

# **EQUAL GROUND**

Center for International  
Human Rights



**Bluhm Legal Clinic**  
Northwestern Law

**HEARTLAND  
ALLIANCE**

GLOBAL INITIATIVE FOR  
SEXUALITY AND HUMAN RIGHTS

## **Human Rights Violations Against Lesbian, Gay, Bisexual, and Transgender (LGBT) People in Sri Lanka: A Shadow Report**

**Submitted for consideration at the 112th Session of the  
Human Rights Committee**

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Prepared by:

**EQUAL GROUND, Sri Lanka**

Center for International Human Rights  
of Northwestern University School of Law

Heartland Alliance for Human Needs & Human Rights,  
Global Initiative for Sexuality and Human Rights

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# **Human Rights Violations Against Lesbian, Gay, Bisexual and Transgender (LGBT) People in Sri Lanka: A Shadow Report**

## **I. Introduction**

This shadow report is submitted to the Human Rights Committee (“Committee”) by EQUAL GROUND,<sup>1</sup> the Center for International Human Rights of Northwestern University School of Law, and the Global Initiative for Sexuality and Human Rights (GISHR) of Heartland Alliance for Human Needs & Human Rights,<sup>2</sup> in anticipation of the Committee’s consideration at its 112<sup>th</sup> Session of Sri Lanka’s compliance with the International Covenant on Civil and Political Rights (“Covenant”).<sup>3</sup>

The purpose of this report is to direct the Committee’s attention to serious and ongoing violations of the Covenant rights of Sri Lanka’s lesbian, gay, bisexual, and transgender (“LGBT”) population. These violations include, notably, the following:

- \*\* criminalization of same-sex sexual conduct (violations of Articles 2(1), 2(3), 17, and 26);
- \*\* arbitrary arrests and detentions and abusive and violent police behavior (violations of Articles 7, 9, and 10);
- \*\* suppression of freedom of expression, assembly, and association (violations of Articles 19(2), 21, and 22); and
- \*\* failure to protect against discrimination, hate crimes, and forced marriages by private actors (violations of Articles 2(1), 7, 9, 23(3), and 26).

This report will conclude with (1) suggested recommendations to be made to Sri Lanka to promote greater compliance with its Covenant obligations and (2) suggested questions to be asked of Sri Lanka during the review session. We respectfully ask that the violations discussed

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<sup>1</sup> EQUAL GROUND is a non-profit organization based in Colombo, Sri Lanka, whose vision is to attain true equal social and political rights for the lesbian, gay, bisexual, transgender, intersex, and questioning (LGBTIQ) community in Sri Lanka. Much of EQUAL GROUND’s work focuses on raising awareness of LGBTIQ issues to enable LGBTIQ individuals to live and lead fulfilling lives free from stigma and discrimination.

<sup>2</sup> This report was authored by Northwestern University School of Law students Mary Elise Johnson (J.D. 2014), Ahalya Sriskandarajah (J.D. 2014), Erica Embree (J.D. and LL.M. in International Human Rights 2015) and Nida Jafrani (J.D. 2015), under the supervision of Professor Bridget Arimond of the Center for International Human Rights of Northwestern University School of Law. The report was prepared in collaboration with EQUAL GROUND and was guided by Stefano Fabeni, Managing Director of GISHR.

<sup>3</sup> International Covenant on Civil and Political Rights, 16 Dec. 1966, 999 U.N.T.S. 171, *available at* [https://treaties.un.org/pages/viewdetails.aspx?chapter=4&src=treaty&mtdsg\\_no=iv-4&lang=en](https://treaties.un.org/pages/viewdetails.aspx?chapter=4&src=treaty&mtdsg_no=iv-4&lang=en) [hereinafter *Covenant*]. Sri Lanka acceded to the Covenant on 11 June 1980. *United Nations Treaty Collection: International Covenant on Civil and Political Rights*, U.N., [https://treaties.un.org/pages/viewdetails.aspx?chapter=4&src=treaty&mtdsg\\_no=iv-4&lang=en](https://treaties.un.org/pages/viewdetails.aspx?chapter=4&src=treaty&mtdsg_no=iv-4&lang=en) (last visited 6 Sept. 2014).

in this report be raised by the Committee during its review of Sri Lanka's compliance with its Covenant obligations, and that the Committee consider our proposed recommendations and questions.

## II. Criminalization of Same-Sex Sexual Conduct

Like many colonial countries, Sri Lanka inherited colonial laws passed during British rule that reflected Britain's efforts to impose Victorian values on its colonies. These laws – which criminalize same-sex sexual conduct and, with time, have been increasingly used to persecute individuals on grounds of their real or perceived sexual orientation and gender identity and expression – have been retained to the present. Indeed, these laws have been extended to criminalize female, as well as male, same-sex sexual conduct.

Section 365 of the Sri Lankan Penal Code makes it a criminal offense to engage in “carnal intercourse against the order of nature.”<sup>4</sup> The penalty for violation of § 365 is up to ten years imprisonment and a fine.<sup>5</sup> Although “carnal intercourse against the order of nature” theoretically might be construed to include certain sexual activities between heterosexuals (such as non-procreative sex acts), it is widely understood to apply to sexual acts between same-sex individuals.

Section 365A of the Penal Code criminalizes “any act of gross indecency with another person.”<sup>6</sup> Violation of § 365A is punishable by up to two years in prison, a fine, or both.<sup>7</sup> Prior to being amended in 1995, § 365A read as follows:

“Any male person who in public or private, commits, or is party to the commission of, or procures or attempts to procure the commission by any male person of, any act of gross indecency with another male person, shall be guilty of an offence.”<sup>8</sup>

Pre-1995, § 365A unambiguously targeted sexual conduct and displays of affection between men. The 1995 amendment to § 365A removed the word “male” from the statute, making it gender neutral and applicable to women as well as men. Although “gross indecency” is not defined by the law or any Sri Lankan court decision, the current law embodies the same spirit as its predecessor and is commonly understood to target male and female homosexual conduct.<sup>9</sup> Moreover, because the term “gross indecency” is left open to interpretation by police officers, prosecutors, and judges, the breadth and ambiguity of what could constitute “gross indecency” invites abuse.

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<sup>4</sup> Sri Lankan Penal Code § 365.

<sup>5</sup> *Id.*

<sup>6</sup> Sri Lankan Penal Code § 365A.

<sup>7</sup> *Id.*

<sup>8</sup> See EQUAL GROUND, *Strengthening of Legal Protection for LGBT in Sri Lanka: Road to Decriminalization: Situation Analysis*, 2 (2012) [hereinafter, *Situation Analysis*].

<sup>9</sup> See *Former Commonwealth Head of Human Rights Condemns Sri Lanka over Gay Harassment*, PINK NEWS, 23 Sept. 2013, available at <http://www.pinknews.co.uk/2013/09/23/former-commonwealth-head-of-human-rights-condemns-sri-lanka-over-gay-harassment/> (last visited 6 Sept. 2014).

There have been no convictions under §§ 365 and 365A since Sri Lanka gained independence in 1948. However, regardless of whether these laws are enforced, they have the effect of perpetuating discrimination, harassment, violence, and unequal treatment of LGBT individuals in Sri Lanka. The laws serve as a pretext for denying sexual minorities a range of rights to which they are entitled under the Covenant. They also legitimize the stigma of sexual minorities in Sri Lanka, who face pervasive societal discrimination in employment, housing, the media, family matters, and daily life.

One recent example of the opportunities for abuse presented by these laws involves Member of Parliament Mangala Samaraweera, who is a leading opposition political leader and who is openly gay. In January 2014 his home was broken into and certain items were stolen. This incident became a media event when the man arrested for the crime claimed that the stolen items had been given to him as gifts and that he had been involved in a relationship with Mr. Samaraweera. Mr. Samaraweera issued a statement denying these allegations and accusing the government of engaging in a witch hunt against him, saying that the government was trying “to incarcerate and silence me by preparing to invoke an archaic Victorian law of the Sri Lankan penal code against me.”<sup>10</sup> Ultimately, the case against Mr. Samaraweera under § 365 was withdrawn after he agreed to drop his charges against the thief.

In addition to §§ 365 and 365A, Sri Lanka’s Vagrants Ordinance<sup>11</sup> is used to target LGBT individuals.<sup>12</sup> Although this Ordinance is primarily used against sex-workers, individuals who do not maintain traditional hetero-normative appearances have also been charged with vagrancy.<sup>13</sup> Likewise, transgender people have been charged with the crime of cheating the public by impersonation.<sup>14</sup>

These laws, which are used to target and harass LGBT individuals, violate several Covenant rights.

#### A. *The right to equality and non-discrimination*

Articles 2(1) and 26 of the Covenant guarantee the right to equality and prohibit discrimination on grounds such as race, color, and sex.<sup>15</sup> In the landmark decision of *Toonen v. Australia*, this

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<sup>10</sup> *Mangala opens the closet as regime smells blood*, THE REPUBLIC SQUARE, 29 Jan. 2014, available at <http://www.therepublicsquare.com/politics/2014/01/29/mangala-opens-the-closet-as-regime-smells-blood/>.

<sup>11</sup> The Legislative Enactments of Ceylon, 1956, Chapter 32, available at [http://www1.umn.edu/humanrts/research/srilanka/statutes/Vagrants\\_Ordinance.pdf](http://www1.umn.edu/humanrts/research/srilanka/statutes/Vagrants_Ordinance.pdf) (last visited 6 Sept. 2014). “Ceylon” is the former name for Sri Lanka.

<sup>12</sup> See Situation Analysis, *supra* note 8, at 12.

<sup>13</sup> *Id.*

<sup>14</sup> Sri Lankan Penal Code § 399 (“A person is said to ‘cheat by personation’ if he cheats by pretending to be some other person, or by knowingly substituting one person for another, or representing that he or any other person is a person other than he or such other person really is.”). See, e.g., Lankadeepa, *Boy Disguised as Girl since the age of 18*, 31 Aug. 2010; Lankadeepa, *Woman disguised as a Male Army Officer married to a Woman Following mobile phone love affair*, 23 Aug. 2010; Divaina, *Women Disguised as Men (aka Tom Boys)*, 17 May 2009; Lankadeepa, *Person who had disguised himself as a man for 20 years becomes a woman at the police station*, 3 Jan. 2009.

<sup>15</sup> Covenant, *supra* note 3, Arts. 2(1) & 26.

Committee found that the reference to “sex” in Articles 2(1) and 26 includes sexual orientation among the prohibited grounds of discrimination.<sup>16</sup>

Sections 365 and 365A of the Penal Code violate Articles 2(1) and 26 of the Covenant, as they single out same-sex sexual relations as criminal, thereby discriminating on the basis of sexual orientation and violating the principle of equal treatment under the law. The same is true of the use of laws against “vagrancy” and “cheating the public by impersonation” to harass, arrest and/or charge individuals because of their sexual orientation or gender identity. These laws serve to perpetuate societal prejudices against LGBT individuals and to validate, and even encourage, hate crimes and acts of discrimination and violence, both by State and non-State actors.

Sections 365 and 365A violate Articles 2(1) and 26 for the additional reason that they deny LGBT individuals the equal protection of a wide range of laws, both criminal and civil. LGBT individuals who are the victims of assault, rape, or other hate crimes cannot report these crimes to the police without fear that their sexual orientation or gender identity will be exposed or highlighted, leading to further discrimination and marginalization and, potentially, to prosecution under §§ 365 and 365A. For the same reason, although Sri Lankan law provides significant protection to people who have been fired from their jobs or displaced from their housing, victims of discrimination in employment or housing on grounds of their sexual orientation or gender identity cannot avail themselves of these protections without risking further violations of their rights.

#### *B. The right to privacy*

Article 17 recognizes the right of all people to be protected against arbitrary or unlawful interference with their privacy.<sup>17</sup> The right to privacy includes an affirmative right to personal autonomy in one’s private life. In *Toonen v. Australia*, this Committee found that laws criminalizing same-sex sexual conduct violated the Covenant right to privacy on the basis of sex, stating that: “it is undisputed that adult consensual sexual activity in private is covered by the concept of ‘privacy.’”<sup>18</sup> Sri Lanka’s laws criminalizing same-sex sexual conduct therefore violate Article 17.

Section 365’s criminalization of sexual relations between same-sex individuals also violates Article 17 because it authorizes Sri Lankan law enforcement officials to investigate intimate details regarding private life. Section 365A authorizes the investigation of an even broader range of activities – namely, any conduct between same-sex individuals that is deemed “grossly indecent.”

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<sup>16</sup> See *Toonen v. Australia*, Communication No. 488/1992, U.N. Doc CCPR/C/50/D/488/1992, ¶ 8.7 (1994).

<sup>17</sup> Covenant, *supra* note 3, Art. 17.

<sup>18</sup> *Toonen v. Australia*, Communication No. 488/1992, U.N. Doc CCPR/C/50/D/488/1992, ¶ 8.2 (1994).

### C. *The right to a remedy*

Article 2(3) of the Covenant imposes upon States Parties an obligation to “provide effective remedies” to anyone whose Covenant rights have been violated.<sup>19</sup> A State Party’s failure to fulfill this obligation “could in and of itself give rise to a separate breach of the Covenant.”<sup>20</sup>

Sri Lanka has not complied with this obligation. As noted above, the existence of laws criminalizing same-sex sexual conduct effectively prevents LGBT individuals from seeking recourse because doing so could expose them to criminal liability.

### III. **Arbitrary Arrests and Detentions and Abusive and Violent Police Behavior**

Article 9 of the Covenant guarantees the “right to liberty and security of person” and prohibits arbitrary arrests or detentions and any form of physical abuse or violence towards those in police custody. Article 10 recognizes that individuals who are deprived of their liberty must be treated with humanity and respect for their personal dignity. Article 7 proscribes torture and any other “cruel, inhuman or degrading treatment or punishment.”<sup>21</sup> Notwithstanding Sri Lanka’s obligations as a State Party to the Covenant, LGBT individuals in Sri Lanka are subjected to arbitrary arrest and detention and to abuse and violence at the hands of the police.

Individuals in Sri Lanka suffer arbitrary arrest and detention because of their sexual orientation and gender identity. For example, in 2012 a lesbian was arrested and charged with vagrancy when the police found her walking back to her motorcycle on a beach near Colombo. The police commented on her masculine appearance and the fact that she was wearing pants, and she was heavily questioned for her decision to ride a motorcycle. The lesbian was detained for approximately five hours before the police released her.<sup>22</sup>

Another example involves a man from Kandy who traveled to Colombo to sit for an accounting exam. While staying in the area, he and a Belgian male friend shared a room just outside Colombo in a guest house known to be a place where gay men commonly stay. One evening, after the two men had returned from dinner, the police broke down the door of their room and arrested both men under § 365A. The police forced the Sri Lankan man’s fingers onto unused condoms and planted the condoms at the scene before taking both men to the police lock-up. To obtain release from detention, the men were forced to agree to a settlement under which the Sri Lankan man had to agree to be identified as the State’s witness against his friend, and the Belgian man had to pay a fine.<sup>23</sup>

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<sup>19</sup> Human Rights Comm., General Comment No. 31: Nature of the General Legal Obligation Imposed on States Parties to the Covenant, CCPR/C/21/Rev.1/Add.13, ¶¶ 8, 15, 16, 26 May 2004, *available at* [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2f21%2fRev.1%2fAdd.13&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2f21%2fRev.1%2fAdd.13&Lang=en) [hereinafter *General Comment No. 31*]; Covenant, *supra* note 3, Art. 2(3).

<sup>20</sup> General Comment No. 31, *supra* note 19, at ¶¶ 15, 18.

<sup>21</sup> Covenant, *supra* note 3, Arts. 7, 9, 10.

<sup>22</sup> Anonymous report to EQUAL GROUND, recorded 4 Dec. 2013.

<sup>23</sup> Anonymous call to EQUAL GROUND Hotline, 2008.

In early 2014, a lesbian couple from Puttalam District traveled together to a nearby town where they went to a guest house, purchased beer, and took it to a romantic setting near a lake. The guest house staff that sold them the beer called the police and asked them to arrest the couple. While the women were seated together, the police came and arrested them. Fortunately, an EQUAL GROUND field officer heard about the arrest, went to the police station, and was able to persuade the police not to press charges. As a consequence, the women were released.<sup>24</sup>

LGBT individuals are also subjected to acts of police abuse and violence in violation of Articles 7, 9 and 10. Although §§ 365 and 365A of the Penal Code permit arrests only when there is evidence of the commission of “carnal intercourse”<sup>25</sup> or “gross indecency,”<sup>26</sup> Sri Lankan police conduct arbitrary arrests of LGBT individuals without such evidence on the purported grounds that the arrested individuals, being lesbian, gay, bisexual or transgender, will commit such acts in the future. Most of these arrests lead not to the filing of charges, but to bribery, blackmail, extortion, violence or coerced sexual favors.<sup>27</sup> For example, Saman, a graduate student, was accosted in Galle by police officers dressed in civilian clothing while he was conducting an interview of several men and one transgender woman for his thesis on safer sex. The men he was interviewing were arrested and beaten, and the transgender woman was sodomized by three police officers who inserted a wooden stick into her anus. The police accused Saman himself of promoting homosexuality, and he was slapped by the police and thrown into a jail cell with such force that he tripped and his ankle was injured.<sup>28</sup>

Another example involves two gay men who were arrested by police at a public restroom in Colombo. The police accused the two men of having sex in the restroom, using derogatory terminology for gay individuals. The police started to solicit bribes from the men, implying that they would be let go if they paid, but a senior police officer drove by and, after that, the men were taken to the police station. Once there, they were charged with inappropriate behavior in a public restroom, taken to court, and ordered to pay a government fine. They were released only after they paid the fine and lawyer fees.<sup>29</sup>

A similar incident was reported to have occurred in December 2013 at the Fort Railway Station, where three men were arrested at a public bathroom. The officer threatened them with a court case, and then demanded Rs. 50,000 to release them. The men gave him all they had, Rs. 5,000, and the officer released them, but told them that he wanted the rest of the money on a later date.<sup>30</sup>

These are but a few examples of the arbitrary arrests and detentions and the police abuse and violence directed against LGBT individuals in Sri Lanka. These examples demonstrate that,

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<sup>24</sup> Case reported to EQUAL GROUND by Puttalam Field Officer, 2014.

<sup>25</sup> Sri Lankan Penal Code § 365.

<sup>26</sup> *Id.* § 365A.

<sup>27</sup> Situation Analysis, *supra* note 8, at 11.

<sup>28</sup> *Codified Homophobia in Sri Lanka and its Oppressive Side-Effects*, YOU TUBE (uploaded 6 Jan. 2012), <http://www.youtube.com/watch?v=nRuj27pt65o> (last visited 6 Sept. 2014).

<sup>29</sup> *Colombo Fort Incident in 2006, Sri Lanka*, YOU TUBE (uploaded 11 Sept. 2011), <http://www.youtube.com/watch?v=uGnw5KuELhk&feature=related> (last visited 6 Sept. 2014).

<sup>30</sup> Jagathsithija, Post to Gay Meeting Places in Sri Lanka – Fort Railway Station, ONLYMEN: SRI LANKA GAY AND BISEXUAL WEBSITE (January 1, 2014, 6:05 AM), <http://onlymen.page.tl/Forum/thema-1-Fort-Railway-Station.htm>.

although no one has been convicted under §§ 365 and 365A, these provisions are frequently used to harass and abuse individuals on the basis of their sexual orientation or gender identity. Because the police are aware that citizens are frightened and reluctant to challenge such incidents of police harassment and abuse, they feel they have license to continue these practices unabated. These practices constitute clear violations of Covenant rights.

#### **IV. Violations of Freedom of Expression, Assembly & Association**

Articles 19(2), 21, and 22 of the Covenant recognize, respectively, the freedom to express ideas and impart information, the freedom to peacefully assemble, and the freedom to associate with others.<sup>31</sup> These rights are paramount to the functioning of a democratic society. This Committee has noted that individuals who engage in the gathering, analysis and dissemination of information related to a country's human rights situation are often subject to "threats, intimidation and attacks because of their activities," and it has emphasized that such threats and attacks can never be tolerated and must be met with timely investigation, prosecution, and redress for the victims.<sup>32</sup> Notwithstanding these guarantees, Sri Lankan LGBT human rights defenders and their organizations have been subjected to harassment and threats designed to suppress their advocacy efforts. These attacks, for which no one has been charged, prosecuted or otherwise sanctioned, have had the effect of curtailing freedom of expression, assembly and association.

One example of these attacks on LGBT activists and their organizations took place in June 2013 in the town of Galle. The NGO Secretariat's Office – a State agency – sent a representative to the Galle office of one of EQUAL GROUND's partner organizations in Galle. When the representative from the NGO Secretariat's Office saw files labeled "EQUAL GROUND," she ordered the partner organization staff member to give her the original files. The staff member refused to turn over the originals, but she did give the State representative copies of the documents. One month later, an officer from the Criminal Investigations Department raided the partner organization's office and demanded all the original documents pertaining to its work with EQUAL GROUND. After the Criminal Investigations Department officer lectured members of the organization's staff that homosexuality is not part of Sri Lankan culture, he threatened to shut down EQUAL GROUND and to arrest its Executive Director and the other members of its staff.<sup>33</sup>

Another example of these assaults on freedom of expression and assembly involved a series of workshops on HIV/AIDS. The events leading up to this crackdown began on 17 August 2013, when a State-controlled newspaper, Lakbima, printed an article titled "Male prostitution brothels run by homosexual groups." Furthering the spread of misinformation, the article claimed that children were being brainwashed to turn into homosexuals during a peer educators' workshop on

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<sup>31</sup> Covenant, *supra* note 3, Arts. 19(2), 21, 22.

<sup>32</sup> Human Rights Comm., General Comment No. 34: Freedoms of opinion and expression, CCPR/C/GC/34, ¶ 23, 12 Sept. 2011, available at <http://www2.ohchr.org/english/bodies/hrc/docs/GC34.pdf> [hereinafter *General Comment No. 34*].

<sup>33</sup> EQUAL GROUND, *Post UPR – A Report on the Ground Situation for LGBTI HRDs in Sri Lanka: Situation Alert*, 1 (2013) [hereinafter, *Situation Alert, Post UPR*].

stopping the spread of HIV/AIDS, run by one of EQUAL GROUND's partner organizations in Anuradhapura. After the publication of this article, officers from the Criminal Investigations Department visited the office of the partner organization and questioned its Executive Director about the workshop and specifically about the topics that had been covered. The officers told the Executive Director that he could continue the workshops only on the condition that he would not discuss homosexuality, human rights, or § 365A of the Penal Code.

This ban effectively shut down the organization's partnership work with EQUAL GROUND in that District for a period of time. Rather than risk the shutting down of their organization or the arrest of their officers and members, the partner organization gave in to the State's demands and curtailed any further HIV/AIDS workshops in that area.<sup>34</sup> The organization also pulled out from receiving funding from the Global Fund to Fight AIDS, Tuberculosis and Malaria. This had a significant impact on MSM<sup>35</sup> HIV/AIDS intervention work because that organization had been one of the very few in Sri Lanka that worked with the MSM population on these issues.

These examples are not isolated incidents. Other EQUAL GROUND Field Officers<sup>36</sup> have also been visited by officers of the Criminal Investigations Department and advised to discontinue any public discussion of LGBT issues. Following these visits, these Field Officers expressed difficulty in continuing their work. These State attacks on human rights defenders strike at the heart of freedom of expression, assembly and association.

Events in 2014 underscore the hostile environment in which Sri Lankan human rights defenders are operating. Several training workshops have been disrupted by intimidation since the start of the year. Transparency International, for example, was forced to cancel workshops for Tamil-language journalists in May and June due to intimidation by the government and other threats.<sup>37</sup> Following these disruptions, in July 2014, the Sri Lankan National Secretariat for NGOs issued a circular to all NGOs to prevent them from conducting press conferences, workshops, journalism training, and issuing press releases.<sup>38</sup> The justification given was that such activities are outside of NGOs' mandates.<sup>39</sup>

Workshops are not the only NGO activity being targeted. In August 2014, around 40 people violently interrupted a meeting of the Association for Families of the Disappeared. The intruders, eight of whom were swathed in Buddhist Monk's robes, verbally abused the meeting participants and accused them of supporting the Liberation Tigers of Tamil Eelam. The intruders were eventually forced to leave by the police. However, in the days that followed, the police sought out information about the meeting participants and summoned and interrogated at least one participant, Nimalka Fernando, the President of the International Movement against All

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<sup>34</sup> *Id.* at 2.

<sup>35</sup> "MSM" is the acronym for "males who have sex with males."

<sup>36</sup> Field Officers are designated staff members of EQUAL GROUND and its partner organizations, who handle EQUAL GROUND's project-related work in various districts.

<sup>37</sup> *Id.*

<sup>38</sup> *Sri Lanka muzzles NGOs and bans media-related activities*, INTERNATIONAL FEDERATION OF JOURNALISTS (July 7, 2014), available at <http://www.ifj.org/nc/news-single-view/backpid/33/article/sri-lanka-muzzles-ngos-and-bans-media-related-activities/>.

<sup>39</sup> Bob Dietz, *Sri Lanka moves to silence NGOs, press groups*, COMMITTEE TO PROTECT JOURNALISTS (July 9, 2014), available at <http://cpj.org/blog/2014/07/sri-lanka-moves-to-silence-ngos-press-groups.php>.

Forms of Discrimination and Racism. Nimalka Fernando was accused of treason in 2012 by state-affiliated media and government websites for activities conducted in relation to this Committee.<sup>40</sup>

While these recent developments do not specifically target LGBT human rights defenders, they indicate a crackdown on NGOs that has a chilling effect on the activities of LGBT activists as well as other human rights defenders.

## V. Violations of the State's Obligation to Protect

Sri Lanka fails to protect LGBT individuals against discrimination, harassment, violence and other wrongful acts committed by private persons. These matters engage the responsibility of the State of Sri Lanka under Article 2(1) of the Covenant, which obliges States Parties to “ensure,” as well as to respect, the rights set out in the Covenant. As this Committee has noted,

“[T]he positive obligations on States Parties to ensure Covenant rights will only be fully discharged if individuals are protected by the State, not just against violations of Covenant rights by its agents, but also against acts committed by private persons or entities that would impair the enjoyment of Covenant rights . . . .”<sup>41</sup>

Accordingly, a State Party can violate its Covenant obligations by “failing to take measures or to exercise due diligence to prevent, punish, investigate or redress the harm caused by such acts by private persons or entities.”<sup>42</sup> In addition, it is “implicit” in Article 7 “that States Parties have to take positive measures to ensure that private persons or entities do not inflict torture or cruel, inhuman or degrading treatment or punishment on others within their power.”<sup>43</sup> Similarly, Article 17 requires States Parties to adopt legislative and other measures to give effect to the “prohibition against . . . unlawful attacks on . . . honor and reputation” by both public officials and private individuals.<sup>44</sup> Article 26 also imposes a positive obligation on States Parties: “In fields affecting basic aspects of ordinary life such as work or housing, individuals are to be protected from discrimination within the meaning of Article 26.”<sup>45</sup> This Committee has previously noted that it “is concerned about discrimination against lesbian, gay, bisexual and transgender persons in employment, housing, social security, health care, education and other fields regulated by law,” and it has urged the amendment of anti-discrimination legislation “with a view to including sexual orientation among the prohibited grounds of discrimination.”<sup>46</sup>

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<sup>40</sup> *Sri Lanka – Meeting of Families of the Disappeared disrupted, human rights defenders intimidated and targeted in a smear campaign*, FRONT LINE DEFENDERS (Aug. 8, 2011), available at <http://www.frontlinedefenders.org/node/26842>.

<sup>41</sup> General Comment No. 31, *supra* note 19, at ¶ 8.

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> Covenant, *supra* note 3, Art. 17.

<sup>45</sup> General Comment No. 31, *supra* note 19, at ¶ 8.

<sup>46</sup> Human Rights Comm., Concluding Observations of the Human Rights Committee: Japan, U.N. Doc. CCPR/C/JPN/CO/5, ¶ 29, 18 Dec. 2008.

Unfortunately, Sri Lanka has not complied with its obligation to ensure Covenant rights for LGBT individuals. The State has not taken appropriate measures – such as passing laws prohibiting discrimination or criminalizing hate crimes – to protect the rights of LGBT individuals. In the absence of such laws, individuals are frequently victimized by discrimination and violence due to their sexual orientation or gender identity.

#### A. *Discrimination in Employment*

Individuals are frequently discriminated against within the workplace due to their sexual orientation or gender identity. EQUAL GROUND receives two to three complaints per month on this issue alone.<sup>47</sup> Because of the laws criminalizing homosexuality, sexual minorities are hesitant to come forward with their stories; thus, in all likelihood, the actual prevalence of employment discrimination is much higher than the number of cases reported to EQUAL GROUND.

For LGBT individuals in Sri Lanka, workplace discrimination takes many forms. LGBT individuals have been (1) assigned the worst shifts and tasks, (2) required to meet higher quotas than their peers, (3) forced to dress against one's gender identity, (4) subjected to taunting, (5) sexually harassed, or (6) fired. Some sexual minorities have opted to be self-employed – driving taxis or operating small shops – just to avoid discrimination in the workplace.<sup>48</sup>

Examples abound. Sometime between 2008 and 2010, two women, Vineetha and Anula, were working in a factory in the Nuwara Eliya District. Despite their efforts to conceal their relationship, their co-workers began to suspect that the two were a couple. This suspicion led to such a high level of harassment by fellow employees that the two women felt forced to leave their jobs.<sup>49</sup>

In 2013, an employer learned that one of his tea pickers was a lesbian. The woman was then assigned to work one of the most treacherous, steep slopes. She was forced to hold onto a tea branch with one hand and pluck tea with the other to avoid potential injury. The woman had no other employment opportunities so she had to continue performing this dangerous work.<sup>50</sup>

Transgender individuals also face discrimination in the workplace. In early 2013, a transgender man was terminated from his job in a factory because, while he was working, a security guard went through his belongings and found EQUAL GROUND materials in his possession. The guard reported what he had found to the factory management, and management said they were going to call the transgender man's parents to tell them about his sexuality. They then fired him. The firing of this man was discriminatory because it was based solely on his presumed sexual orientation.<sup>51</sup>

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<sup>47</sup> Interview from EQUAL GROUND Hotline, 2013.

<sup>48</sup> Anonymous call to EQUAL GROUND Hotline, recorded 29 July 2013.

<sup>49</sup> Kemone Brown, *Struggling Against Homophobic Violence and Hate Crimes*, A report on the documentation and research conducted by EQUAL GROUND from Apr. 2010 – June 2011, EQUAL GROUND, 11 (5 Sept. 2011) [hereinafter, *Struggling Against Homophobic Violence*].

<sup>50</sup> Interview from EQUAL GROUND Hotline, 3 Dec. 2013.

<sup>51</sup> Interview from EQUAL GROUND Hotline, 4 Oct. 2013.

## B. *Discrimination in Housing*

LGBT individuals also often experience discrimination with respect to housing. First, landlords have refused to rent units to persons because of their real or perceived sexual orientation or gender identity. Landlords who learn that a tenant is an LGBT person after a lease has been signed have several ways to displace their tenants. Once a lease expires – typically in six months or one year – landlords have increased rent by up to 200% for their LGBT tenants because they know the renter cannot pay the higher rent and will have no choice but to move out.<sup>52</sup>

Alternatively, landlords will report, or threaten to report, the tenant’s sexual orientation or gender identity to the police.<sup>53</sup> As a consequence of discriminatory treatment by landlords, LGBT individuals often are forced to repeatedly change their place of residence.<sup>54</sup> Due to fear of the repercussions of exposing their sexual orientation or gender identity, LGBT individuals have no real recourse through the justice system. They move from place to place rather than challenging their landlords in court.

A 2011 study that investigated how stigma and discrimination affect LGBT individuals in Sri Lanka (“2011 Study”)<sup>55</sup> documented “a high level of discrimination and stigmatization” in access to housing.<sup>56</sup> Approximately 24% of respondents indicated that, within the past two years, they had been unable to rent housing or had been forced to change their place of residence due to their sexual orientation or gender identity. Some of these respondents reported having experienced this form of discrimination “repeatedly” during the two prior years.<sup>57</sup>

## C. *Hate Crimes*

Articles 7 and 9 of the Covenant recognize the right of all persons to freedom from torture and cruel, inhuman and degrading treatment and to personal security.<sup>58</sup> But notwithstanding these provisions, individuals in Sri Lanka have been the victims of hate crimes based on their sexual orientation or gender identity. Indeed, physical and verbal violence against LGBT individuals is pervasive in Sri Lanka. These crimes include death threats, sexual harassment, rape, and other physical attacks.<sup>59</sup>

Over the four month period between July and October 2013, EQUAL GROUND’s Field Officers met with three transgender men who had received death threats as a result of their gender identity. Additionally, results from the 2011 Study indicate that approximately 37% of LGBT respondents were victims of physical abuse, threats, assault, harassment, rape, or battery, the

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<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

<sup>55</sup> *Towards a Lesbians, Gays, Bisexuals, Transsexuals and Transgendered (LGBT) Stigma and Discrimination Index for Sri Lanka*, EQUAL GROUND, 32, 2011 [hereinafter, *2011 Study*] (study was based on answers to questionnaires by 119 Sri Lankan LGBT individuals).

<sup>56</sup> *Id.* at 38.

<sup>57</sup> *Id.* at 37.

<sup>58</sup> Covenant, *supra* note 3, Arts. 7 and 9.

<sup>59</sup> EQUAL GROUND Field Officer Reports, 2013.

majority of whom experienced such abuse more than once in the past two years.<sup>60</sup> Of the respondents who had suffered physical abuse, 50% stated that it was due to their gender identity or expression, and another 41% of respondents who had suffered physical abuse reported that their physical abuse was due to both their sexual orientation and gender identity or expression.<sup>61</sup>

EQUAL GROUND has received numerous reports from LGBT individuals who recounted having been raped, assaulted, kidnapped or threatened with death. For example, in 2013, a 19 year old transgender woman reported that she was cycling home one evening when a man stopped her, dragged her into a forest area, and raped her.<sup>62</sup> A bisexual male reported that he had been taken into one of the washrooms at his school at the age of 16 and raped by two senior students.<sup>63</sup>

In April 2014, a lesbian couple in Nuwara Eliya went to pray at a village temple and were accosted by a Buddhist monk, who kicked one of the women and berated both for being lesbian. He also screamed at the woman he was beating that “her kind” were not welcome in the temple. When he continued to assault the woman, her partner tried to help and ended up pulling at the monk’s robes. Nearby villagers then intervened on behalf of the monk and assaulted both women, who eventually got away and sought refuge at a convent. The women left their employment at a nearby factory out of fear of returning to the area of this encounter.<sup>64</sup>

In another April 2014 incident, two lesbians were dancing at a musical performance in Nuwara Eliya when a group of men surrounded them. One of the men began dancing with one of the women in a lewd way, and when her partner had words with him, the group of men began assaulting both women. The women were able to flee and sought refuge in a safe house in Kandy. One of the women had to be admitted to the hospital for her injuries and remained there for one or two days of observation. She also had to undergo psychiatric evaluation because she was in shock and was refusing to speak.<sup>65</sup>

In another reported incident, a transgender man was attacked as he and his boyfriend were standing in front of a hardware store. The transgender man suffered a blow to the eye that caused blood to drain into his eye. When the couple escaped and got into a three-wheeler taxi, they were followed by two men on motorbikes all the way to the house where they were staying.<sup>66</sup>

In 2008 two gay Muslim men from East Sri Lanka reported that because of their sexual orientation, they were abducted, tortured, and had a Fatwa (death threat) placed on their lives.<sup>67</sup> Additionally, in 2008 another young Muslim man from South Sri Lanka was attacked due to his sexual orientation, and was forced to flee his home.<sup>68</sup>

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<sup>60</sup> 2011 Study, *supra* note 55, at 32.

<sup>61</sup> *Id.* at 33.

<sup>62</sup> Anonymous report to EQUAL GROUND, recorded 2013.

<sup>63</sup> Anonymous report to EQUAL GROUND, recorded 29 Aug. 2013.

<sup>64</sup> EQUAL GROUND Field Officer Report, 2014.

<sup>65</sup> EQUAL GROUND Field Officer Report, 2014.

<sup>66</sup> Anonymous report to EQUAL GROUND, recorded 29 Oct. 2013.

<sup>67</sup> Situation Analysis, *supra* note 8, at 17.

<sup>68</sup> *Id.*

Segments of the Sri Lankan media have encouraged and legitimated hate crimes against LGBT individuals. For example, in August 1999, a local newspaper printed a letter urging that convicted rapists be released at a proposed conference on lesbian issues.<sup>69</sup> In response to a complaint brought by an organizer of the conference, Sri Lanka's Press Council issued a decision in June 2000 condoning the letter and expressing support for the author's views.<sup>70</sup> The Press Council's decision stated that lesbianism is an act of sadism, and that "misguided and erratic women should be corrected."<sup>71</sup> The Press Council acknowledged that the letter called for rape, but concluded that the words were simply the author's way of protesting lesbianism.<sup>72</sup>

#### D. *Forced Marriages*

Article 23(3) of the ICCPR states that "no marriage shall be entered into without the free and full consent of the intending spouses."<sup>73</sup> Notwithstanding this provision, Sri Lankan law does not protect LGBT individuals from forced, heterosexual marriages. In recent years, EQUAL GROUND has received reports from a number of lesbians who were forced into heterosexual marriages.<sup>74</sup>

For example, two women, Vineetha and Anula, were found by Vineetha's family to be in a relationship. Without Vineetha's consent, her parents gave her in marriage to a Sri Lankan man and ignored her protests to the marriage. "After being unhappy in her marital home, she returned to her parents' home only to be chased away and forced to go back to her husband."<sup>75</sup> Another example involves Chandra, a lesbian from Anuradhapura. When her parents learned that she was in a relationship with another woman, they "locked her up and gave her in marriage to a man who was 8 years younger than her."<sup>76</sup> A third example involves Sumanawathie, a woman from Nuwara Eliya District who was in a same-sex relationship. She and her girlfriend lived together and, together, looked after Sumanawathie's ailing mother. When her mother passed away, Sumanawathie's brother forced her to marry a man by threatening to take away all the property that had been bequeathed to her if she did not agree to a heterosexual marriage. Sumanawathie's marriage to a man took such a toll on her girlfriend that her girlfriend committed suicide.<sup>77</sup>

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<sup>69</sup> P. Alles, "Lesbian Conference in Colombo?", THE ISLAND, August 20, 1999.

<sup>70</sup> ASIAN HUMAN RIGHTS COMM'N, *SRI LANKA: Press Council condones incitement to rape* (June 7, 2000), <http://www.humanrights.asia/news/urgent-appeals/UA000607>

<sup>71</sup> *Id.*

<sup>72</sup> *Id.*

<sup>73</sup> Covenant, *supra* note 3, Art. 23(3).

<sup>74</sup> See Situation Alert, Post UPR, *supra* note 33, at 4.

<sup>75</sup> Struggling Against Homophobic Violence, *supra* note 49, at 10.

<sup>76</sup> Situation Alert, Post UPR, *supra* note 33, at 4.

<sup>77</sup> Struggling Against Homophobic Violence, *supra* note 49, at 29.

## VI. Suggested Recommendations

1. **Decriminalization.** Decriminalize same sex sexual conduct.
2. **Protection against discrimination.** Enact and enforce laws prohibiting discrimination on the basis of sexual orientation and gender identity, whether by state actors or by private actors. Instruct the Sri Lanka Human Rights Commission to recognize and address human rights violations based on sexual orientation and gender identity. Include LGBT persons in quotas for education, employment and governance.
3. **Protection against violence.** Enact and enforce laws criminalizing hate crimes based on sexual orientation and gender identity. Ensure that any crimes motivated by sexual orientation or gender identity are promptly investigated, prosecuted, and punished, and that the victims are provided appropriate remedies.
4. **Protection against stigmatization.** Open a dialogue between representatives of the Government of Sri Lanka and LGBT human rights defenders and individuals to promote better understanding of LGBT issues. Develop and implement programs to educate and sensitize health care workers to ensure that LGBT individuals are provided health care services in an atmosphere of respect. Initiate programs to assist organizations working on LGBT issues to reach members of the LGBT community with needed services such as counseling, health education regarding HIV and sexually transmitted infections, and information about accessing health care services

## VII. Suggested Questions

1. In its written replies to this Committee's List of Issues, Sri Lanka stated that the non-discrimination measure in Article 12 of its Constitution "protects persons from stigmatization and discrimination on the basis of sexual orientation and gender identities." (Replies of Sri Lanka to the list of issues, CCPR/C/LKA/Q/5/Add.1, at paragraph 43.)
  - (a) Please explain how Article 12 has been used, in practice, to protect persons from stigmatization and discrimination on the basis of sexual orientation and gender identity.
  - (b) Can individuals bring judicial or administrative actions under Article 12 to challenge acts of stigmatization or discrimination based on sexual orientation and gender identity?
  - (c) During the past four years, how many times have such actions been brought, and how many of those actions have been successful?
2. Since, according to Sri Lanka's written replies to the List of Issues, Article 12 of the Constitution of Sri Lanka prohibits stigmatization and discrimination against individuals based on their sexual orientation or gender identity, how can the Penal Code of Sri Lanka criminalize same sex sexual conduct? What steps is Sri Lanka taking to decriminalize same sex sexual conduct?