



Convention on the Elimination of All Forms of Discrimination against Women

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Committee on the Elimination of Discrimination against Women

Views adopted by the Committee under article 7 (3) of the Optional Protocol, concerning Communication No. 134/2018^{*,**}

<i>Communication submitted by:</i>	Rosanna Flamer-Caldera (represented by counsels, the Human Dignity Trust; Christine Chinkin, of the London School of Economics; Karon Monaghan QC, of Matrix Chambers; Keina Yoshida, of Doughty Street Chambers; and Olivia Clark, of DLA Piper)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Sri Lanka
<i>Date of communication:</i>	23 August 2018 (initial submission)
<i>References:</i>	Decision taken pursuant to rule 69 of the Committee's rules of procedure, transmitted to the State party on 12 October 2018 (not issued in document form)
<i>Date of adoption of decision:</i>	21 February 2022

* Adopted by the Committee at its eighty-first session (7 – 25 February 2022).

** The following members of the Committee participated in the examination of the present communication: Gladys Acosta Vargas, Hiroko Akizuki, Leticia Bonifaz Alfonso, Corinne Dettmeijer-Vermeulen, Náela Gabr, Hilary Gbedemah, Nahla Haidar, Dalia Leinarte, Lia Nadaraia, Aruna Devi Narain, Ana Peláez Narváez, Bandana Rana, Rhoda Reddock, Elgun Safarov, Natasha Stott Despoja, Genoveva Tisheva and Franceline Toé-Bouda.



Background

1. The communication is brought by Rosanna Flamer-Caldera, a national of Sri Lanka born in 1956. She claims that the State party has violated her rights under articles 2 (a) and (c)–(g), 5 (a) and 16 of the Convention. In addition, the Committee notes that the third party intervener raises claims under articles 7 (c) and 15 of the Convention. The Optional Protocol entered into force for Sri Lanka on 15 January 2003. The author is represented by counsels.

Facts as submitted by the author

2.1 The author is a lesbian. She dresses in what is considered “masculine” attire and wears her hair short. She is open about her sexuality and is a prominent activist for lesbian, gay, bisexual, transgender and intersex rights in Sri Lanka. She founded and is the Executive Director of Equal Ground, the only organization in Sri Lanka that represents the entire lesbian, gay, bisexual, transgender and intersex community on issues of non-discrimination.

2.2 The author has suffered discrimination and abuse due to being a lesbian. As a teenager, she suffered from stigma associated with her sexual orientation and attempted to commit suicide when she was 17 years old. Not long after, she left Sri Lanka for the United States of America, where she could be open about her sexuality. She returned to Sri Lanka permanently in 1990. However, she found it difficult to find a job and to run her business being and dressing as who she is.

2.3 In 1997, the author discovered that same-sex sexual activity between consenting adults was a criminal offence under section 365A of the Penal Code of 1883. Previously encompassing only men, it was amended by the Penal Code (Amendment) Act No. 22 of 1995 to include sexual conduct between women, replacing the previous wording “male person” with “person”.¹

2.4 In 1999, the author co-founded a support group for lesbian and bisexual women, the Women’s Support Group. She has since been threatened frequently and has faced abuse from the media and the public. When the members of the Women’s Support Group spoke about organizing a lesbian conference in 1999, a letter was published in the press calling on the police to release convicted rapists so that lesbians “might get a taste of the real thing”. A complaint about this to the Press Council by a non-governmental organization proved fruitless. During this time, the Press Council published a ruling denouncing lesbianism.²

2.5 In 2004, the author founded a new organization called Equal Ground. She has faced continual challenges running the organization. In December 2012 and February 2013, the Women and Children’s Bureau of the police made presentations asserting

¹ Section 18 of the Penal Code (Amendment) Act No. 22 reads as follows: “Section 365A of the principal enactment is hereby repealed and the following section substituted therefor: - “Acts of gross indecency between persons. 365A. Any person who, in public or private, commits, or is a party to the commission of, or procures or attempts procure the commission by any person of, any act of gross indecency with another person, shall be guilty of an offence, and shall be punished with imprisonment of either description, for a term which may extend to two years or with fine or with both and where the offence is committed by a person over eighteen years of age in respect of any person under sixteen years of age shall be punished with rigorous imprisonment for a term not less than ten years and not exceeding twenty years and with fine and shall also be ordered to pay compensation of an amount determined by court to the person in respect of whom the offence was committed for the injuries caused to such person.”

² The Press Council’s ruling stated as follows: “Lesbianism is at least an act of gross indecency and unnatural. Lesbianism is itself an act of sadism and salacious. Publication of any opinion against such activities does not amount to a promotion of sadism or salacity, but any publication, which supports such conduct is an obvious promotion of all such violence, sadism and salacity.” The author notes that the head of the Press Council at the time, Wijeyadasa Rajapakshe, is currently the Minister of Higher Education and Cultural Affairs.

that child abuse was increasing mostly due to the “growing homosexual culture”. The author’s picture was shown together with her name and position with Equal Ground, claiming that she and her organization were responsible for spreading homosexuality, implying that they were also responsible for spreading paedophilia. She did not complain to the police out of fear of being arrested. The Criminal Investigation Department has placed her and Equal Ground under surveillance, which forced her to move the organization’s materials to a secure location, as the Department had deemed any homosexual material to be pornography, which could provoke arrest.

2.6 In July 2013, a partner organization of Equal Ground was raided by the Criminal Investigation Department on the basis of the allegation that it was “spreading homosexuality”. The author has been subjected to discrimination, harassment, stigmatization, threats, high-profile attacks on her character and threats of violence by State officials and members of the public, including on social media. She has been targeted due to her openness about her sexual orientation, her “masculine” attire, her failure to conform to gender stereotypes and her advocacy for lesbian, gay, bisexual, transgender and intersex persons in Sri Lanka. In April and May 2018, she was verbally abused and was threatened with violence in a driving altercation and by a bread delivery man.³

2.7 According to the author, the criminalization of same-sex sexual activity has meant that the discrimination, violence and harassment faced by the lesbian, gay, bisexual, transgender and intersex community in Sri Lanka continue with impunity. Members of the community are not protected against police harassment. The law has altered how she lives and conducts herself in public and private. She has a constant fear of arrest and keeps her door locked and curtains drawn when she is at home with her girlfriend.

2.8 The author submits that she has no means to challenge section 365A of the Penal Code of 1883, as the Sri Lankan Constitution explicitly prohibits any constitutional challenge to the validity of enacted legislation,⁴ as confirmed by the State party.⁵ In 2016, the Supreme Court of Sri Lanka confirmed the validity of sections 365 and 365A of the Penal Code in SC Appeal No. 32/11 and upheld the conviction of two men.⁶

Complaint

3.1 The author argues that the criminalization of female same-sex sexual activity and the concomitant potential for arrest and prosecution amount to discrimination on the grounds of gender and sexual orientation, in violation of her right to non-discrimination under article 2 (a) and (d)–(g) of the Convention.⁷ While section 365A of the Penal Code of 1883 applies equally to men and women, it is by virtue of the intersecting forms of discrimination they face as women and as sexual minorities that lesbian and bisexual women suffer a compounded impact from the provision.⁸

³ The harassers said, for example, that she was “a disgrace to decent Sri Lankan women”, asked “why are you trying to look like a man?”, and said “you should be thrashed”.

⁴ Article 16 (1) of the Constitution states that “all existing written law and unwritten law shall be valid and operative notwithstanding any inconsistency with the preceding provisions of this Chapter”. Article 80 (3) of the Constitution states as follows: “Where a Bill becomes law upon the certificate of the President or the Speaker, as the case may be endorsed thereon, no court or tribunal shall inquire into it, pronounce upon or in any manner call into question, the validity of such Act on any ground whatsoever.”

⁵ [A/HRC/WG.6/28/LKA/1](#).

⁶ The author refers to the Supreme Court’s judgment in *Galabada Wimalasiri v. Officer-in-Charge, Police Station, Maradana and the Attorney General*, SC Appeal No. 32/11 of 30 November 2016.

⁷ *Toonen v. Australia* (CCPR/C/50/D/488/1992).

⁸ General recommendation No. 28 (2010) on the core obligations of States parties under article 2 of the Convention, para. 18.

3.2 According to the author, the criminalization of same-sex sexual activity violates the *jus cogens* principle of equality and non-discrimination under article 2 (d) of the Convention.⁹ Lesbian and bisexual women suffer significant societal discrimination and stigmatization. The criminalization has created significant barriers to accessing justice as well as a culture where discrimination, harassment and violence against lesbians has been allowed to flourish.¹⁰ As such, the author has been subjected to threats and harassment based on her sexuality and her non-conformity with stereotypical roles and appearances for women, causing her to fear for her own safety and that of her family. As a human rights defender, she has been particularly vulnerable to discrimination, as demonstrated by the vilification, monitoring, surveillance and harassment to which she has been exposed. The failure to address this discrimination amounts to a violation of article 2 (f) and (g) of the Convention.

3.3 Under article 2 (c)–(g) of the Convention and general recommendation No. 35 (2017) on gender-based violence against women, updating general recommendation No. 19, the author affirms that the criminalization of same-sex sexual activity between women exacerbates gender-based violence against women, including at the hands of their community and family.¹¹ It creates a context in which lesbians and bisexual women are forced into heterosexual marriages, in the absence of a criminal prohibition of marital rape, and suffer violations of their right to sexual and bodily autonomy. Violations of the rights of lesbian, gay, bisexual, transgender and intersex persons are underreported and are not properly investigated or prosecuted.¹² The criminalization has left the author vulnerable to vilification by the authorities and threats of violence by private actors, in breach of the State party’s obligation to respect and protect her right to be free from violence.¹³ She has been targeted as the most prominent defender of the human rights of lesbian, gay, bisexual, transgender and intersex persons in Sri Lanka, in addition to the precautions she has to take as a woman. Thus, she has put in place security protocols for her protection and that of her family, organizes events in safe spaces and ensures that the location of her work is not made public. Given her activism and known sexual orientation, she fears falling victim to the continuing practice of “white van disappearances”.

3.4 Invoking article 5 (a) of the Convention, paragraph 10 of general recommendation No. 25 (2004) on temporary special measures, paragraph 18 of general recommendation No. 28 (2010) on the core obligations of States parties under article 2 of the Convention, and paragraph 8 of general recommendation No. 33 (2015) on women’s access to justice, the author argues that the criminalization of same-sex sexual activity between women and discrimination against lesbians and bisexual women form part of entrenched patriarchal attitudes that fix gender roles and reduce women to a particular reproductive function. The law violates article 5 (a) of the Convention by criminalizing a sexual activity that does not conform to gender stereotypes and by legitimizing societal prejudice and gender stereotypes and roles. In addition to having faced stereotypes as a woman, including against her having a

⁹ Inter-American Court of Human Rights, *Atala Riffo and daughters v. Chile*, Judgment (Merits, Reparations and Costs), 24 February 2012, Series C No. 239, paras. 79, 91 and 133.

¹⁰ CEDAW/C/GUA/CO/7, paras. 19–20.

¹¹ African Commission on Human and Peoples’ Rights, resolution 275 of 2014 on protection against violence and other human rights violations against persons on the basis of their real or imputed sexual orientation and gender identity; and *Ending Violence and Other Human Rights Violations Based on Sexual Orientation and Gender Identity: A Joint Dialogue of the African Commission on Human and Peoples’ Rights, the Inter-American Commission on Human Rights and the United Nations* (2016).

¹² The Yogyakarta Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity.

¹³ The author notes that she has been subject to accusations that she “behaves like a man”, that she is a “barren bitch” and that she is a “disgrace to Sri Lankan women”.

livelihood, the author has been subjected to harmful stereotyping on account of her sexual orientation, including the accusation that she is spreading paedophilia, as well as vilification, harassment and threats based on such stereotypes.

3.5 The author argues that the criminalization of same-sex sexual conduct between women violates the rights to autonomy and choice underpinning article 16 of the Convention. She affirms that sexual orientation is linked to the right to individual self-determination and sexual autonomy, in accordance with her own choice and convictions.¹⁴ The criminalization brings consensual private activity into the public domain and thus violates the rights to privacy, dignity and personal integrity, as it allows police officers to enter a household on the mere suspicion that two consenting women are in an intimate relationship, and to investigate such aspects of private life and to detain the author. This has made it difficult for her to find a Sri Lankan partner due to fears of persecution, and when she is with someone, she has to make sure the door is locked and windows and curtains are closed.

State party's observations on admissibility

4.1 By note verbale of 13 August 2019, the State party submits that the communication is inadmissible. The State party argues that the author has failed to exhaust domestic remedies, as she has not engaged any domestic procedure. It observes that article 126 of the Constitution of Sri Lanka provides a right of direct access to the Supreme Court to seek redress for violations of fundamental rights by the executive or administrative authorities. Thus, the Supreme Court has rendered many judgments in which it has ascertained violations of fundamental rights by public officials and provided for compensation. Moreover, claims of violations of such rights by private actors can be brought before ordinary courts. On the basis of article 4 (d) of the Constitution, the Supreme Court has also enabled public interest litigation. In SC Appeal No. 32/11, the Supreme Court acknowledged "contemporary thinking, that consensual sex between adults should not be policed by the State nor should it be grounds for criminalization". While acknowledging the domestic law in force, the Court held that imposing custodial sentences would be inappropriate in cases where the impugned acts were between consenting adults. Further, article 140 of the Constitution provides for the availability of writs before the Court of Appeal.

4.2 The State party observes that the Human Rights Commission, the Public Petitions Committee of Parliament, the Parliamentary Commissioner for Administration and the National Police Commission receive and inquire into complaints about human rights violations and official decisions. The criminal justice system provides for numerous legal processes for the protection of persons, including payment of compensation to victims of unlawful arrest or detention. Additionally, legislative action can be challenged by way of pre-enactment review.

4.3 The State party submits that the communication is insufficiently substantiated for the purpose of admissibility, as the author invokes the Convention in very general terms, without specifically explaining the alleged violations.

4.4 According to the State party, the communication is inadmissible *ratione temporis*, as the author refers to several alleged events that occurred prior to the entry into force of the Convention for the State party.¹⁵

4.5 The State party observes that it is committed to reforming the Penal Code of 1883 to ensure that all offences contained therein comply with its human rights obligations.

¹⁴ Inter-American Court of Human Rights, *Atala Riffo and daughters v. Chile*, para. 136.

¹⁵ Under article 4 (2) (e) of the Optional Protocol, the Committee shall declare a communication inadmissible where the facts that are the subject of the communication occurred prior to the entry into force of the Optional Protocol for the State Party concerned unless those facts continued after that date.

The State party has recognized before the human rights treaty bodies that the right to equality and non-discrimination implicitly includes non-discrimination on the ground of sexual orientation. An ongoing constitutional reform process includes the consideration of a recommendation by the Parliamentary Subcommittee on Fundamental Rights to explicitly guarantee non-discrimination on the ground of sexual orientation.

Author's comments on the State party's observations on admissibility

5.1 In her comments dated 10 December 2019, the author disputes the claim that she has failed to exhaust domestic remedies. She argues that none of the measures indicated by the State party would allow her to challenge the validity of section 365A of the Penal Code. While article 126 of the Constitution allows the Supreme Court to grant relief, it must be read together with provisions precluding a review of enacted legislation. The State party does not comment on the impossibility of conducting such a review, nor does it provide any examples of successful constitutional challenges to the validity of a criminal law. The author invokes the Committee's concern that there is no opportunity for judicial review of legislation predating the Constitution.¹⁶ Additionally, there is no requirement to address the non-judicial remedies invoked by the State party.¹⁷

5.2 The author disputes that the communication is inadmissible *ratione temporis*, as the violation of her rights, including through the existence of section 365A of the Penal Code of 1883, is ongoing.

5.3 The author reiterates that, in 2016, the Supreme Court upheld convictions under section 365A of the Penal Code. The State party's reference to the possibility of a change to the law is irrelevant to the admissibility of the communication. Moreover, this observation amounts to an acceptance of the law's discriminatory nature. She submits that she has clearly argued how each of the articles of the Convention has been violated.

State party's observations on the merits

6.1 By note verbale of 3 January 2020, the State party submits its observations on the merits. The State party argues that article 12 of the Constitution is in accordance with article 2 (a) of the Convention as it provides for equality before the law, equal protection of the law and non-discrimination. The State party understands these rights as including non-discrimination on the ground of sexual orientation. There are no laws in Sri Lanka permitting discrimination on the ground of sexual orientation or precluding persons from engaging in their day-to-day activities solely on this basis. Any such laws would be unconstitutional, giving the victim a right to pursue remedies. Additionally, numerous policies have been implemented to contribute to the realization of the rights set out in the Convention. Moreover, the Supreme Court's reasoning in SC Appeal No. 32/11 shows that attitudes of the courts in this context are evolving.

6.2 The State party notes that article 120 of the Constitution enables the Supreme Court to review the consistency of a bill with the Constitution, which is a procedure that may be invoked by citizens. Whereas the Constitution only provides for pre-enactment judicial review of legislation, the author had the possibility of challenging the Penal Code (Amendment) Act No. 22 of 1995. However, she failed to do so and thus acquiesced in the constitutionality of the law. The State party further notes the existence at every police station in the country of a designated division for the specific needs of women. However, the author has not filed any complaint in Sri Lanka.

¹⁶ CEDAW/C/LKA/CO/8, para. 10.

¹⁷ *Purna Maya v. Nepal* (CCPR/C/119/D/2245/2013).

6.3 The State party argues that the author wrongly claims to live under a constant threat of arrest. First, certain conditions must be met before an arrest can be made, including the arrestee's involvement in the commission of a crime, the receipt of a reasonable complaint or credible information, or the existence of a reasonable suspicion of the commission of a crime. Second, the organization of Sri Lankan society militates against the operational relevance of section 365A of the Penal Code, as the aforementioned criteria require a reasonable suspicion of the commission of a grossly indecent act. According to the State party, the author's other claims lack substantiation and are based on hypothetical scenarios or conjecture.

Author's comments on the State party's observations on the merits

7.1 In her comments of 23 March 2020, the author notes that the State party accepts that legislation in force cannot be challenged. Thus, she has no effective legal remedy to challenge section 365A of the Penal Code. Pre-enactment review by the Supreme Court can only be triggered if a request thereto is filed within one week of the bill being placed on the Order Paper of Parliament (art. 121 (1) of the Constitution). However, the author only became aware of the law two years after it was adopted. As a consistent advocate for the rights of lesbian, gay, bisexual, transgender and intersex persons, she is deeply hurt by the State party's argument that she acquiesced in the constitutionality of the law.

7.2 The author argues that the State party's observations on the threshold of arrest and the Supreme Court's decision in SC Appeal No. 32/11 only confirm that consensual sex between adults remains policed and criminalized. She argues that complaints about matters other than the criminalization of same-sex sexual activity between women are not relevant to the communication.

7.3 On 13 October 2020, the author requested the submission of a third party intervention. On 9 November 2020, following the Committee's approval in this regard, the author provided a third-party intervention.¹⁸ The intervener affirms, inter alia, that the State party violated the author's rights under article 7 (b) and (c) of the Convention given the inflammatory rhetoric of government leaders, the intimidating surveillance of Equal Ground, the barriers to registering it as a non-governmental organization and the need to find safe spaces to hold events. The State party also breached article 15 (1) of the Convention, as the criminalization of same-sex sexual activity by women denies lesbians, including the author, equal recognition before the law and obstructs them from reporting crimes committed against them.

7.4 Invoking article 16 of the Convention, the intervener notes that the author constantly needs to hide her relationships. In 2005, she and her partner experienced discrimination because of their family status, as a health-care professional refused to provide treatment to her partner with her present. The State party has violated her right to privacy, as the police force is allowed to investigate intimate aspects of her private life. There have also been forced marriages of lesbians, in breach of the right to choose not to marry. Moreover, negative stereotypes of unmarried women have not been countered.

Issues and proceedings before the Committee

Consideration of admissibility

8.1 In accordance with rule 64 of its rules of procedure, the Committee is to decide whether the communication is admissible under the Optional Protocol. In accordance with rule 72 (4), it must do so before considering the merits of the communication.

¹⁸ The third-party intervention was authored by Dianne Otto, Professorial Fellow at Melbourne Law School.

8.2 In accordance with article 4 (2) (a) of the Optional Protocol, the Committee has verified that the same matter has not already been examined by the Committee and has not been and is not being examined under another procedure of international investigation or settlement.

8.3 The Committee notes the State party's argument that the communication is inadmissible, as the author has not engaged any domestic remedies. In particular, the State party argues that she could have brought a petition for a pre-enactment review of the amendment to the Penal Code of 1883 under article 121 (1) of the Constitution. The Committee notes the author's argument that, according to article 121 (1) of the Constitution, a request for pre-enactment review must be filed within one week of the bill being placed on the Order Paper of Parliament, and that she was not aware of this possibility at the relevant time. Considering the limited time frame and the lack of information to show how the author could, in practice, have used this remedy in a timely manner, the Committee cannot ascertain that the procedure under article 121 (1) of the Constitution was in fact available to her under article 4 (1) of the Optional Protocol. The Committee therefore concludes that the author's non-use of this procedure does not preclude it from examining the communication under article 4 (1) of the Optional Protocol.

8.4 The Committee notes the author's argument that the other procedures invoked by the State party, namely those before the Supreme Court, the Court of Appeal, the Human Rights Commission, the Public Petitions Committee of Parliament, the Parliamentary Commissioner for Administration and the National Police Commission, are incapable of addressing her complaint, which concerns section 365A of the Penal Code of 1883 as amended. Noting that the State party does not refute the stated impossibility for its courts to review adopted legislation,¹⁹ and recalling that there is no requirement to address non-judicial remedies for the purpose of admissibility,²⁰ the Committee cannot conclude that said procedures could effectively provide relief in the light of the author's claims. The Committee therefore finds that it is not precluded by article 4 (1) of the Optional Protocol from examining the communication.

8.5 The Committee notes the State party's argument according to which the communication is inadmissible *ratione temporis*. The Committee recalls that it has competence to consider alleged violations that occurred after the entry into force of the Optional Protocol for the State party, which took place on 15 January 2003. The Committee finds that the author's claim regarding the effects on her of section 365A of the Penal Code of 1883 as amended must be considered as having continued after the entry into force of the Optional Protocol for the State party, including the discrimination, harassment, stigmatization, threats and attacks to which she was subject after that date. The Committee therefore finds that it is not precluded from examining the communication under article 4 (2) (e) of the Optional Protocol insofar as it concerns section 365A of the Penal Code of 1883 as amended and any events that occurred after the entry into force of the Optional Protocol for the State party.

8.6 The Committee notes the submission by the State party that the communication is inadmissible on the ground that it is insufficiently substantiated. The Committee considers, however, that the communication raises issues of substance under the Convention, particularly as regards the claims concerning the effects on the author of the criminalization of same-sex sexual activity by women. The Committee therefore finds that the communication is sufficiently substantiated for the purpose of admissibility, in accordance with article 4 (2) (c) of the Optional Protocol.

¹⁹ CEDAW/C/LKA/CO/8, para. 10 (b).

²⁰ *Purna Maya v. Nepal*.

8.7 In the absence of any other objections by the State party to the admissibility of the communication, the Committee declares the communication admissible, insofar as it concerns the effects on the author of the criminalization, by the State party, of same-sex sexual activity by women following the entry into force of the Optional Protocol for the State party, as raising issues under articles 1, 2, 5, 7, 15 and 16 of the Convention.

Consideration of the merits

9.1 The Committee has considered the present communication in the light of all the information made available to it by the author and by the State party, as provided for in article 7 (1) of the Optional Protocol.

9.2 The Committee notes the author's claim that section 365A of the Penal Code of 1883 as amended violates her right to non-discrimination under article 2 (a) and (d)–(g) of the Convention, as the criminalization of same-sex sexual activity by women compounds discrimination against women in Sri Lanka. The Committee recalls that certain groups of women, including lesbian women, are particularly vulnerable to discrimination through civil and penal laws, regulations, and customary law and practices.²¹ The Committee notes the author's claims that, as a well-known activist for the rights of lesbian, gay, bisexual, transgender and intersex persons and being known for being lesbian, she is under constant risk of arrest, detention and investigation of her private life and has had to modify her behaviour accordingly, as the law continues to be enforced. It further notes the author's argument that this norm has the effect of sanctioning the threats and abuse to which she and her organization have been subjected by State and non-State actors and of obstructing access to procedures for the author to complain hereof. Under the circumstances, the Committee finds that the State party has subjected the author to direct and indirect discrimination emanating from the Penal Code of 1883 as amended. The Committee is concerned that the Code has not been repealed despite previous expressions of concern about its discriminatory effect on women.²² In the light of the foregoing, the Committee considers that the State party has breached the author's rights under article 2 (a) and (d)–(g) of the Convention.

9.3 The Committee notes the author's claim that the criminalization of same-sex sexual activity between women exacerbates gender-based violence against women, including vilification and harassment of and threats against the author. The Committee recalls that gender-based violence against women takes multiple forms, including acts or omissions intended or likely to cause or result in death or physical, sexual, psychological or economic harm or suffering to women, threats of such acts, harassment, coercion and arbitrary deprivation of liberty.²³ The Committee further recalls its recommendation to States parties to repeal provisions that allow, tolerate or condone forms of gender-based violence against women.²⁴ In the present case, the Committee notes that the author claims to have been targeted by State and non-State actors due to her activism and because of being known as lesbian, including through frequent threats, abuse, attacks and harassment. She also claims that she has had to put in place security protocols for her protection and that of her family, that she organizes events in safe spaces and that she has to ensure that the location of her work is not made public. The Committee further notes that the State party has neither effectively refuted these allegations nor indicated any legal or other measures taken to respect and protect the author's right to a life free from gender-based violence. Accordingly, the Committee

²¹ General recommendation No. 28, para. 31 and general recommendation No. 35, para. 12.

²² CEDAW/C/LKA/CO/7, para. 24; CCPR/C/LKA/CO/5, para. 8; and E/C.12/LKA/CO/5, para. 17.

²³ General recommendation No. 35, para. 14.

²⁴ Ibid., para. 29 (c) (i).

finds that the State party has breached the author's rights under article 2 (c)–(f) of the Convention, read in conjunction with general recommendations Nos. 19 and 35.

9.4 The Committee notes the author's claim according to which the State party has failed to eliminate the prejudice and stereotypes to which she has been exposed. The author claims that, in addition to the stereotypes she has had to face as a woman, the authorities have subjected her to harmful stereotyping and accusations on account of being lesbian, including the accusation that she spreads paedophilia. She also claims that the criminalization of same-sex sexual activity by women legitimizes societal prejudice and gender stereotypes, including through the threats and harassment she receives. The Committee notes that decriminalization of consensual same-sex relations is essential to prevent and protect against violence, discrimination and harmful gender stereotypes.²⁵ However, the State party has neither effectively refuted the author's allegations nor indicated any measures taken to eliminate the prejudices to which she has been exposed as a woman, lesbian and activist. Therefore, the Committee finds that the State party has breached its obligations under article 5 (a), read in conjunction with article 1, of the Convention.

9.5 The Committee notes the author's claim that she has been frequently threatened and faced abuse from the police, the media and the public in connection with her leadership of the Women's Support Group and Equal Ground, and that she has been unable to report this abuse out of fear of being arrested. The Committee also notes the author's claim that the Criminal Investigation Department has placed her and Equal Ground under surveillance and deemed any homosexual material to constitute pornography. This forced her to move the organization's materials to a secure location and subjected her to a constant threat of being arrested due to her leadership of Equal Ground. The Committee recalls that States parties should encourage the work of human rights and women's non-governmental organizations.²⁶ The Committee also recalls that women's "ability to participate as active members of civil society" is among the "prerequisites for creating a society with lasting democracy, peace and gender equality".²⁷ In the present case, the Committee considers that the State party's authorities have failed to protect the author against, and have partaken in, harassment, abuse and threats against the author's work promoting the rights of lesbian, gay, bisexual, transgender and intersex community in Sri Lanka. The Committee finds that these facts amount to a violation of the author's rights under article 7 (c) of the Convention.

9.6 The Committee notes the author's claim according to which she has been unable to approach the police and file complaints against the threats and harassment to which she has been subjected, given that the criminalisation of same-sex sexual activity renders her vulnerable to arrest and prosecution. The Committee recalls that States parties are obliged under articles 2 and 15 of the Convention to ensure that women have access to the protection and remedies offered through criminal law and that they are not exposed to discrimination within the context of those mechanisms either as victims or as perpetrators of criminal acts.²⁸ The Committee also recalls, in this regard, that women are disproportionately criminalized due to their situation or status, including lesbian women.²⁹ The Committee considers that the criminalisation by article 365A of the Penal Code of 1883 as amended of same-sex sexual activity in Sri Lanka has resulted in much more significant difficulties for the author, being a lesbian woman. In particular, the Committee considers that the criminalisation is incompatible with the author's right to complain of the abuse and threats to which she has been subjected.

²⁵ [A/HRC/35/36](#), para. 37 and [A/HRC/31/57](#), para. 10.

²⁶ *Abaida v. Libya* (CEDAW/C/78/130/2018), para. 6.5.

²⁷ General recommendation No. 30 on women in conflict prevention, conflict and post-conflict situations, para. 42.

²⁸ General recommendation No. 33 on women's access to justice (CEDAW/C/GC/33), para. 46.

²⁹ *Ibid.*, para. 49.

The Committee therefore finds that the author's rights under article 15 (1) of the Convention have been breached.

9.7 The Committee notes the author's argument that the State party, by criminalizing same-sex sexual conduct between women, has breached her rights to autonomy and choice underpinning article 16 of the Convention, as her fear of persecution has rendered it difficult for her to find a Sri Lankan partner, she is subjected to the risk of her home being entered by the police and being prosecuted on the suspicion of engaging in same-sex sexual activity, and has had to keep her door locked and her windows and curtains closed when she is with her partner. The Committee recalls that, whatever the form of a family, the treatment of women in the family both at law and in private must accord with the principles of equality and justice for all people.³⁰ The Committee considers that the rights enshrined in the Convention belong to all women, including lesbian, bisexual, transgender and intersex women, and that article 16 of the Convention applies also to non-heterosexual relations. The Committee notes that the criminalisation of same-sex sexual activity between women in Sri Lanka has meant that the author has had difficulties with finding a partner, has to hide her relations and runs the risk of being investigated and prosecuted in this context. The Committee therefore finds that the State party has breached the author's rights under article 16 of the Convention.

10. In accordance with article 7 (3) of the Optional Protocol, the Committee is of the view that the facts before it reveal a violation of the author's rights under articles 2 (a) and (c)–(g) and 5 (a), 7 (c), 15 and 16, read in conjunction with article 1, of the Convention, in the light of general recommendations Nos. 19, 33 and 35.

11. The Committee makes the following recommendations to the State party:

- (a) Concerning the author of the communication:
 - (i) Take immediate and effective action against the threats, harassment and abuse to which the author has been subjected, including through the adoption of preventative and protective measures and, where appropriate, initiate criminal procedures to hold those responsible to account;
 - (ii) Take all appropriate measures to ensure that the author and her organization can carry out their activism safely and freely;
 - (iii) Provide the author with appropriate reparation, including adequate compensation, commensurate with the gravity and the ongoing consequences of the violations of her rights;
- (b) Generally:
 - (i) With respect to section 365A of the Penal Code of 1883, decriminalise consensual same-sex sexual conduct between women having passed the age of consent;
 - (ii) Provide effective protection against gender-based violence against women, including by adopting comprehensive legislation against discrimination against lesbian, bisexual, transgender and intersex women;
 - (iii) Provide adequate protection, support systems and remedies, including reparation, to lesbian, bisexual, transgender and intersex women who are victims of discrimination;
 - (iv) Ensure that victims of gender-based violence against women, including lesbian, bisexual, transgender and intersex women, have access to effective civil and criminal remedies and protection, including counselling, health services and

³⁰ General recommendation No. 21 (1994) on equality in marriage and family relations, para. 13.

financial support, in line with the guidance provided in the Committee's general recommendation No. 33;

(v) Collect statistics on cases of hate crimes and gender-based violence against lesbian, bisexual, transgender and intersex women;

(vi) Effectively address discrimination against lesbian, bisexual, transgender and intersex women in the workplace;

(vii) Take specific and effective measures to ensure a safe and favourable environment for women human rights defenders and female activists;

(viii) Provide training to law enforcement agencies on the Convention, the Optional Protocol thereto and the Committee's general recommendations, in particular general recommendations Nos. 19, 21, 28, 33 and 35, to raise awareness of the human rights of lesbian, bisexual, transgender and intersex women and so that crimes with homophobic undertones committed against lesbian, bisexual, transgender or intersex women will be understood as gender-based violence or hate crimes requiring active State intervention.

12. In accordance with article 7 (4) of the Optional Protocol, the State party shall give due consideration to the views of the Committee, together with its recommendations, and submit to the Committee, within six months, a written response, including information on any action taken in the light of those views and recommendations. The State party is requested to have the Committee's views and recommendations translated into the official languages of the State party, to publish them and to have them widely disseminated, in order to reach all sectors of society.
