



October 9, 2003

The Human Rights Committee

Re: Supplementary information on Sri Lanka  
Scheduled for review by the Human Rights Committee at the 79<sup>th</sup> Session

Dear Committee Members:

This letter is intended to supplement the periodic report submitted by Sri Lanka, scheduled to be reviewed by this Committee during its 79th session. The Center for Reproductive Rights, an independent non-governmental organization, hopes to further the work of the Committee by providing independent information concerning the rights protected in the ICCPR.

Because reproductive rights are fundamental to women's health and equality, States Parties' commitment to ensuring them should receive serious attention. Further, women's reproductive health and rights receive broad protection under the ICCPR. In its elaboration of equality of rights between men and women in General Comment 28, the Committee directs States Parties to report on laws as well as government or private action that interfere with women's equal enjoyment of the right to privacy.<sup>1</sup> The Committee asks States Parties to eliminate any interference in the exercise of this right.<sup>2</sup> Further, women's lack of access to health services, and particularly reproductive health services, has been identified by the Committee as a violation of Article 3, which guarantees the right of equality of men and women.<sup>3</sup> General Recommendation 28 also elaborates on provisions of Article 6 of the ICCPR, considering it the responsibility of States Parties to "ensure that [women] do not have to undergo life-threatening clandestine abortions."<sup>4</sup> This letter will highlight one area of particular concern related to the status of women's reproductive health and rights in Sri Lanka: the country's discriminatory laws on abortion.

Under Sri Lanka's Penal Code 1883, the "termination of pregnancy is a punishable offence unless caused in good faith for the purpose of saving the life of the mother."<sup>5</sup> Despite the illegality of abortion, a high number of clandestine abortions occur every day in Sri Lanka. A 1998 UNFPA-sponsored workshop on reproductive rights draws on anecdotal evidence to estimate that there are about 750 abortions performed daily in Sri Lanka.<sup>6</sup> According to a government report, over 90 percent of those seeking abortion are married women.<sup>7</sup> There has

also been an increase in clandestine abortion among young, unmarried women between the ages of 18-25.<sup>8</sup>

The Sri Lankan abortion ban undermines women's enjoyment of Article 6, which guarantees the right to life. The Committee has made the link between illegal and unsafe abortions and high rates of maternal mortality.<sup>9</sup> It has consistently criticized legislation that criminalizes or severely

restricts access to abortion and has issued specific recommendations to several states parties advising that they review or amend legislation criminalizing abortion—often referring to such legislation as a violation of the right to life.<sup>10</sup> Government neglect of the life and health risks associated with clandestine abortion leads to unwarranted and preventable risks for all Sri Lankan women.<sup>11</sup> Abortion is a leading cause of maternal death in Sri Lanka.<sup>12</sup> In 2003, the maternal mortality rate was estimated to be at 92 deaths per 100,000 live births.<sup>13</sup> Another study found that 25 percent of maternal deaths were due to unsafe abortions.<sup>14</sup>

The abortion ban also has implications for the enjoyment of Article 7, which ensures freedom from torture and cruel, inhuman and degrading treatment or punishment. To assess compliance with Article 7, the Committee requires that information be furnished on national laws and practice with regard to domestic and other types of violence against women, including rape. It also needs to know whether the State party gives access to safe abortion to women who have become pregnant as a result of rape.<sup>15</sup> There is evidence of a disturbing increase in sexual crimes, including rape and incest in Sri Lanka.<sup>16</sup> In addition to sexual crimes committed in the private sphere, Sri Lanka's 20 year long ethnic conflict has contributed to an increase in sexual violence against women. The rape of women and young girls by government security forces at checkpoints has reportedly occurred in several instances.<sup>17</sup> In Colombo, police reported a total of 36 rape cases, five of which involved security personnel, during the first six months of 2001.<sup>18</sup> The government, in its report to this committee states, "The law in its present application affords protection for women victims of gender related violence."<sup>19</sup> However, as long as rape remains unrecognized as grounds for legal abortion, the government will continue to fail to protect women victims of violence, standing in violation of Article 7.

Sri Lanka's abortion ban also interferes with the right to privacy, as specified in Article 17 of the Covenant. In General Comment 28, the Committee requires states parties to "provide information to enable the Committee to assess the effect of any laws and practices that may interfere with women's right to enjoy privacy and other rights protected by Article 17 on the basis of equality with men."<sup>20</sup> A woman forced to carry an unwanted pregnancy to term loses her bodily autonomy as she faces the physical and emotional effects of undesired motherhood. Decisions about one's own body, particularly regarding one's own reproductive life, lie squarely in the domain of private decision-making and should be shielded from government interference. There are reports of women and doctors being arrested and prosecuted on abortion-related charges.<sup>21</sup> These charges force women to bear a double interference by the state: they are at once denied health care facilities for safe abortion and are criminally prosecuted for their attempts to make decisions about their bodies and lives.

Finally, the Committee has called on states parties to "ensure that traditional, historical, religious or cultural attitudes are not used to justify violations of women's right to equality before the law and to equal enjoyment of all Covenant rights."<sup>22</sup> The Committee further requires states parties to "furnish appropriate information on those aspects of tradition, history, cultural practices and religious attitudes which jeopardise, or may jeopardise, compliance with article 3, and indicate what measures they have taken or intend to take to overcome such factors."<sup>23</sup> It has been noted that opposition to abortion law reform in Sri Lanka has been fueled by religious and customary norms that relegate women to traditional gender roles.<sup>24</sup> Although the government has

acknowledged the widespread occurrence of illegal abortions and attempted to liberalize the law in 1995, conservative social forces have defeated attempts at reform.<sup>25</sup>

In failing to mobilize the political will required for abortion law reform, the government continues to deny women their basic rights. The criminalization of abortion interferes with guarantees of the right to life, liberty and security of the person and the right to privacy and equality as expressed in the ICCPR.

We hope the Committee will consider addressing the following questions to the government of Sri Lanka:

1. What legislative and policy measures are being taken to address the issue of unsafe abortion, in particular efforts to reform the law that criminalizes abortion? What provisions has the government made for post-abortion care?
2. What measures are being taken to combat the persistently high rates of violence against women? Given the high incidence of sexual violence, what efforts are being made to permit women to obtain legal and safe abortion to terminate pregnancies resulting from rape and incest? Is emergency contraception made available as part of counseling and services offered to victims of such crimes?
3. What steps are being taken to ensure that traditional, historical, religious or cultural attitudes that justify violations of women's right to equality before the law and to equal enjoyment of all ICCPR provisions are not being used to prevent legal reform?
4. What measures has the National Committee on Women taken to address unsafe abortion, maternal death due to unsafe abortion, the increase in sexual violence and access to emergency contraception?

There remains a significant gap between the guarantees of the ICCPR provisions and the reality of women's reproductive health and lives in Sri Lanka. We applaud the Committee for its commitment to women's reproductive rights and the strong concluding observations and recommendations the Committee has issued to governments in the past, which stress the need to take steps to ensure the realization of these rights.

We hope that this information is useful during the Committee's review of the Sri Lankan government's report. If you have any questions, or would like further information, please do not hesitate to contact us.

Very truly yours,

Melissa Upreti  
Legal Adviser for Asia  
International Legal Program

Laura Katzive  
Legal Adviser for Global Projects  
International Legal Program

---

<sup>1</sup> Human Rights Committee (HRC), Gen. Comment 28, *Equality of Rights Between Men and Women*, 1834<sup>th</sup> mtg., para. 20, U.N. Doc. CCPR/C/21/Rev/1/Add/10 (2000) [hereinafter HRC, Gen. Comment 28].

<sup>2</sup> *Id.*

<sup>3</sup> See, e.g., *Concluding Observations of the Human Rights Committee: Ecuador*, para. 11, U.N. Doc. CCPR/C/79/Add.92 (1998); *Concluding Observations of the Human Rights Committee: Poland*, para. 11, U.N. Doc. CCPR/C/79/Add.110 (1999).

<sup>4</sup> HRC, Gen. Comment 28, *supra* note 1, para. 10.

<sup>5</sup> Third and fourth reports of the Government of Sri Lanka before the UN Committee on the Elimination of Discrimination against Women (CEDAW Committee), CEDAW/C/LKA/3-4, para. 140 (1999) [hereinafter Government report before the CEDAW Committee].

<sup>6</sup> See Dr. Prasanna Gunasekera, *Abortion, Safe Motherhood and Reproductive Rights*, in PROCEEDINGS OF THE WORKSHOP ON REPRODUCTIVE RIGHTS 19 (1998), available at <http://www.unfpa.org/regions/apd/countries/srilanka/srlrights.doc> (last visited Oct. 9, 2003).

<sup>7</sup> POPULATION DIVISION, MINISTRY OF HEALTH, NUTRITION AND WELFARE, SRI LANKA COUNTRY REPORT, 17 (2002) [hereinafter SRI LANKA COUNTRY REPORT].

<sup>8</sup> *1,200 Illegal Abortions Daily*, THE ISLAND, Oct. 8, 2002.

<sup>9</sup> See e.g., *Concluding Observations of the Human Rights Committee: Bolivia*, para. 22, U.N. Doc. CCPR/C/79/Add.74 (1997); *Concluding Observations of the Human Rights Committee: Colombia*, para. 24, U.N. Doc. CCPR/C/79/Add.76 (1997); *Concluding Observations of the Human Rights Committee: Poland*, para. 11, U.N. Doc. CCPR/C/79/Add. 110 (1999).

<sup>10</sup> See e.g., *Concluding Observations of the Human Rights Committee: Argentina*, para. 14, U.N. Doc. CCPR/CO/70/ARG (2000); *Concluding Observations of the Human Rights Committee: Chile*, para. 15, U.N. Doc. CCPR/C/79/Add.104 (1999); *Concluding Observations of the Human Rights Committee: Trinidad and Tobago*, para. 18, U.N. Doc. CCPR/CO/70/TTO (2000).

<sup>11</sup> See SRI LANKA COUNTRY REPORT, *supra* note 7.

<sup>12</sup> P. Hewage, *Induced Abortion in Sri Lanka: Opinions of Reproductive Health Care Providers*, in ABORTION IN THE DEVELOPING WORLD, 321, 322 (Axel Mundigo and Cynthia Indriso eds., 2001).

<sup>13</sup> UNITED NATIONS POPULATION FUND (UNFPA), STATE OF WORLD POPULATION 2003 71 (2003).

<sup>14</sup> POPULATION DIVISION, UNITED NATIONS, DEPARTMENT OF ECONOMIC AND SOCIAL AFFAIRS, ABORTION POLICIES: A GLOBAL REVIEW, vol. III, 106 (2002).

<sup>15</sup> HRC, Gen. Comment 28, *supra* note 1, para. 11.

<sup>16</sup> See Sunila Abeyesekera, *Abortion in Sri Lanka in the Context of Women's Human Rights* 9 REPROD. HEALTH MATTERS 87, 91 (1997).

<sup>17</sup> Darini Rajasingham-Senayake, *Ambivalent Empowerment: The Tragedy of Tamil Women in Conflict*, in WOMEN, WAR AND PEACE IN SOUTH ASIA: BEYOND VICTIMS OF AGENCY, 102, 115 (Rita Manchando ed. 2001).

<sup>18</sup> DEPARTMENT OF CENSUS AND STATISTICS, MINISTRY OF HEALTH, NUTRITION AND WELFARE, SRI LANKA DEMOGRAPHIC AND HEALTH SURVEY 2000 63 (2002).

<sup>19</sup> Fourth report of the Government of Sri Lanka before the UN Human Rights Committee, CCPR/C/LKA/2002/4, para. 412 (2002).

<sup>20</sup> HRC, Gen. Comment 28, *supra* note 1, para. 20.

<sup>21</sup> See Abeyesekera, *supra* note 16.

<sup>22</sup> HRC, Gen. Comment 28, *supra* note 1, para. 5.

<sup>23</sup> *Id.*

<sup>24</sup> See generally Abeyesekera, *supra* note 16.

<sup>25</sup> Government report before the CEDAW Committee, *supra* note 6, para. 51. Despite strong support from the National Committee of Women, the proposed provisions to broaden legal grounds for abortion to include rape, incest and fetal impairment were withdrawn before reaching parliament. *Id.*