

EQUAL GROUND

Center for International Human Rights

Northwestern
PRITZKER SCHOOL OF LAW
Bluhm Legal Clinic

Violations by Sri Lanka of the Civil and Political Rights of the Lesbian, Gay, Bisexual, Transgender, Intersex and Questioning/Queer (LGBTIQ) Community

Submitted for consideration at the
135th Session of the Human Rights Committee

Geneva, June-July 2022

Submitted by:

EQUAL GROUND, Sri Lanka

Center for International Human Rights (CIHR)
of Northwestern Pritzker School of Law

May 2022

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30 May 2022

I. Introduction

1. This report is submitted to the Human Rights Committee by EQUAL GROUND¹ and the Center for International Human Rights (CIHR) of Northwestern Pritzker School of Law,² to direct the Committee's attention to the serious and ongoing violations of the Covenant rights of Sri Lanka's LGBTIQ population. These violations include, notably, the following:

- Sri Lanka continues to criminalize consensual same-sex sexual relations
- Sri Lanka imposes onerous barriers to obtaining legal recognition of gender
- Sri Lanka has failed to amend its Constitution or enact laws to prohibit discrimination based on sexual orientation and gender identity and expression (SOGIE)

2. As a consequence of these violations, LGBTIQ individuals in Sri Lanka are extremely vulnerable to harassment, violence and discrimination by State actors and by society at large. The continued criminalization of same-sex sexual relations leads directly to arbitrary arrest, violence and other abuses by the Sri Lanka Police. At the same time, it perpetuates and reinforces the widespread societal stigma against LGBTIQ people, giving license to harassment and discrimination in employment, housing, education, health care and family relations. The barriers to obtaining legal recognition of gender, expose transgender individuals to further humiliation and discrimination. All this results in the gross marginalization of LGBTIQ individuals, many of whom feel forced to hide their identities.

¹ EQUAL GROUND is a Sri Lankan nonprofit organization seeking economic, social, cultural, civil and political rights for the Lesbian, Gay, Bisexual, Transgender, Intersex and Questioning/Queer (LGBTIQ) community of Sri Lanka. Founded in 2004, EQUAL GROUND is the oldest organization of this nature functioning in the country.

² The Center for International Human Rights (CIHR) of Northwestern University's Pritzker School of Law (Chicago, USA) is dedicated to human rights education and legal and policy-focused human rights advocacy within the United States and worldwide. CIHR is in special consultative status with the United Nations Economic and Social Council (ECOSOC). CIHR has worked in collaboration with EQUAL GROUND since 2013.

II. Criminalization of consensual same-sex sexual relations and displays of romantic affection

A. Criminal Laws

3. The Sri Lankan Penal Code – 139 years after its initial adoption – still criminalizes private, consensual, same-sex sexual activities.

(a) Section 365 criminalizes “carnal intercourse against the order of nature.”³ It does not, however, explain what constitutes “against the order of nature.” In practice, it is widely understood to apply only to sexual acts between two individuals of the same sex. The penalty for violation of § 365 is up to ten years’ imprisonment and a fine.⁴

(b) Section 365A criminalizes “any act of gross indecency with another person.”⁵ Violations are punishable by up to two years’ imprisonment, a fine, or both.⁶ Although “gross indecency” is not defined by the law or any Sri Lankan court decision, the current law is understood to target not only sexual acts but also any displays of romantic affection between two individuals of the same sex. The breadth and ambiguity of this provision invites abuse, as what constitutes “gross indecency” is left open to interpretation by police officers, prosecutors, and judges.⁷

(c) Section 399 of the Penal Code makes it a criminal offense to “cheat by personation.”⁸ According to this provision, “a person is said to ‘cheat by personation’ if he cheats by pretending to be some other person . . . or representing that he or any other person is a person other than he or such other person really is.”⁹ This Section has been used by the police to target transgender persons on the purported basis that they are pretending to be a different gender with the intent of cheating others.¹⁰

4. In addition to the Penal Code, Sri Lanka’s Vagrants Ordinance of 1841¹¹ is also used to disproportionately target LGBTIQ community members, take them into custody and even put them in prison to extort or harass them. “[T]he intention of this archaic law is to punish those deemed to be ‘rogues and vagabonds’ behaving in an idle and disorderly manner.”¹² Section 7 of the Ordinance, which criminalizes “[s]oliciting and acts of indecency in public places,” is

³ Penal Code § 365, <https://www.lawnet.gov.lk/penal-code-consolidated-2/> [hereinafter Penal Code].

⁴ *Id.*

⁵ *Id.* § 365A.

⁶ *Id.*

⁷ United Kingdom, Home Office, *Country Policy and Information Note Sri Lanka: Sexual Orientation and Gender Identity and Expression* (Nov. 2021), ¶ 3.1.8, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1039053/Sri_Lanka_Final_PDF.pdf [hereinafter UK Home Office].

⁸ Penal Code, *supra* note 3, § 399.

⁹ *Id.*

¹⁰ Amnesty International, *Sri Lanka: End discrimination against LGBTI people* (Dec. 7, 2019), <https://www.amnesty.org/en/latest/news/2019/12/spectrum-sri-lanka-lgbti/> (last visited 28 May 2022).

¹¹ Vagrants Ordinance (No. 4 of 1841), <https://www.srilankalaw.lk/Volume-VIII/vagrants-ordinance.html>.

¹² EQUAL GROUND, *My Rights, My Responsibility*, p. 6 (p. 6 of English version, which appears below other language versions), <https://www.equal-ground.org/wp-content/uploads/MyRightsMyResponsibility-Final-PDF-Copy.pdf>.

particularly used against LGBTIQ community members to arrest them on the allegation of soliciting and committing acts of public indecency.¹³

B. Impact of laws

5. The government has taken the stance that even though the laws are in place, there have not been any convictions under §§ 365 and 365A.¹⁴ However, Chapter 7.1 of the Sri Lanka Police Performance Report 2018 shows that from 2016 through 2018, 48 men were charged and prosecuted for "homosexuality."¹⁵ Moreover, even apart from prosecutions and convictions, the existence of these laws causes serious harm by perpetuating discrimination, harassment, violence, and stigma against LGBTIQ individuals.

6. Incidents of police abuse against LGBTIQ people, including wrongful arrest, violence, and harassment, are quite common in Sri Lanka. In a recent nationwide survey of Sri Lankan public opinion commissioned by the Westminster Foundation for Democracy, 69.2% of respondents agreed that LGBT people "are subjected to discrimination by the Police because they are LGBT persons."¹⁶ In another survey, conducted by EQUAL GROUND, the LGBTIQ respondents shared that "[t]heir main fear was getting identified and being arrested by the police."¹⁷

7. Among the worst abuses committed by the police are forced anal and vaginal examinations, purportedly to find proof of homosexual conduct. Human Rights Watch (HRW) and EQUAL GROUND reported in 2020 that "Sri Lankan authorities have subjected at least seven people to forced physical examinations since 2017 in an attempt to obtain proof of homosexual conduct."¹⁸ These exams, which were conducted by Judicial Medical Officers while the accused were in custody, included six forced anal exams and a forced vaginal exam. A lawyer for the six men subjected to forced anal exams told HRW that in each case, "prosecutors submitted reports of anal exams in court as evidence of past anal penetration."¹⁹ HRW and EQUAL GROUND have denounced these exams as "a form of sexual

¹³ *Id.*

¹⁴ Replies of Sri Lanka to the list of issues, 8 Feb. 2017, *submitted to* Committee on the Elimination of Discrimination against Women (CEDAW), p. 21 ¶ 115, UN Doc. No. CEDAW/C/LKA/Q/8/Add.1, https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/LKA/CEDAW_C_LKA_Q_8_Add-1_26040_E.pdf.

¹⁵ Sri Lanka Police, *Performance Report 2018*, p. 36 (Mar. 23, 2018), <https://www.parliament.lk/uploads/documents/paperspresented/performance-report-srilanka-police-2018.pdf>.

¹⁶ Pradeep Peiris, *Knowledge, Attitudes and Perceptions Survey Report: Sri Lankan society's views about sexuality and LGBT people's experiences in Sri Lanka*, p. 23, Table 3.10 (2021) (reporting results of a survey by the Social Scientists' Association, commissioned by the Westminster Foundation for Democracy under the Commonwealth Equality Project), <https://www.wfd.org/sites/default/files/2022-03/Final%20Report%20-%2012th%20Jan%202022.pdf> [hereinafter *Survey of Sri Lankan society's views*].

¹⁷ EQUAL GROUND, *Mapping LGBTIQ Identities in Sri Lanka (2021)*, p. 9, https://www.equal-ground.org/wp-content/uploads/Report_EG-edited.pdf.

¹⁸ Human Rights Watch, *Sri Lanka: Forced Anal Exams in Homosexuality Prosecutions* (Oct. 20, 2020), <https://www.hrw.org/news/2020/10/20/sri-lanka-forced-anal-exams-homosexuality-prosecutions#> (last visited 28 May 2022) [hereinafter Human Right Watch].

¹⁹ *Id.*

violence as well as cruel, inhuman, and degrading treatment that can rise to torture,”²⁰ and the World Health Organization (WHO) has condemned such exams as a form of torture.²¹

8. These horrific exams were accompanied by other abuses. In one case, before sending the defendant to the Judicial Medical Officer for the forced anal exam, police brutally whipped him with a wire. In another case, the detained man was told he could refuse the anal exam, but he was cautioned that such refusal could be used against him at trial. In three cases, the court ordered the men to submit to HIV exams without their consent, and the results of those tests were then disclosed in open court.²²

9. In 2019, in connection with an attempted prosecution for same-sex sexual conduct, a transgender man and a cisgender woman, who were married to each other, were both subjected to forced vaginal examinations. As a purported virginity test, a Judicial Medical Officer inserted two fingers into their vaginas, causing them to scream in pain. The two were then forced to undergo another physical examination, conducted by another doctor in front of other doctors and nurses at the hospital. When they begged the doctor not to do another vaginal examination because of how much the exam had hurt, he laughed at them and said that instead of doing an exam, he would light firecrackers inside their vaginas. In the end, a magistrate dismissed the prosecution for same-sex sexual conduct, because the transgender man had obtained a Gender Recognition Certificate, and, as a result, their marriage was valid.²³ But before this dismissal, the couple had to undergo the abusive treatment described above.

10. In June 2020, police from the Narahenpita area of Colombo conducted a raid of a hotel room and arrested three men for alleged gross indecency in violation of § 365A. According to a report of the incident, the police “beat the men with batons and wires until they bled.”²⁴ Though the men do identify as gay, they “were not participating in any sexual activity at the time of the raid but were merely having drinks and eating in the room. The men allege[d] that the police had used an unopened packet of condoms in the hotel bathroom” – of the sort often provided in complimentary hotel amenity kits – “as grounds to arrest them.”²⁵

11. In another incident, a gay man who travels to Colombo by train was with another man in the train station restroom when two police officers broke in and dragged the man out to the public area, where they beat him. The police then ordered him to unlock his phone; when he did so, they browsed through it without his consent. The officers also threatened that they would contact his parents. Throughout this encounter, they yelled at him, calling him “ponnaya” (a Sinhala language derogatory term used to insult gay men, equivalent to “faggot”). Before they left him, the officers went through the man’s wallet and took Rs. 5,000.

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ *JMOs and Police conducting forced anal and vaginal examinations on LGBT people*, DAILY MIRROR (30 Oct. 2020), <https://www.dailymirror.lk/news-features/JMOs-and-Police-conducting-forced-anal-and-vaginal-examinations-on-LGBT-people/131-198911> (last visited 28 May 2022); Human Rights Watch, *supra* note 18.

²⁴ *Sri Lanka: Court case against three gay men for homosexuality dismissed*, SRI LANKA BRIEF (10 Dec. 2021), <https://srilankabrief.org/sri-lanka-court-case-against-three-gay-men-for-homosexuality-dismissed/> (last visited 28 May 2022).

²⁵ *Id.*

12. Due to the existence of the discriminatory laws and their frequent abuse by police, LGBTIQ crime victims are deprived of normal police protection, because they are unwilling to report crimes to the police. A case referred to EQUAL GROUND in July 2021 involving a lesbian in Kiribathdoda, Western Province, provides an example. In that case, a lesbian who was constantly harassed by her brother after revealing her sexual orientation refused to lodge a harassment complaint with the police, for fear of further harassment and reprisal by the police themselves.

13. This reluctance to go to the police is well-founded, given the experiences other LGBTIQ people have had when they did report crimes to the police. For instance, in a 2021 case from Nittambuwa, Gampaha District, a lesbian victim of attempted rape went to the nearest police station to make a complaint. Instead of helping her, the police told her that under §§ 365 & 365A of the Penal Code, it is wrongful and illegal for two women to be in a relationship. The police threatened to take legal action against her unless she ended her relationship with another woman.

14. Incidents like these of police abuse, reflect the biased attitudes that are prevalent within law enforcement in Sri Lanka. These include the erroneous and ignorant position that homosexuality (and any non-heteronormative sexual orientation) is a mental disorder. This can be seen in the official *Prison Statistics of Sri Lanka 2020*, produced by the Sri Lanka Department of Prisons. Among the statistical information provided in this report is a table classifying the “Mental Disposition” of youth admitted to a training school for youthful offenders. After first indicating the number of admittees with a “Normal” mental disposition, the table indicates the number of admittees with what are considered non-normal dispositions: Defective, Aggressive, Regressive, Mutual Sex Tendencies, and Homosexual.

15. The negative attitudes held by the Sri Lanka Police towards LGBTIQ people can also be seen in the way they choose to report crimes. For example, their “Grave Crimes Abstract, 2019,” uses a single category – “unnatural offences/grave sexual abuse” – to report a *combined total* for the number of cases involving consensual same-sex sexual acts *and* the number of non-consensual sexual crimes other than rape (which requires penetration). The clear implication is that *consensual same-sex intimacy* is an equivalent crime to *non-consensual sexual abuse*.²⁶

16. Given the prevalence of these attitudes, it is essential that the police receive proper training to combat biased and discriminatory stereotypes of LGBTIQ persons. Unfortunately, to date, such training has not been provided. In June 2018, the Deputy Inspector General of the Sri Lanka Police, Mr. Ajith Rohana, acknowledged that there were what he termed “isolated incidents of discrimination against LGBTIQ persons,” but he claimed that the Sri Lanka “Police are working towards eliminating them by introducing sensitizing programs in

²⁶ Sri Lanka Police, *Grave Crime Abstract for the Year 2019 for Whole Island from 01.01.2019 to 31.12.2019*, https://www.police.lk/images/crime_statistics/2019/Grave-crime-abstract-for-the-Year-2019.pdf (last visited 5 Apr. 2022).

the police training curriculum.”²⁷ Unfortunately, however, no report or other evidence of any such revision to the police curriculum can be found in the public domain.

17. Instead, there has been evidence of police training that reinforces the worst kind of negative stereotypes of LGBTIQ people. On 5 August 2021, the Daily Mirror Online reported that a video had been posted on YouTube showing a purported counsellor named Ama Dissanayake conducting a training programme for police officers at the Police Auditorium in Kandy.²⁸ In her lecture, she deliberately propagated malicious, discriminatory, and derogatory misinformation about LGBTIQ individuals. According to the Daily Mirror Online, “In the video clip that has gone viral, Dissanayake claims that ‘homosexuals’ in Sri Lanka are preying on others, especially the youth, trying to make them a part of the LGBTIQ community.”²⁹ She declared:

“Homosexuality is against the human nature. If your parents were homosexuals, you would not have been born. Few years ago, some people tried to say that this is normal. But it is not and I will tell you the reasons one by one.”³⁰

To reinforce her message, she encouraged the police officers attending the training to actively participate in affirming the harmful and discriminatory views she had expressed. After making her remarks, she asked the police officers “whether they would like to see their children being ‘victimized’ by a homosexual person,” eliciting shouts of “No” from the audience of police.³¹

III. Barriers to obtaining legal recognition of gender

18. Although a process now exists through which transgender individuals can seek legal recognition of their gender, that process is long, complex and expensive – for many, prohibitively so. A person must undergo psychiatric evaluation by a medical professional, receive a diagnosis of “trans-sexualism” and undergo hormone and surgical treatment before they can be issued a Gender Recognition Certificate. Hormone treatment and gender reassignment surgery services are scarce and expensive. A Gender Recognition Certificate is available only to individuals 18 years or older.

19. A transgender person cannot obtain a new passport and National Identity Card, reflecting their name and gender, until after they have received a Gender Recognition Certificate. National Identity Cards are used throughout daily life in Sri Lanka – for example, when applying for jobs, renting an apartment, obtaining health care, banking, or buying train tickets.

²⁷ *Police admit isolated incidents reported targeting LGBTIQ persons*, DAILY FT (2 June 2018), <https://www.ft.lk/News/Police-admit-isolated-incidents-reported-targeting-LGBTIQ-persons/56-656388> (last visited 28 May 2022).

²⁸ *Calling for an end to homophobia and transphobia*, DAILY MIRROR ONLINE (Aug. 5, 2021), <https://www.dailymirror.lk/recommended-news/Calling-for-an-end-to--homophobia-and-transphobia/277-217552> (last visited 28 May 2022).

²⁹ *Id.*

³⁰ Rizwana Hasan, *Youtube Counsellor’s anti-LGBTQ remarks at Police training programme spark controversy*, NEWS 19 (Aug. 3, 2021), <https://www.news19.lk/youtube-councillors-anti-lgbtq-remarks-at-police-training-programme-spark-controversy/> (last visited 28 May 2022).

³¹ *Id.*

As a result, the extremely long process for obtaining a Gender Recognition Certificate creates serious problems for transgender people. The transition process can take up to ten years, and the Sri Lanka Government does not issue any form of temporary ID documentation to accommodate a change in gender identity during the transitioning process.

20. Even when a person finally is able to obtain new documents, a problem remains. When the gender marker on a person's birth certificate is changed, the original gender marker is simply crossed out and the new gender written next to it. An endorsement is added at the end, indicating that the person is transgender. This means that the person's private information about their gender transition is revealed to others even decades later, whenever a birth certificate must be presented. For example, this includes when the person renews their National Identity Card or obtains a new one, renews their passport or obtains a new one, gets married, obtains a police report for new employment requirements, or migrates to another country.

IV. Failure to enact laws to prohibiting discrimination based on sexual orientation and gender identity and expression (SOGIE)

A. Failure to adopt laws or policies to combat discrimination

21. Sri Lanka has not adopted or implemented measures to eliminate discriminatory treatment based on sexual orientation and gender identity and expression (SOGIE). Neither the Sri Lankan Constitution nor any law expressly prohibits discrimination based on SOGIE. Efforts to amend the Constitution to include such a prohibition have, as of this date, been unsuccessful.

22. Sri Lanka has stated, in the past, that the equality provision in Art. 12 of the Constitution³² does protect against discrimination based on sexual orientation and gender identity, although those grounds are not expressly mentioned. However, other provisions of the Constitution nullify the effectiveness of this provision. Article 15(7) provides that the Constitution's fundamental rights provisions (which include Article 12) can be made subject to restrictions in the name of "morality."³³ Article 16(1) states that laws existing at the time of the Constitution's adoption (both written and unwritten) shall remain valid even if inconsistent with the Constitution's fundamental rights provisions,³⁴ making it impossible to challenge the constitutionality of the laws criminalizing same-sex sexual relations.

23. Sri Lanka also does not have laws prohibiting harassment on the basis of sexual orientation and gender identity and expression. Sri Lanka does have a law that prohibits ragging (hazing) and other forms of violence in educational institutions,³⁵ but that law does

³² Parliament Secretariat, *The Constitution of the Democratic Socialist Republic of Sri Lanka* (As amended up to 29 October 2020), Revised Edition – 2021, Art. 12, <https://www.parliament.lk/files/pdf/constitution.pdf> [hereinafter Constitution].

³³ *Id.*, art. 15(7).

³⁴ *Id.*, art. 16(1).

³⁵ Prohibition of Ragging and Other Forms of Violence in Educational Institutions Act (1998), <https://www.lawnet.gov.lk/prohibition-of-ragging-and-other-forms-of-violence-in-educational-institutions-2/> [hereinafter Ragging Act].

not include in its definitions of “ragging” and “sexual harassment” any mention of sexual orientation or gender identity or expression. None of the laws governing workplace relations address sexual harassment in the workplace, much less harassment due to SOGIE.

24. The absence of anti-discrimination and anti-harassment legislation to protect the rights of LGBTIQ persons has meant that they have no recourse to a remedy when they experience discrimination or harassment. Such discrimination and harassment are further fueled by the continued criminalization of same-sex activities and the related stigmatization of LGBTIQ persons. Moreover, as noted above, LGBTIQ persons who are victims of violence or hate crimes rarely report these crimes to the police due to the well-founded fear of exposing their sexual orientation or gender identity or expression.³⁶

B. Continuation of discriminatory treatment

25. The lack of any Constitutional protection or anti-discrimination laws or policies has exposed LGBTIQ individuals to continued discriminatory treatment with respect to employment, housing, education, health care, and family life, in violation of Sri Lanka’s obligations under Articles 2(1) and 26 of the Covenant.³⁷ There are also occasions in which LGBTIQ individuals are forced to enter into heterosexual marriages against their will, a violation of Covenant Article 23(3).³⁸

1. Discriminatory treatment and harassment in the workplace

26. A 2021 EQUAL GROUND study on the experience of LGBTIQ people in the workplace documented a disturbing level of discrimination and harassment against LGBTIQ people.³⁹ The study involved an employee survey administered to 193 LGBTIQ individuals employed in various sectors of the economy, and an employer survey administered to 45 managers, human resource officers or other representatives of private and public employers.⁴⁰ Both surveys revealed the obstacles LGBTIQ people face in the workplace.

27. One key finding of the study was that a very high number of LGBTIQ employees feel they must hide their sexual orientation, gender identity or gender expression (SOGIE) to avoid facing discrimination and harassment in the workplace. Forty-two percent of respondents said they are not “out” to anyone in their workplace; another 39% reported being out only to a limited number of select people.⁴¹ Fifty percent stated that if everyone at work knew their

³⁶ UK Home Office, *supra* note 7, ¶ 2.5.4.

³⁷ International Covenant on Civil and Political Rights, *adopted* 16 Dec. 1966, 999 U.N.T.S. 171, Arts. 2(1) and 26, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx> [hereinafter Covenant]. Sri Lanka acceded to the Covenant on 11 June 1980. United Nations Treaty Collection: International Covenant on Civil and Political Rights, https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-4&chapter=4&clang=_en (last visited 28 May 2022).

³⁸ Covenant, *supra* note 37, Art. 23(3).

³⁹ Chowdhury, S.A., *A study on workplace discrimination: Challenges faced by LGBTIQ employees and the perspectives of employers in Sri Lanka*, EQUAL GROUND, Sri Lanka (2021), <https://www.equal-ground.org/wp-content/uploads/DAP-REPORT-FINAL.pdf> [hereinafter *Workplace Discrimination*].

⁴⁰ *Id.*, pp. 26, 48.

⁴¹ *Id.*, p. 32.

sexual orientation or gender identity, they would face increased reprisal.⁴² Only 12% said they would be accepted.⁴³

28. These fears are well-founded. Fifty-one percent of the employers interviewed by EQUAL GROUND agreed that it is difficult for LGBTIQ persons to find work.⁴⁴ When asked for additional comments, one CEO of an NGO stated that if a person's sexuality "becomes visible," they will have issues, but "[i]f they keep their sexual orientation discrete, they will face no difficulty."⁴⁵ This further confirms that LGBTIQ persons have to hide their identity throughout the hiring process and in the workplace to avoid unfair treatment.

29. Employer responses also revealed attitudes that limit career opportunities for LGBTIQ people. One human resources manager told EQUAL GROUND that LGBTIQ persons "may not fit into the so-called 'boss' archetype" or have the correct "leadership charisma" to get selected for top management-level positions.⁴⁶ Another stated that LGBTIQ persons may be recruited to work in "beauty culture" because work in that sector "does not demand high qualifications or education standards."⁴⁷ Overall, "[t]he findings suggest that there is a pre-conceived notion among employers and decision makers that LGBTIQ persons are not qualified or suitable for formal employment and leadership positions."⁴⁸

30. EQUAL GROUND's study also found that verbal and sexual harassment due to sexual orientation or gender identity or expression (SOGIE) was common. Fifty-eight percent of respondents reported having experienced verbal harassment on the job due to their SOGIE, and 31% said they had experienced workplace sexual harassment.⁴⁹ Those who escaped harassment often did so by hiding their SOGIE. Among those who did not report any harassment, almost half responded that they had not revealed their SOGIE to anyone at work.⁵⁰ Harassment was found in all sectors of work and most commonly involved humiliation, name calling, co-workers asking personal questions, co-workers spreading rumors, comments on clothing, and grabbing and stroking.⁵¹ Seventeen percent of respondents reported having faced rape, attempted rape, or threats of rape.⁵² Nearly a quarter of all respondents – 23% - reported having left jobs as a result of the psychological and emotional harassment.⁵³

31. Company policies during the application process and in the workplace are not inclusive to LGBTIQ persons. Formal work settings generally are highly gender-segregated by male and female, and anyone who does not neatly identify with these two categories is not recognized.

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*, pp. 12, 54.

⁴⁵ *Id.*, p. 54.

⁴⁶ *Id.*, p. 52.

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*, pp. 39, 41.

⁵⁰ *Id.*, pp. 39, 41.

⁵¹ *Id.*, pp. 40-42.

⁵² *Id.*, p. 42.

⁵³ *Id.*, p. 11.

For example, 42% of respondents said they were not able to wear the clothing of their preferred gender at work.⁵⁴

32. According to EQUAL GROUND's study, LGBTIQ persons who face workplace discrimination generally cannot rely on management to remedy the situation. More than half of respondents – 56% – reported that they could not complain to management if their workplace rights were violated.⁵⁵ Even this understates the magnitude of the problem: among the respondents who said they *could* complain to management, not a single one had revealed their LGBTIQ status to management.⁵⁶ Of those who felt they could not complain, 46% believed they would face reprisal for making a complaint, and 25% were convinced that management would do nothing to remedy the situation if they did complain.⁵⁷

33. The experience of Nethmi,⁵⁸ a 23-year-old lesbian working for a software company in Gampaha, provides an example of the mistreatment LGBTIQ people face in the workplace. In 2020, Nethmi was physically and verbally abused by a co-worker after revealing her sexual orientation to him. She had felt safe confiding in her co-worker, but after her revelation he verbally harassed her at work by constantly asking inappropriate questions relating to her sexuality. The co-worker told her that she needed to marry a man or else she would never have a family, and he repeatedly insisted he could change her lifestyle. The co-worker repeatedly grabbed her hand, grabbed her from behind her back, and made other physical advances, supposedly to change her so she would be heterosexual. Nethmi had to tell him repeatedly that she did not like his advances, before he finally stopped.

34. After coming out at work, Nethmi also faced both physical and verbal abuse from her supervisor. In July 2021, her supervisor took her to Kurunegala to give a work presentation and told her that they would be staying in a hotel overnight. When they arrived, she learned that her supervisor had only booked one room for the two of them. Throughout the entire day she became scared and fearful. When they were in the hotel room, her supervisor tried to grab her and force himself on her, despite her telling him to stay away. The supervisor insisted that he could “fix her.” Nethmi had to call a friend to help her escape the room and find somewhere else for the night. The next morning the supervisor contacted Nethmi's mother to tell her that her daughter had left their hotel the previous night, and that she was a lesbian, unprofessional, and a disgrace. Later, the supervisor accused Nethmi of coming on to him, and he insulted her for her sexual orientation. Because of her supervisor's behavior, Nethmi left the company. She also has had to get professional psychological help for what the supervisor put her through.

35. The experience of Fatima,⁵⁹ a 27-year-old transgender woman, provides another example. In 2020, Fatima reached out to EQUAL GROUND through their counselling page. She explained that she had never been given a promotion after three years of work, even though all her peers had been promoted. In order to survive in the workplace, she had had to repress

⁵⁴ *Id.*, p. 33.

⁵⁵ *Id.*, pp. 37-38.

⁵⁶ *Id.*, p. 38.

⁵⁷ *Id.*, p. 39.

⁵⁸ Pseudonym.

⁵⁹ Pseudonym.

herself and hide her femininity. Even then, she had still had to deal with teasing and harassment from her colleagues.

2. Discriminatory treatment and harassment in housing

36. LGBTIQ persons in Sri Lanka face substantial difficulty renting a place to live. In a recent nationwide survey of attitudes of Sri Lankans toward LGBT persons, the overwhelming majority – 87.5% – acknowledged that LGBT persons are discriminated against or face harassment when trying to obtain rental housing.⁶⁰ Two thirds of respondents – 66.5% – said that renting houses to LGBTIQ persons could threaten the community’s way of life.⁶¹ When asked to agree or disagree with the statement that “[r]enting my house to a LGBT person will not be a problem to me,” 59.5% indicated that it *would* be a problem.⁶²

37. Transgender individuals face additional problems obtaining housing when their National ID cards do not match their appearance. As was explained above, it is impossible for a Sri Lankan to obtain a new ID card without first obtaining a Gender Recognition Certificate – a process that is impossible for many and extremely drawn out for the rest.⁶³ The transition process can take up to ten years, and during this time the Sri Lanka Government does not issue any kind of temporary ID documentation. National ID cards are a required form of documentation for any housing transaction. As a result, during the years that a transgender person’s name and appearance do not match their ID card, that individual is unable to supply the necessary documentation for renting or for securing housing loans.

38. Shared housing situations (such as boarding houses), which due to their lower cost are a common form of housing for single people in Sri Lanka, pose further difficulties for transgender people. Shared housing in Sri Lanka involves renting rooms in living spaces that share common living areas, kitchens, and washrooms. This type of housing is often segregated by gender. Transgender people in shared housing who have not obtained Gender Recognition Certificates are required to live with people of the opposite gender, which creates safety issues and opens the door to harassment. They may be easily identifiable as targets or be forced to suppress their gender identity to blend in.

39. The difficulties LGBTIQ individuals face securing housing often leave them with limited options. As a result, real estate agents are able to take advantage of this situation and charge higher fees. Additionally, once housing has been secured, LGBTIQ people must be extra vigilant in the way they act in order to avoid giving landlords pretexts for eviction.

40. Once LGBTIQ persons have found somewhere to live, they often cannot remain there. It is not uncommon for LGBTIQ persons to have to move frequently due to treatment by neighbors and landlords. For example, two EQUAL GROUND employees have had to make multiple moves, most recently in 2019, due to persistent problems that arose because of their sexual orientation or gender identity. As another example, a transgender woman reported to EQUAL GROUND in 2020 that due to her identity as a transgender woman, she had been

⁶⁰ *Survey of Sri Lankan society’s views*, *supra* note 16, p. 23.

⁶¹ *Id.*, p. 20.

⁶² *Id.*

⁶³ *See supra*, ¶¶ 18-19.

forced to vacate boarding houses twice.⁶⁴ LGBTIQ people often move from rural areas to the capital city of Colombo in hopes of finding a more accepting environment, but even there they still face harassment.

41. Organizations as well as individuals have been forced to move to new locations. In 2020, a transgender organization had to move their office space from Kirulapone to Colombo due to transphobia from their landlord. People in the neighborhood the office was in had complained to the landlord that transgender people were in their neighborhood. Because of these complaints, the landlord terminated the organization's lease, forcing them to move.

3. Discriminatory treatment and harassment in schools

42. The existence of discrimination against LGBTIQ students is widely recognized in Sri Lanka. In the recent nationwide survey referred to above, 62.3% of respondents agreed that LGBT students “are subjected to discrimination by the teachers in schools because they are LGBT students,” and 87.4% agreed that “[t]hey are subjected to discrimination by other students in schools because they are LGBT students.”⁶⁵

43. For example, in 2020, in Colombo, a father discovered his daughter’s relationship with another girl in school and reported it to the school principal. The girl was subjected to harassment from peers and from the school administration, in an effort to get her to end the relationship. She eventually dropped out of school because of the harassment.

44. As another example, in 2018, Colombo International School (CIS) failed to provide an inclusive environment for a bi-sexual, gender-fluid student. Anjali,⁶⁶ a CIS student who identifies as bi-sexual and gender-fluid, was told she could not wear a rainbow flag during a school fashion show, which she wanted to wear as a sign of pride and solidarity for the LGBTIQ community. Anjali also wanted to wear trousers (the boys’ uniform), instead of a skirt (the girls’ uniform), as an expression of her identity, but the school refused to allow this. When she wore trousers anyway, she was disciplined. In July 2018, the school administration told her that although she was qualified for the honor of being a prefect, they would not make her a prefect unless she agreed to wear a skirt.

4. Discriminatory treatment and harassment in health care settings

45. “Conversion therapy” – programs intended to convert people from homosexuality to heterosexuality – is a widespread practice in Sri Lanka.⁶⁷ For example, a doctor in Sri Lanka’s Southern Province agreed to provide conversion therapy and claimed that he could “fix” a person’s sexual orientation. Although “there is an overwhelming lack of scientific evidence

⁶⁴ Boarding houses are a form of shared housing in which individual rooms are rented out in a share common living space.

⁶⁵ *Survey of Sri Lankan society’s views*, *supra* note 16, p. 23.

⁶⁶ Pseudonym.

⁶⁷ Zahara Dawoodbhoy, ‘*Homosexuality Is Wrong!*’: *The Chilling Reality of Conversion Therapy in Sri Lanka*, ROARMEDIA (11 Apr. 2019), <https://roar.media/english/life/srilanka-life/reality-conversion-therapy-sri-lanka> (last visited 28 May 2022).

supporting the idea that a person’s sexual orientation can be changed,” conversion therapy remains common in Sri Lanka, “largely without protest from other medical practitioners.”⁶⁸

46. Transgender patients have experienced sexual harassment and discrimination in hospitals.

“In one case, a doctor sexually harassed a transwoman seeking medical assistance at a government hospital. In another incident a transgender man reported having his genitals examined when he was under sedation for surgery not related to his sexual organs. There are also reports indicating that transwomen who go to government healthcare facilities have faced discrimination, such as their cases being delayed, and their appointments being pushed to the back of the queue.”⁶⁹

47. Medical providers have violated transgender patients’ right to privacy by divulging patients’ confidential information to non-medical hospital staff, including cleaning staff and security personnel, leading to incidents of intimidation and harassment.⁷⁰ In one egregious case, in 2021, doctors and nurses at Matale Hospital violated the privacy of a pregnant transgender male patient. The doctors and nurses leaked his pregnancy status to the media, leading to harassment from both the public and those within the hospital. The man had to be transferred to a hospital in Colombo because of the harassment.

5. Violence and Abuse by Family Members

48. Meghna,⁷¹ an 18-year-old lesbian, was subjected to physical violence and imprisonment by her parents after they learned she was lesbian and was in a relationship with another woman. In 2019, Meghna and her partner were told by both families to discontinue their relationship. In April 2020, they were caught dating and one of the women was beaten by her mother. Both women’s families threatened them with violence, and Meghna was locked in her room during the day. Meghna’s parents also threatened to bring in doctors to “fix” her sexual orientation.

49. In 2021, a young transgender woman in Sri Lanka’s Eastern Province was beaten and bullied by her brother into denying her gender identity. Saro⁷² was shamed by her brother for participating in an EQUAL GROUND workshop and other LGBTIQ advocacy activities. The brother burned all her feminine clothing. Saro was also called names by her brother such as “Ponnaya” (Sinhala word with a meaning similar to “faggot”). Later, Saro’s brother hit her over the head with a glass bottle, leaving her with a gash that required twelve stitches to close.

⁶⁸ *Id.*

⁶⁹ Women and Media Collective, *Discrimination of Lesbians, Bisexual Women and Transgender Persons in Sri Lanka*, Shadow Report to the Committee for the Elimination of All Forms of Discrimination Against Women (CEDAW) (Feb. 2017), p. 10, https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/LKA/INT_CEDAW_NGO_LKA_26252_E.pdf.

⁷⁰ *Id.*

⁷¹ Pseudonym.

⁷² Pseudonym.

50. A young woman living in the Gampaha district faces constant harassment from her brother because she is a lesbian. Piyumi,⁷³ who is still in school, is financially dependent on her brother. After her sexual orientation was revealed, her brother harassed and bullied her. Piyumi contacted an EQUAL GROUND hotline and was taken to a temporary safe space. The safe house regulations, however, required her to make a complaint to the police, in order to be allowed to stay for an extended period. Fearing harassment from the police, Piyumi was not willing to file a complaint. As a result, she was forced to move back in with her brother, where she is still facing harassment.

51. The societal attitudes that result in violence and abuse within families are powerfully reinforced by the continued criminalization of same-sex sexual relations. Those same laws leave LGBTIQ unable to seek police protection when they experience violence and abuse from family members.

6. Forced Marriage

52. During October 2021, Anoma,⁷⁴ a lesbian from Colombo, was forced to marry a man by her father, who claimed the marriage would make her heterosexual. Anoma's husband wanted to divorce after she refused to engage in sexual acts with him and revealed to him that she is a lesbian. Anoma is now divorced from her husband.

53. Chathuri⁷⁵ is in a lesbian relationship with Anoma and is married. Chathuri's husband started abusing her physically, sexually, and emotionally after it was revealed to him that she is in a relationship with Anoma. One night in November 2021, he with four other men kidnapped Anoma and took her to a remote area. There the five men beat her, forcefully removed her clothes, verbally abused her, attempted to rape her, and left her there. Anoma didn't make a complaint about this incident to the police. After the incident, Anoma and Chathuri were both summoned to the police for an ongoing inquiry based on a complaint that had been made by Chathuri's husband earlier about the lesbian relationship. At this inquiry, even though Anoma mentioned to the police about the physical and sexual assault she faced by Chathuri's husband and others, the police did not take any action. Both Anoma and Chathuri were told that under Section 365 and 365A of the Penal Code it was illegal for two women to be in a relationship. The police threatened Anoma that she will be arrested and detained if they did not end their relationship with each other.

V. Positive developments

54. In recent years, some private schools and businesses have taken steps forward in respecting the rights of LGBTIQ people. As one example, a British school in Colombo has adopted an anti-bullying school policy that prohibits homophobic (as well as sexual or xenophobic) language towards an individual or group. As another example, following an incident on 18 September 2020 in which a transgender individual was denied entry by a bouncer to the bar "The Love Bar" due to her "appearance," The Love Bar issued a formal

⁷³ Pseudonym.

⁷⁴ Pseudonym.

⁷⁵ Pseudonym.

apology and conducted sensitivity training for its staff. While incidents like these have been too few and far between, they are noteworthy and deserve recognition.

55. Comments by some politicians reflecting changing attitudes have also been a positive development, although they have not yet led to any positive changes in law or policy.

56. On 1 March 2021, on the eve of the UN’s “Zero Discrimination Day,” Sri Lankan president Gotabaya Rajapaksa tweeted his determination to secure every Sri Lankan the “right to live life with dignity” regardless of their sexuality.⁷⁶ His tweet was the first of its kind among South Asian Heads of State acknowledging the rights of LGBTIQ people.

57. On 30 October 2020, Minister of Justice Mohamed Ali Sabry, PC posted on Facebook an endorsement of the right of LGBTIQ people to live with dignity and without any discrimination.⁷⁷ He expressed his disgust at the forced anal and vaginal exams conducted by police on persons arrested under the laws targeting LGBTIQ people, and he told the relevant authorities to refrain from conducting such forced exams in the future.⁷⁸

58. After EQUAL GROUND drew the attention of the Sri Lanka College of Psychiatrists to the homophobic lecture presented before the Sri Lanka Police in Kandy on 27 July 2021 (described above), the Sri Lanka College of Psychiatrists responded by issuing a press release (titled “Press Statement regarding human sexuality and mental illness”) categorically denouncing the lecturer’s characterization of LGBTIQ status as a disease of the mind or body, and stating that “[m]odern day psychiatrists do not identify or diagnose homosexuality as a mental illness or treat it as such.”⁷⁹

59. EQUAL GROUND also filed a Writ petition in November 2021 seeking to bar the police and the purported counsellor Ama Dissanayake from repeating such homophobic training. The petition alleged that the training violated the rights of the LGBTIQ community in contravention of the constitution’s promise of equal protection by the law. This was the first case in Sri Lanka where law enforcement authority has been challenged by an organization over discrimination against the LGBTIQ population. On 8 December 2021, the Court of Appeal granted leave to proceed with the case, which is a big win for the LGBTIQ community.⁸⁰ It sets a positive precedent in terms of ending discrimination and marginalization as well as police

⁷⁶ Gotabaya Rajapaksa (@GotabayaR), TWITTER (Feb. 28, 2021, 11:26 PM), [https://twitter.com/GotabayaR/status/136625850188695526?ref_src=twsrc%5Etfw%7Ctwcamp%5Etweetembed%](https://twitter.com/GotabayaR/status/136625850188695526?ref_src=twsrc%5Etfw%7Ctwcamp%5Etweetembed%5Etfw) (last visited 28 May 2022).

⁷⁷ Daily Mirror (@Dailymirror_SL), TWITTER (Oct. 30, 2020, 5:04 AM), https://twitter.com/Dailymirror_SL/status/1322117244814422017/ (last visited 28 May 2022).

⁷⁸ *Id.*

⁷⁹ *Sri Lanka College of Psychiatrists says homosexuality no illness, calls for decriminalization*, ECONOMYNEXT (Aug. 19, 2021), <https://economynext.com/sri-lanka-college-of-psychiatrists-says-homosexuality-no-illness-calls-for-decriminalisation-85208/> (last visited 28 May 2022).

⁸⁰ EQUAL GROUND, *Court of Appeal grants leave to proceed with EQUAL GROUND’s Writ petition against Police, Ama Dissanayake over homophobia and discrimination* (8 Dec. 2021), <https://www.equal-ground.org/breaking-news-court-of-appeal-grants-leave-to-proceed-with-equal-grounds-writ-petition-against-police-ama-dissanayake-over-homophobia-and-dis/> (last visited 28 May 2022).

harassment of minority groups including the LGBTIQ community.⁸¹ Of course, it remains to be seen whether, in the end, the case is successful.

60. In another recent instance, a Magistrate advised the Sri Lanka Police to treat transgender persons with dignity and not to deem them lawbreakers on account of their gender identity. The news was reported by a local Sinhala newspaper, “Mawbima” on 9 March 2021.⁸²

61. These indications of changing attitudes among certain lawmakers and members of the judiciary are welcome, but the presence of penal provisions and absence of anti-discrimination laws continue to render LGBTIQ people vulnerable to various forms of violence and harassment from both State and non-State actors.

V. Suggested questions for Sri Lanka

- Does Sri Lanka have any plan to decriminalize consensual same-sex relations? If yes, by what date does Sri Lanka intend to do so?
- Does Sri Lanka have any plan to amend its Constitution or to adopt comprehensive anti-discrimination legislation, to explicitly prohibit all forms of discrimination based on sexual orientation and gender identity and expression (SOGIE)? If yes, does Sri Lanka have any concrete timeframe in mind within which it will do so?
- What specific measures has the Government taken to sensitize the members of Sri Lanka Police to combat homophobic and transphobic attitudes towards the LGBTIQ community?

VI. Suggested recommendations for Sri Lanka

- Sri Lanka should decriminalize adult, consensual same-sex sexual conduct by repealing Penal Code §§ 365 and 365A and by reviewing the application of Penal Code § 399 and the Vagrants Ordinance, to clarify that they do not apply to adult, consensual same-sex sexual conduct, displays of affection or transgender persons.
- Sri Lanka should amend its Constitution and adopt comprehensive anti-discrimination legislation to explicitly include sexual orientation and gender identity and expression among the prohibited grounds of discrimination. It should also amend its Constitution to provide that any legislation, subsidiary legislation, executive decision or administrative policy that is inconsistent with the Constitution can be reviewed and invalidated by an independent judiciary.
- Sri Lanka should take all necessary steps to combat and prevent discrimination and violence against persons of diverse sexual orientations and gender identities and

⁸¹ *Historic Court Win for LGBTIQ Community*, GROUNDVIEWS (Dec. 13, 2021), <https://groundviews.org/2021/12/13/historic-court-win-for-lgbtqi-community/> (last visited 28 May 2022).

⁸² *Fort Magistrate tells Police not to describe transgender persons as law-breakers*, NEWSWIRE (Mar. 15, 2021), <https://www.newswire.lk/2021/03/15/fort-magistrate-tells-police-not-to-describe-transgender-persons-as-law-breakers/> (last visited 28 May 2022).

expressions, and to ensure their equal enjoyment of all human rights. In this regard, Sri Lanka should develop, implement, and intensify training programs and public awareness efforts to educate law enforcement officers, public employees and the general public in order to combat discriminatory stereotypes against LGBTIQ persons.

- Sri Lanka should develop and implement measures to promote inclusive policies in the workplace, in educational institutions, and in healthcare institutions. The Ragging Act should be amended to specifically prohibit ragging, harassment and violence motivated by a person's sexual orientation or gender identity or expression. Legislation governing workplace relations should be adopted to prohibit sexual harassment in the workplace, specifically including harassment motivated by a person's sexual orientation or gender identity or expression.