

EQUAL GROUND - HUMAN RIGHTS VIOLATIONS AGAINST LESBIAN AND BISEXUAL WOMEN IN SRI LANKA: A SHADOW REPORT (JUNE 2016) ("REPORT")

1. The Report was drafted in June 2016 for the attention of the Pre-Sessional Working Group of the 66th Session of review under the Convention on the Elimination of All Forms of Discrimination Against Women, to inform the Group of the human rights violations faced by lesbian and bisexual women in Sri Lanka. This Executive Summary of the Report distils the key findings and recommendations of the Report for consideration by the Committee during the Main Session.
2. The Report notes that sexual acts between same-sex individuals remain a criminal offence under sections 365 and 365A of the Sri Lankan Penal Code (as amended by the Penal Code (Amendment) Act, No. 22 of 1995) ("**Code**").
3. In 2011 the CEDAW Committee stated that it was concerned about the lack of protection for lesbians and bisexual women in Sri Lanka,¹ and recommended that Sri Lanka should decriminalise sexual relationships between consenting adults of the same sex. As of the date of the Report this had not occurred.
4. Section 365 of the Code makes it a criminal offence to "*engage in carnal intercourse against the order of nature*" which is widely understood to apply to sexual acts between same-sex individuals. Section 365A criminalises "*any person who, in public or private, commits, or is party to the commission of, or procures or attempts to procure the commission by any person of, any act of gross indecency with another person*", which is also commonly understood to apply to all homosexual conduct.
5. While there have been no convictions under sections 365 and 365A of the Code since Sri Lanka gained independence in 1948, the Report suggests that these laws have the effect of perpetuating and legitimising discrimination of, and violence against, lesbian and bisexual women in Sri Lanka.
6. Article 12 of the Constitution of Sri Lanka contains the principle of non-discrimination, however this does not expressly protect persons from discrimination on the basis of sexual orientation. The Government of Sri Lanka has repeatedly stated that LGBTI persons in Sri Lanka are constitutionally protected from discrimination under Article 12. Despite this the Report outlines various examples of discrimination against lesbian and bisexual women in Sri Lanka under four headings. The Sunday Times reported on 15th January 2016 that the GOSL has dropped decriminalisation from the National Human Rights Action Plan which indicates that the GOSL has no intention decriminalising homosexual conduct anytime in the near future.

Arbitrary arrests and detentions and abusive and violent police behaviour

7. The Report states that Sri Lankan police have been known to conduct arbitrary arrests on the purported grounds that those arrested will commit same-sex sexual acts in the future, in the absence of evidence.
8. Sri Lanka's Vagrancy Ordinance of 1842, which empowers authorities to detain people loitering in public, is often used to harass, arrest and detain individuals on the basis of appearance, e.g. 'masculine-looking' women who are perceived to be lesbians.
9. Human rights organisations have reported that, while not actively arresting and prosecuting members of the LGBTI community, police harassed and extorted money or sexual favours from LGBTI individuals with impunity and assaulted lesbians in Colombo (the Sri Lankan capital) and other areas.

Violence against lesbians and bisexual women

10. The Prevention of Domestic Violence Act, No. 34 of 2005 cannot be relied upon for protection against abusive partners by women in same-sex relationships. In the event that women in same-sex relationships do attempt to report violations of this law, the reports aren't taken seriously, or the women are exposed to harassment at the point of reporting.

¹ Committee on the Elimination of Discrimination against Women, "Concluding observations of the Committee on the Elimination of Discrimination against Women", CEDAW/C/LKA/CO/7 (2011), paragraph 24, available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fLKA%2fCO%2f7&Lang=en

11. Lesbian and bisexual women are exposed to a range of physical, verbal and emotional violence, and are scared to report this to the police for fear of not being taken seriously or dismissed.

Forced marriage

12. Sri Lankan law does not protect LGBTI individuals from being forced into heterosexual marriages, and lesbian and bisexual women are often coerced into marriage, and threatened with violence or removal of their property if they refuse.
13. The lack of state protection against forced marriage gives rise to a suggestion that Sri Lanka could be in breach of both Articles 12 (discrimination against women in the field of healthcare) and 16 (discrimination against women in all matters relating to marriage and family relations) of the CEDAW Treaty.

Discrimination in employment

14. Lesbian and bisexual women in Sri Lanka are often subject to significant discrimination in the course of their employment as non-heterosexual sexual orientation is not readily accepted in the Sri Lankan workplace.
15. LGBT individuals have been assigned the worst shifts and tasks, required to meet higher quotas than their peers, forced to dress against their gender identity, subjected to taunting, sexually harassed, or fired based on their sexual orientation or status.

16. The Report makes several **recommendations** to the Sri Lankan Government:

- 16.1 Repeal sections 365 and 365A and expressly legalise consensual same-sex activity.
- 16.2 Recognise intersecting forms of discrimination, including on the basis of gender and sexual orientation, and take active measures to prohibit such discrimination.
- 16.3 Include sexual orientation, gender identity and intersex status as prohibited grounds for discrimination under Article 12 (2) of the Constitution, and provide for a right to privacy within the Constitution.
- 16.4 Enact national legislation and policies to protect against discrimination in various forms on the grounds of sexual orientation and gender identity, for example in the workplace.
- 16.5 Enact legislative and other relevant measures to eliminate violence against lesbian and bisexual women and to punish perpetrators of hate crimes including State and non-State actors.
- 16.6 Enact relevant measures to prevent forced or pressured heterosexual marriages of lesbian and bisexual women and provide social services and information to women needing to escape from family or community pressures to enter into unwanted marriage.
- 16.7 Amend the Vagrants Ordinance 1842 so it is not used discriminatorily and arbitrarily against LGBTI groups.
- 16.8 Create awareness-raising, education and training programmes to combat stigma, prejudice and discrimination against LGBTI persons and provide these in particular to police, employers and judges.