The legal age of marriage under the Kandyan Marriage and Divorce Act is 18 years for both men and women.[712] (See "Marriage laws" for more information.)

Laws governing Muslims

Muslim personal law does not specify a minimum age for marriage. In an effort to discourage child marriages, the Muslim Marriage and Divorce Act requires the consent of the *Quazi* for the registration of a marriage of a girl under the age of 12.[713] However, a minor girl who marries has the right to repudiate her marriage upon attaining puberty.[714] Although courts have recognized this right, the question of whether it is an unconditional right or available only where it can be proved that the marriage entered on the child's behalf is not in her interest remains discretionary.[715] (See "Marriage laws" for more information.)

Laws governing Tamils

The Marriage Registration Ordinance applies to marriage among Tamils and requires that both parties be at least 18 years of age.

C. EDUCATION

Almost 90% of girls aged 5–14 were in school in 1994 (the last year in which such age-specific data was calculated), with virtually the same rate among boys.[716] Among 15–19 year-olds, the participation rate falls dramatically to 55.3% among girls and 53.4% among boys.[717] The Ministry of Education reports that among children entering first grade in 1995, 96.2% of girls and 96.7% of boys had reached fifth grade by 1999.[718] However, fewer than 25% of children entering the school system eventually reach 12th grade.[719]

The proportion of female students in the school system has been growing. About half of all students in the school system were female in 1998, a slight increase from 1993 estimates.[720] There have also been increases in the percentage of female students in estate schools (from 45% in the late 1980s to about 47% in 1996), and in the enrollment of boys and girls in preschool (from 20% for both sexes in the 1980s to 44% for girls and 42% for boys in 1994).[721] Part of the rise in school enrollment rates is attributed to women's increasing participation in the workforce and the need for child care outside the home.[722]

In 1998, the National Education Commission formulated educational reforms that make compulsory education a fundamental right for children aged 5–14. The reforms also call for a more equitable distribution of education facilities, improvements in the curriculum, and management reforms in educational institutions.[723] While the primary motivation for these reforms was to protect the large number of child laborers who are not in school, the reforms also been conducive to increasing girls' enrollment in schools.[724]

Adolescents have poor knowledge of sex and contraception, and they also widely lack information on reproductive health services.[725] Surveys have revealed that adolescents also lack awareness of sexuality and STIs, including HIV/AIDS.[726]

Education programs on adolescent reproductive health are implemented through the Department of Education, the National Youth Services Council (established in 1979 to promote the participation of youth aged 15–29 in national development schemes), and NGOs working in the field, such the Family Planning Association of Sri Lanka.[727]

The Health Education Bureau conducts programs on reproductive health targeted at youth, school children and teachers, among other groups.[728] The bureau has established 1,074 school health clubs with the support of UNICEF and in collaboration with regional health authorities.[729] These clubs encourage young adults to discuss issues related to sexual behavior and expand their knowledge of reproductive health issues, including STI and HIV prevention, through lectures and seminars.[730]

The National Institute of Education launched a population and family life education project in 1993 with UNFPA funding to promote reproductive health education in schools. The program aims to include selected reproductive health components in school curricula in different grades.[731] It also provides for a training program for teachers of social studies, science, health, and physical education was set up under this project in how to address newly emerging population and reproductive health issues in their classes. The teachers also receive practical and specialized training on how to counsel adolescents on issues related to reproductive health.[732]

In the NGO sector, the Family Planning Association of Sri Lanka has been in the forefront of reproductive health education.[733] It provides educational programs on population and sexual health for school children and youth out of school, reaching about 100,000 annually.[734] One of its projects—which has been implemented in 312 locations in 17 districts, including those in the north and east—provides community-based sexual and reproductive health information and counseling to adolescents and youth, among other services. About 120,000 youth received services during the first phase of the project. In another project—the Peer Education Project—600 youth leaders have been trained and mobilized to disseminate sexual and reproductive health information to their

peers, who in turn educate about 30,000 adolescents and youth every year.[735]

The Reproductive Health Information, Counseling, and Services to Adolescents and Youth Project was implemented by seven NGOs: the Family Planning Association of Sri Lanka, Sarvodaya, World View Sri Lanka, the Sri Lanka Association for Voluntary Surgical Contraception, the Center for Development Studies, Vinivida Federation of Community Based Organizations, and the Society for the Prevention of Cancer and AIDS–Northern Province.[736] These NGOs have been conducting programs to train peer counselors on reproductive health issues, with the objective of improving knowledge on reproductive health and sexuality, providing skills in sexual health–related communication, and fostering attitudes that support low-risk behaviors.

D. SEXUAL OFFENSES AGAINST MINORS

Nearly 20% of boys and 10% of girls are sexually abused in their own homes and schools by parents, teachers or someone known to them.[737] Of the child abuse cases reported to the government during January–May 2003, there were 100 sex abuse cases out of a total of 179 cases.[738] According to international sources of data on Sri Lanka, there are nearly 40,000 child prostitutes in the country, and 5,000 to 30,000 Sri Lankan boys are used by Western pedophile sex tourists in Sri Lanka. Nearly 10,000 to 12,000 children from rural areas are trafficked and prostituted to pedophiles by organized crime groups.[739]

The penal code was amended in 1995 to criminalize several sexual abuses against children.[740] The procurement of children for prostitution; sexual exploitation of children; indecent exhibition of children; publication of obscene photographs of children; trafficking of children; incest; and cruelty to children in one's custody are offenses under the new amendment.[741] An additional amendment to the code in 1998 enhances penalties for the exploitation of children.[742] This amendment criminalizes the acts of procuring or causing any child to beg; hiring or employing children to act as procurers for sexual intercourse; and hiring or employing children for trafficking in restricted articles.[743]

The penal code criminalizes sexual intercourse with a girl is under the age of 16, regardless of consent, provided that she is not married to the man or judicially separated from him.[744] Sexual intercourse with one's wife is only considered rape if she is under the age of 12.[745] Even though the Supreme Court chose to ignore this provision in an early case, the Muslim Law Research Committee, a group of NGO representatives that has recommended reforms to Muslim personal law, expressed the view that this provision of the code is the governing legal provision in Muslim marriages of girls under twelve years of age, meaning that sexual intercourse with a wife younger than 12 years of age is rape and can be prosecuted as such.[746]

The penal code provides that a person convicted of rape, gross sexual abuse or acts of gross indecency with a person under the age of 16 may be punished with a minimum prison term of 10 years. Monetary compensation for victims of sexual abuse, acts of gross indecency, rape, and gang rape are imposed by the court and vary according to the injuries caused to the victim of the offense.

An amendment to the Code of Criminal Procedure in 1998 brought expanded the definition of "child abuse."[747] The amendment also introduces special provisions to deal with those arrested on suspicion of child abuse, and provides for a victim of abuse to be kept in a place of safety.[748] The amendment also stipulates that courts must give priority to trials and appeals in cases of child abuse.[749]

The 1999 Evidence Act (Special Provisions) deals with evidentiary issues in cases involving children.[750] Under the act, the unsworn testimony of a child is admissible evidence.[751] The act also provides that a video-recorded interview with a child may be admitted as evidence in cases of child abuse.[752]

The government formed the National Child Protection Authority in 1998 to formulate a national policy on the prevention of child abuse and the protection and treatment of child abuse victims, and to coordinate and monitor action against all forms of abuse. The authority's mandate includes:

- advising the government on the formulation of national policy;
- creating public awareness and providing information on child abuse to the public;
- monitoring the implementation of laws and the monitoring of criminal proceedings relating to child abuse;
- recommending legal and administrative reforms to implement national policies on child abuse; and
- ensuring the protection and rehabilitation of child victims.

The government has formulated a Children's Charter and a National Plan of Action for the Children of Sri Lanka in an effort to protect children from abuse and neglect, child labor, trafficking, sexual exploitation, and other offenses.[753] A National Monitoring Committee was established under the charter to monitor child rights. In 2002, the government formulated a national plan to combat the trafficking of children.[754]

ENDNOTES

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432. *Id*. art. 12(4).
433. *Id*. art. 27(6).
434. *See* Wills Ordinance, No. 21, 1884 (Sri Lanka); *see* Sex Disqualification Removal (Legal Profession) Ordinance, No. 25, 1933 (Sri Lanka); *see* Industrial Disputes Act, No. 43, 1950 (Sri Lanka); *see* Trade Union Ordinance, No. 14, 1935 (Sri Lanka); *see* Citizenship Act, No. 18, 1948, *amended by* Citizen (Amendment) Act, No. 16, 2003 (Sri Lanka).
435. The Official Website of the Government of Sri Lanka, Ministry of Women's Affairs, http://www.priu.gov.lk/Ministries/Min_Women'sAffairs.html#The%20Vision (last visited Feb. 4, 2004).
436. Women's Charter, *supra* note 250, § 17–23.
437. *Id*. § 19.
438. *See* Communication with Shyamala Gomez, *CRLP—L&P section (draft), supra* note 35, at 13.
439. Centre for Women's Research (CENWOR), Citizenship Act Amended, http://www.cenwor.lk/citizenship.html (last visited Feb. 4, 2004).
440. *Id*.
441. Centre for Women's Research (CENWOR), Cabinet Approves Granting of Citizen to Spouses of Sri Lankan Women Who are Foreign Nationals, http://www.cenwor.lk/citizenshipspo.html (last visited Feb. 4, 2004).
442. Marriage Registration Ordinance, No. 19, 1907, § 64 (Sri Lanka).
443. Kandyan Marriage and Divorce Act, No. 44, 1952, § 3(1)(a) (Sri Lanka). *See* Communication with Shyamala Gomez, University of Colombo, *Final draft 2—The Legal Status of Women* (Sept. 23, 2003) (on file with Center for Reproductive Rights) [hereinafter Communication with Shyamala Gomez, *Final draft 2—The Legal Status of Women*].
444. Marriage Registration Ordinance, No. 19, 1907, § 64 (Sri Lanka).
445. Marriage Registration (Amendment) Act, No. 18, 1995, § 2 (Sri Lanka).
446. Marriage Registration Ordinance, No. 19, 1907, § 22, *amended by* Marriage Registration (Amendment) Act, No. 12, 1997, § 2 (Sri Lanka).
447. *Id*. § 22(2).
448. Gunerishami v. Gunatilaka, 1904, 7 NLR 219 (Sri Lanka). In this case for example, the girl's father refused his consent because, according to the evidence, the man wished to marry his daughter merely to shield his brother who was responsible for seducing the girl. The Supreme Court held that under the circumstances it had no authority to overrule the objections of the father.
449. Marriage Registration Ordinance, No. 19, 1907, § 42 (Sri Lanka).
450. Shirani Ponnambalam, Law and the Marriage Relationship in Sri Lanka 54 (2nd ed. 2000) (citing Selvaratnam v. Anandavelu, 1941, 42 NLR 487 (Sri Lanka)). It has been suggested that in the case of unregistered marriages, the Roman-Dutch common law should apply, which retrospectively validates a marriage once the minor has attained majority or upon the subsequent approval of the parents.
451. In *Ratnamma v. Rasiah*, the court held that want of consent would not invalidate a Hindu customary marriage after it had been consummated. *See* Ponnambalam, *supra* note 450, at 54–56 (citing Ratnamma v. Rasiah, 1947, 48 NLR 475 (Sri Lanka)).
452. Marriage Registration Ordinance, No. 19, 1907, § 16 (Sri Lanka).
453. *Id*. § 17.
454. Penal Code, No. 2, 1883, § 364A, *amended by* Penal Code (Amendment) Act, No.22, 1995, § 15 (Sri Lanka).
455. Marriage Registration Ordinance, No. 19, 1907, § 18 (Sri Lanka).
456. *Id*. § 41.
457. Ponnambalam, *supra* note 450, at 74. *See* Ratnamma v. Rasiah, 1947, 48 NLR 475 (Sri Lanka); *see* Sophia Hamine v. Appuhamy, 1922, 23 NLR 353 (Sri Lanka); *see* Wijegunawardena v. Gracia Catherine, 1984, 2 Sri L.R. 381 (Sri Lanka).
458. Ponnambalam, *supra* note 450, at 77–78.
459. Kandiah v. Thangamany, 1953, 55 NLR 568 (Sri Lanka).
460. Kandyan Marriage and Divorce Act, No. 44, 1952, § 3(1)(a) (Sri Lanka).
461. Kandyan Marriage and Divorce (Amendment) Act, No. 19, 1995, § 3 (Sri Lanka).
462. Kandyan Marriage and Divorce Act, No. 44, 1952, § 4(2)(a)-(b)(Sri Lanka).
463. *Id*. § 5(1)–(2).
464. *Id*. § 6.
465. *Id*. § 3(1)(b).
466. Communication with Shyamala Gomez, *Final draft 2—The Legal Status of Women, supra* note 443.
467. L.J.M. Cooray, *supra* note 121, at 126.
468. Kandyan Marriage and Divorce Act, No. 44, 1952, § 28(1) (Sri Lanka).
469. *Id*. § 7.
470. *Id*.
471. Muslim Marriage and Divorce Act, No. 13, 1951, § 98(2) (Sri Lanka).
472. *Id*. § 23. *See* Chulani Kodikara, *Engaging with Muslim Personal Law in Sri Lanka: the Experience of MWRAF* n.viii, *in* Lines, Aug. 2003, *at* http://www.lines-magazine.org/Art_Aug03/Chulani.htm (last visited Feb. 23, 2004).
473. Kodikara, *supra* note 102, at 19.
474. Muheidinbawa v. Seylathumma, 1937, 2 MMDR 53 (Sri Lanka); Kodikara, *supra* note 102, at 19.
475. Penal Code, No. 2, 1883, § 363(e), *amended by* Penal Code (Amendment) Act, No. 22, 1995, § 12 (Sri Lanka); Savitri Goonesekere, Muslim Personal Law in Sri Lanka 19 (2000). *See* Lebbe v. Mohomadu Tambi, 1901, 1 MMDR 13.
476. Muslim Marriage and Divorce Act, No. 13, 1951, § 80 (Sri Lanka); Hurraira Sawall v. Buhary Sawall, 1958, 4 MMDR 174 (Sri Lanka).
477. Muslim Marriage and Divorce Act, No. 13, 1951, §§ 25(1)(a), 47(2) (Sri Lanka).
478. *Id*. § 25(1)(a)(ii).
479. Abdul Cader v. Razik, 1950, 3 MMDR 115 (Sri Lanka).
480. Muslim Marriage and Divorce Act, No. 13, 1951, § 24(1)–(4) (Sri Lanka).
481. Kodikara, *supra* note 102, at 24 (citing Abdul Carim Ali v. Ummu Salama, 1944, 3 MMDR 19 (Sri Lanka)); Usoof Lebbe v. Nihar, 1952, 4 MMDR 33 (Sri Lanka).
482. Abeysundere v. Abeysundere, 1998, 1 Sri L.R. 185 (Sri Lanka).
483. Muslim Marriage and Divorce Act, No. 13, 1951, § 16 (Sri Lanka).
484. *Id*. § 17(2), (5)–(6).
485. Civil Procedure Code, No. 2, 1899, *amended by* Civil Procedure Law, No. 20, 1977 (Sri Lanka).
486. Marriage Registration Ordinance, No. 19, 1907, § 19(2) (Sri Lanka).
487. *See* Communication with Shyamala Gomez, University of Colombo, *RE: Sri Lanka draft—L&P section* (Dec. 14, 2003) (on file with Center for Reproductive Rights).
488. Kodikara, *supra* note 102, at 81.
489. Jayasinghe v. Jayasinghe, 1954, 55 NLR 410 (Sri Lanka), *approved and followed in* Dharmasena v. Navaratne, 1967, 72 NLR 419 (Sri Lanka); Ponnambalam, *supra* note 450, at 322.
490. Ponnambalam, *supra* note 450, at 312.
491. Silva v. Missinona, 1924, 26 NLR 113 (Sri Lanka).
492. Civil Procedure Code, No. 2, 1899, § 608(2)(a)–(b) (Sri Lanka).
493. *See* Muthuranee v. Thuraisingham, 1984, 1 Sri L.R. 381 (Sri Lanka); *see* Tennekoon v. Perera, 1986, 1 Sri L.R. 90; *see also* Ponnambalam, *supra* note 450, at 361.
494. Kandyan Marriage and Divorce Act, No. 44, 1952, *amended by* Kandyan Marriage and Divorce Law, No. 41, 1975, § 32 (Sri Lanka).
495. Kandyan Marriage and Divorce Act, No. 44, 1952, § 33 (Sri Lanka).
496. Muslim Marriage and Divorce Act, No. 13, 1951, § 98(2) (Sri Lanka).
497. Goonesekere, *supra* note 475, at 75.
498. *Id*.
499. *Id*. Ahmed v. Ruwaida Umma, 1949, MMDR 99 (Sri Lanka).
500. Goonesekere, *supra* note 475, at 76.
501. Kodikara, *supra* note 102, at 76.
502. *See* Goonesekere, *supra* note 475, at 77; *see* Kodikara, *supra* note 102, at 77.
503. Muslim Marriage and Divorce Act, No. 13, 1951, § 28(1) (Sri Lanka).
504. *Id*.
505. Goonesekere, *supra* note 475, at 87.
506. *Id*. at 83 n.421. Ansar v. Mirza, 1971, 75 NLR 279 (Sri Lanka); Communication with Shyamala Gomez, *Final draft 2—The Legal Status of Women, supra* note 443.
507 Ansar v. Mirza, 1971, 75 NLR 279 (Sri Lanka); Rasheeda v. Dheen, 1959, 61 NLR 570 (Sri Lanka). *See also* Noor Nazime v. Mohamed, 1946, 3 MMDR 59 (Sri Lanka).
508. Ansar v. Mirza, 1971, 75 NLR 279 (Sri Lanka).
509. Kodikara, *supra* note 102, at 81.
510. The woman is bound to follow Schedule III of the Muslim Marriage and Divorce Act, which provides the procedure for *fasah* divorce.

511. Muslim Marriage and Divorce Act, No. 13, 1951, 3rd sched., Rule 11 (Sri Lanka); KODIKARA, *supra* note 102, at 86 (citing Junaideen v. Noor Sabiya, Apl No. 1312, Kandy 604, 1973 (unreported) (Sri Lanka)); Faiz Mohamed v. Elsie Fathooma, 1939, 2 MMDR 98 (Sri Lanka).
512. GOONESEKERE, *supra* note 475, at 83.
513. *Id*. at 81.
514. KODIKARA, *supra* note 102, at 94.
515. Email from Shyamala Gomez, University of Colombo, to Pardiss Kebriaei, Center for Reproductive Rights (Jan. 13, 2004, 14:51:00 EST) (on file with the Center for Reproductive Rights).
516. Civil Procedure Code, No. 2, 1889, *amended by* Civil Procedure Law, No. 20, 1977 (Sri Lanka).
517. *Id*. § 608(1).
518. PONNAMBALAM, *supra* note 450, at 360 n.307c (citing H.R. Hahlo, The South African Law of Husband and Wife 330 (4th ed. 1975)).
519. Email from Shyamala Gomez to Pardiss Kebriaei, *supra* note 515.
520. *Id*.
521. Maintenance Act, No. 37, 1999, § 17 (Sri Lanka).
522. *Id*. § 2(1).
523. *Id*. § 2.
524. *Id*. § 2(1), Proviso.
525. Sharya de Soysa, Marriage Breakdown and the Duty of Support: The Experience of South Africa and Sri Lanka 35 (1984) (unpublished Ph.D. dissertation, University of Colombo, Sri Lanka) (on file with the Center for Reproductive Rights).
526. PONNAMBALAM, *supra* note 450, at 195.
527. Maintenance Act, No. 37, 1999, § 2(2)–(4) (Sri Lanka).
528. Civil Procedure Code, No. 2, 1899, § 614, *amended by* Civil Procedure Law, No. 20, 1977 (Sri Lanka).
529. *See* Communication with Shyamala Gomez, University of Colombo, *CRLP draft–marriage* (June 30, 2003) (on file with Center for Reproductive Rights).
530. *See id*.
531. Civil Procedure Code, No. 2, 1899, *amended by* Civil Procedure Law, No. 20, 1977 (Sri Lanka).
532. *Id*. § 615.
533. Communication with Shyamala Gomez, University of Colombo, *Maintenance and Support Laws for Kandyans* (Feb. 9, 2004) (on file with Center for Reproductive Rights) [hereinafter Communication with Shyamala Gomez, *Maintenance and Support Laws for Kandyans*].
534. Kandyan Marriage and Divorce Act, No. 44, 1952, § 33(7)(ii)–(iii) (Sri Lanka).
535. Communication with Shyamala Gomez, *Maintenance and Support Laws for Kandyans, supra* note 533.
536. Muslim Marriage and Divorce Act, No. 13, 1951, § 48 (Sri Lanka).
537. *Id*. § 98(2).
538. GOONESEKERE, *supra* note 475, at 69 (citing PEARL DAVID, A TEXT BOOK OF MUSLIM PERSONAL LAW 69 (1987)).
539. Jiffry v. Umma Ayesha, 1958, 4 MMDLR 154, B.Q. (Sri Lanka).
540. Muslim Marriage and Divorce Act, No. 13, 1951, § 47(1)(d) (Sri Lanka).
541. *See* Adoption of Children Act, No. 1, 1964, § 12, *amended by* Adoption of Children Act, No. 38, 1979 (Sri Lanka); Judicature Act, No. 2, 1978 (Sri Lanka).
542. *See* Ivaldy v. Ivaldy, 1956, S.C. 429 (Sri Lanka).
543. *See* Madulawathie v. Wilpus, 1967, 70 NLR 90 (Sri Lanka).
544. *See* Rajaluxumi v. Sivananda Iyer, 1972, 76 NLR 572 (Sri Lanka).
545. *E.g.,* Weragoda v. Weragoda, 1961, 59 CLW 59 (Sri Lanka); Rajaluxumi v. Sivananda Iyer, 1972, 76 NLR 572 (Sri Lanka); Madulawathie v. Wilpus, 1967, 70 NLR 90 (Sri Lanka).
546. *See* Samarasinghe v. Simon, 1941, 43 NLR 129 (Sri Lanka).
547. *See* Jeyarajan v. Jeyarajan, 1999, 1 Sri L.R. 113 (Sri Lanka).
548. Adoption of Children Ordinance, No. 24, 1941, § 4(b). *See* Consideration of Reports Submitted by States Parties under Article 40 of the International Covenant on Civil and Political Rights, Fourth periodic report, Sri Lanka, Human Rights Committee, 66th Sess., ¶ 421, U.N. Doc. CCPR/C/LKA/2002/4 (2002) [hereinafter ICCPR Committee, Fourth periodic report, Sri Lanka].
549. *See id*.
550. *See id*. ¶ 422.
551. *See id*.
552. Mahamedu Cassim v. Cassie Lebbe, 1927, 1 MMDR 102 (Sri Lanka); In re Nona Sooja, 1930, 1 MMDR 107 (Sri Lanka); Fernando v. Fernando, 1932, 2 MMDR 1 (Sri Lanka).
553. KODIKARA, *supra* note 102, at 108.
554. Hameen v. Maliha Baby, 1967, 70 NLR 405 (Sri Lanka).
555. Faiz Mohamed v. Elsie Fathumma, 1942, 3 MMDR 3 (Sri Lanka).
556. *E.g.,* Mahamedu Cassim v. Cassie Lebbe, 1927, 1 MMDR 102 (Sri Lanka).
557. KODIKARA, *supra* note 102, at 112–113.
558. Mafthooha v. Thassim, 1963, 65 NLR 547 (Sri Lanka); KODIKARA, *supra* note 102, at 111–113. In one case, a court held that a mother's habit of drinking and receiving men at all hours was "injurious to the child." KODIKARA, *supra* note 102, at 111 (citing Fernando v. Fernando, 1932, 2 MMDR 1 (Sri Lanka)).
559. KODIKARA, *supra* note 102, at 105. *See also* Subair v. Isthikar, 1974, 77 NLR 397 (Sri Lanka).
560. Fernando v. Fernando, 1932, 2 MMDR 1 (Sri Lanka).
561. Subair v. Isthikar, 1974, 77 NLR 397 (Sri Lanka).
562. Legislative Enactments of the Democratic Socialist Republic of Sri Lanka, vol. IV, ch. 68, (1980).
563. Married Women's Property Ordinance, No. 18, 1923, §§ 5, 7 (Sri Lanka).
564. *Id*. § 18.
565. Matrimonial Rights and Inheritance Ordinance, No. 15, 1876, pt. III (Sri Lanka).
566. Legislative Enactments of the Democratic Socialist Republic of Sri Lanka, vol. IV, ch. 71, (1980).
567. Communication with Camena Guneratne, Open University of Sri Lanka, *Review Section 1* (Dec. 5, 2003) (on file with Center for Reproductive Rights) [hereinafter Communication with Camena Guneratne, *Review Section 1*].
568. Kandyan Law Declaration and Amendment Ordinance, No. 39, 1938, § 12 (Sri Lanka); SAVITRI GOONESEKERE, SRI LANKA LAW ON PARENT AND CHILD 456 (1987).
569. GOONESEKERE, *supra* note 475, at 59–60. *See* Email from Shyamala Gomez, University of Colombo, to Lilian Sepúlveda-Oliva (Feb. 6, 2004, 19:46:56 EST) (on file with Center for Reproductive Rights).
570. Legislative Enactments of the Democratic Socialist Republic of Sri Lanka, vol. IV, ch. 72 (1980).
571. Communication with Shyamala Gomez, University of Colombo, *CRLP Property Rights Draft* (July 24, 2003) (on file with Center for Reproductive Rights) [hereinafter Communication with Shyamala Gomez, *CRLP Property Rights Draft*].
572. *Id*.
573. *Id*.
574. *Id*.
575. Legislative Enactments of the Democratic Socialist Republic of Sri Lanka, vol. IV, ch. 70 (1980).
576. Jaffna Matrimonial Rights and Inheritance Ordinance, No. 1, 1911, § 6 (Sri Lanka).
577. *Id*.
578. *Id*. § 8.
579. *Id*. § 19.
580. *See* Manikkavasagar v. Kandasamy, 1986, 2 Sri L.R. 8 (Sri Lanka).
581. *See id*.
582. *See id*.
583. *See id*.
584. Jaffna Matrimonial Rights and Inheritance Ordinance, No. 1, 1911, § 20, *amended by* Jaffna Matrimonial Rights and Inheritance Ordinance, No. 58, 1947 (Sri Lanka).
585. *Id*. § 3.
586. Legislative Enactments of the Democratic Socialist Republic of Sri Lanka, vol. XI, ch. 300 (1980).
587. Land Development Act, No. 19, 1935, § 48A(1) (Sri Lanka).
588. *Id*.
589. *Id*.
590. *Id*. § 72. *See* Communication with Camena Guneratne, Open University of Sri Lanka, *Review Section 1, supra* note 567.
591. Communication with Shyamala Gomez, *Final draft 2—The Legal Status of Women*, *supra* note 443.
592. SRI LANKA STATISTICAL DATA SHEET, YEAR 2002, *supra* note 26.
593. *See* ICCPR Committee, Fourth periodic report, Sri Lanka, *supra* note 548, ¶ 106.
594. *See id*. ¶ 108.
595. *See id*.
596. *See id*. ¶ 107.
597. *See* CEDAW Committee, States parties initial reports, Sri Lanka, *supra* note 85, ¶ 115.
598. SRI LANKA CONST., art. 14(1)(g).
599. *Id*. art. 14 (1)(c)–(d).
600. The Establishments Code, Public Administration (a) Circular No. 22, 1989, *amended by* Circular No. 13, 1995.
601. The 12-week maternity leave is in line with the Shop and Office Employees (Regulation of Employment and Remuneration) Act, which applies in the private sector. Camena Guneratne, *International Labour Standards and the Employment of Women in Sri Lanka, in* EIGHT NATIONAL CONVENTION ON WOMEN'S STUDIES, MARCH 23–26, 2002, at 19 (Centre for Women's Research ed., 2002). The entitlement to such leave irrespective of marital status, cause of pregnancy and duration of employment is pursuant to 1997 amendments to government labor regulations in the public sector.
602. Shop and Office Employees (Regulation of Employment and Remuneration) Act, No. 60, 1957, § 18A (Sri Lanka). Maternity leave is in addition to weekends and government holidays. *Id*. § 18H.
603. Maternity Benefits Ordinance, No. 32, 1939, § 21 (Sri Lanka). The primary difference between the Ordinance and the Shop and Office Employees Act is that the leave permitted in the former is not in addition to weekends and government holidays. DEPARTMENT OF LABOR, MINISTRY OF EMPLOYMENT AND LABOR, GOVERNMENT OF SRI LANKA, BRIEF DESCRIPTION OF MAIN ACTS AND ORDINANCE, *at* http://www.labour.gov.lk/documents/e_mainacts.htm (last visited Feb. 6, 2004).
604. Maternity Benefits Ordinance, No. 32, 1939, §§ 12A, 12B (Sri Lanka); Guneratne, *supra* note 601.
605. Maternity Benefits Ordinance, No. 32, 1939, § 10A (Sri Lanka); Shop and Office Employees (Regulation of Employment and Remuneration) Act, No. 60, 1957, § 18(e) (Sri Lanka).
606. Maternity Benefits Ordinance, No. 32, 1939, § 10 (Sri Lanka); Shop and Office Employees (Regulation of Employment and Remuneration) Act, No. 60, 1957, § 18(f)

(Sri Lanka).
607. Maternity Benefits Ordinance, No. 32, 1939, § 5 (Sri Lanka).
608. *Id*. § 5(4).
609. Guneratne, *supra* note 601.
610. *Id*.
611. Mines (Prohibition of Female Labour Underground) Ordinance, No. 13, 1937, §§ 2–3 (Sri Lanka).
612. Factories (Amendment) Act, No. 19, 2002, § 2 (Sri Lanka). The amended law allows women to work up to 60 hours of overtime per month and young persons (defined as age 16 or older but under age 18) to work up to 50 hours of overtime per month. The former law provided that women and young persons (those age 16 or older) were only permitted to work up to 100 hours of overtime per year. *See* Factories Ordinance, No. 45 1942, § 68(1) (Sri Lanka). The Amendment Bill was vehemently opposed by the Free Trade Workers Union, which comprises workers from the different Free Trade Zones in the country, on the basis that it would lead to the exploitation of women workers who would be forced to work overtime to meet deadlines. Some NGOs that initially supported the bill on the basis that it would allow women the right to work overtime if they wished to, instead of limiting their overtime hours to 100 hours per year.
613. Sri Lanka was a party to the Night Work (Women) Convention (Revised), 1948 (No. 89). In 1982, Sri Lanka withdrew or denounced the Convention with the establishment of the EPZs.
614. *See* Employment of Women, Young Persons and Children, the Factories and the Shop and Office Employees (Regulation of Employment and Remuneration) (Amendment) Act, No. 32, 1984 (Sri Lanka).
615. Women's Charter, *supra* note 250, art. 10.
616. *Id*. art. 11.
617. *Id*. art. 12(i)–(iii).
618. *Id*. art. 12(vii).
619. Padmini Abeywardena, Women and Credit In Sri Lanka 8 (1993).
620. *Id*.
621. Savitri Goonesekere, *Laws Regulating the Participation and Status of Women in Economic Production: Critical Areas for Reform, in* Women in the Economy, Working Paper No. 12, at 55 (1998).
622. Women's Charter, *supra* note 250, §§ 10(i)(d)(ii), 12 (iv).
623. *See* Central Bank of Sri Lanka Annual Report 2001, *supra* note 375, at 236; *see also* Asian Development Bank, Programs Department West, Country Briefing Paper: Women in Sri Lanka 1999.
624. *See* Central Bank of Sri Lanka Annual Report 2001, *supra* note 375, at 236.
625. *See id*.
626. Ministry of Education, Government of Sri Lanka, About us, *at* www.gov.lk/moe/about/index.htm (last visited Feb. 6, 2004).
627. Swarna Jayaweera, *Education, in* Post Beijing Reflections: Women in Sri Lanka 1995–2000, at 74 (Centre for Women's Research ed., 2000).
628. *Id*.
629. *Id*.
630. Ministry of Education, Government of Sri Lanka, About us, *at* www.gov.lk/moe/about/index.htm (last visited Feb. 6, 2004); Jayaweera, *supra* note 627, at 60.
631. Sri Lanka Const., art. 27(1)(h).
632. Women's Charter, *supra* note 250, § 9(i).
633. *Id*. § 9(iv).
634. National Plan of Action for Women, *supra* note 242, § 2, Goal 1.
635. *See* Communication with Camena Guneratne, Open University of Sri Lanka, *Review Section 2* (Dec. 5, 2003) (on file with Center for Reproductive Rights).
636. Darini Rajasingham-Senanayake, *Ambivalent Empowerment: The Tragedy of Tamil Women In Conflict, in* Women, War and Peace in South Asia: Beyond Victims of Agency 115 (Rita Manchando ed., 2001).
637. Radhika Coomaraswamy & Soundarie David, *Overview, in* Sri Lanka: State of Human Rights 2002, at 14–15 (Law & Society Trust ed., 2002).
638. *Id*.
639. Penal Code, No. 2, 1883, § 363, Explanation (i), *amended by* Penal Code (Amendment) Act, No. 22, 1995, § 12 (Sri Lanka). Some women's groups have argued for a broader definition of rape that would include the insertion of objects into the vagina or anus or other sexual acts. However, the law as it stands distinguishes between rape and "grave sexual abuse," defining the latter as acts for "sexual gratification" that do not involve vaginal penetration. *Id*. § 365B. Both rape and grave sexual abuse carry the same punishment, however. *Id*. § 365B(2)(a)–(b).
640. *Id*. § 363, Explanation (i), *amended by* Penal Code (Amendment) Act, No. 29, 1998 (Sri Lanka).
641. This conditional section was brought in as a result of heavy lobbying by members of the Muslim community at the bill stage. They argued that Muslim law does not recognize that a man can rape his wife.
642. *See* Communication with Shyamala Gomez, University of Colombo, *CRLP—Right to Physical Integrity (draft)* (Aug. 19, 2003) (on file with Center for Reproductive Rights) [hereinafter Communication with Shyamala Gomez, *CRLP—Right to Physical Integrity (draft)*].
643. *Id*. (citing Justice Shiranee Tilakawardane in *Kamal Addararatchi v. The Republic*, No. 7710/96, at 11, Decision of the High Court of the Western Province, Dec. 22, 1997).
644. Penal Code, No. 2, 1883, § 363, Explanation (ii), *amended by* Penal Code (Amendment) Act, No. 22, 1995 (Sri Lanka).
645. Penal Code, No. 2, 1883, § 364(1) (Sri Lanka).
646. *Id*. §§ 364(2)–(3), 364A.
647. Penal Code, No. 2, 1883, § 364A(1), *amended by* Penal Code (Amendment) Act, No. 22, 1995 (Sri Lanka).
648. *Id*.
649. Penal Code, No. 2, 1883, § 364A(3)(a) (Sri Lanka).
650. *Id*. § 364A(3)(b).
651. Marriage Registration Ordinance, No. 19, 1907, § 17 (Sri Lanka).
652. Dole v. Romanis Appu, 1939, 40 NLR 449 (Sri Lanka).
653. *Id*..
654. *Id*..
655. Perera v. Siriwardene, 1946, 48 NLR 84 (Sri Lanka).
656. Penal Code, No. 2, 1883, §§ 294, 297, 300, 305, 308A, 312–313, 330–331, 340, 342, 345, 363–365B, 483–484 (Sri Lanka).
657. Rajepakse, *supra* note 221; Email from Shyamala Gomez, University of Colombo, to Pardiss Kebriaei, Center for Reproductive Rights (Jan. 13, 2004, 08:32:00 EST) (on file with the Center for Reproductive Rights).
658. Mario Gomez, *Domestic Violence and the Sexual History of Rape Victims,* 11 L. & Soc'y Tr. Rev 2 (2001). *See* A Framework for Model Legislation on Domestic Violence, Report of the Special Rapporteur on violence against women, its causes and consequences, Commission on Human Rights, 52nd Sess., U.N. Doc. E/CN.4/1996/53/Add.2, Feb. 2, 1996.
659. Communication with Shyamala Gomez, *CRLP—Right to Physical Integrity (draft), supra* note 642.
660. *Id*.
661. *Id*.
662. *Id*.
663. Penal Code, No. 2, 1883, § 345, *amended by* Penal Code (Amendment) Act, No. 22, 1995 (Sri Lanka). The 1995 amendment repealed the earlier offense of "outraging the modesty" of a woman.
664. Prohibition of Ragging and other Form of Violence in Educational Institutions Act, No. 20, 1998, § 2(2) (Sri Lanka).
665. *Id*.
666. *Id*. § 17.
667. Section 31B(1)(a) of the 1950 Industrial Disputes Act provides that a person dismissed from employment may seek redress from a labor tribunal. A labor tribunal may order compensation or reinstatement. The act only applies to certain categories of employment, mainly in the private sector. The act does not apply to the public sector. Industrial Disputes Act, No. 43, 1950, § 31B(1)(a) (Sri Lanka).
668. Associated Battery Manufacturers (Ceylon) Ltd. v. United Engineering Workers' Union, 1975, 77 NLR 541 (Sri Lanka).
669. Penal Code, No. 2, 1883, § 360A, *amended by* Penal Code (Amendment) Act, No. 22, 1995 (Sri Lanka).
670. *Id*.
671. *Id*.
672. Email from Shyamala Gomez, University of Colombo, to Lilian Sepúlveda-Oliva, Center for Reproductive Rights (Jan. 29, 2004, 8:16:00 EST) (on file with Center for Reproductive Rights).
673. Women's Charter, *supra* note 250, § 14(iii).
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709. Marriage Registration Ordinance, No. 19, 1907, § 22(1) (Sri Lanka).
710. *Id.* § 22(2).
711. Gunerishami v. Gunatilaka, 1904, 7 NLR 219 (Sri Lanka). In this case, the girl's father refused his consent because, according to the evidence, the expectant groom wished to marry his daughter merely to shield his brother, who had seduced the girl. The Supreme Court held that under the circumstances it had no authority to overrule the father's objections.
712. Marriage Registration (Amendment) Act, No. 18, 1995, § 15; Kandyan Marriage and Divorce (Amendment) Act, No. 19, 1995, §§ 4, 66.
713. Muslim Marriage and Divorce Act, No. 13, 1951, § 23 (Sri Lanka).
714. Kodikara, *supra* note 102.
715. Muheidinbawa v. Seylathumma, 1937, 2 MMDR 53 (Sri Lanka); Kodikara, *supra* note 102.
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738. Faraza Farook, *Sex Crimes Top Child Abuse Case*, Sun. Times, July 27, 2003.
739. Hemachandra, *supra* note 737.
740. Penal Code (Amendment) Act, No. 22, 1995 (Sri Lanka).
741. *Id.* §§ 286A, 360A–C, 308A, 364A. These provisions include a mandatory minimum punishment for the first offense.
742. Penal Code (Amendment) Act, No. 29, 1998 (Sri Lanka).
743. *Id.* §§ 288, 288A–B. "Restricted article" is defined according to the Poisons, Opium and Dangerous Drugs Ordinance No. 17 of 1929. These provisions were further strengthened with the Criminal Procedure (Amendment) Act No. 28 of 1998, which empowers a magistrate to arrest a suspected child abuser without a warrant and to keep him in custody for up to 72 hours.
744. Penal Code, No. 2, 1883, § 363(e) (Sri Lanka). The information on statutory rape has been extracted substantially from Shyamala Gomez & Mario Gomez, Gender Violence in Sri Lanka: From Rights and Shame to Remedies and Change (1st ed. 1999).
745. Penal Code, No. 2, 1883, § 363(e), *amended by* Penal Code (Amendment) Act, No. 22, 1995, § 12 (Sri Lanka).
746. Lebbe v. Mohomadu Tambi, 1901, 1 MMDR 13 (Sri Lanka); Goonesekere, *supra* note 475.
747. Code of Criminal Procedure (Amendment) Act, No. 28, 1998, § 2 (Sri Lanka).
748. *Id.* § 43A, 451A.
749. *Id.* § 453A.
750. Evidence (Special Provisions) Act, No. 32, 1999 (Sri Lanka).
751. *Id.* § 2.
752. *Id.* § 4.
753. Ministry of Reconstruction, Rehabilitation and Social Welfare & Department of Probation and Child Care Services, Children's Charter, arts. 20, at 32–37.
754. Communication with Shyamala Gomez, University of Colombo, *CRLP—Sexual Offenses against Minors (draft).*