

**HUMAN RIGHTS VIOLATIONS AGAINST
LESBIAN, GAY, BISEXUAL AND
TRANSGENDER PEOPLE IN SRI LANKA
A SHADOW REPORT**

**SUBMITTED FOR CONSIDERATION AT THE
FIFTY NINTH SESSION OF THE COMMITTEE ON
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Introduction

This shadow report is submitted to the Committee on Economic, Social, and Cultural Rights (“Committee”) in anticipation of the Pre-Sessional Working Group’s determination of the list of issues for the Committee’s review of Sri Lanka’s compliance with the International Covenant on Economic, Social, and Cultural Rights (“Covenant”)¹.

This report is submitted by EQUAL GROUND², the Center for International Human Rights of Northwestern Pritzker School of Law, and Global Initiatives for Human Rights of Heartland Alliance for Human Needs & Human Rights.

The purpose of this report is to provide information about the serious and ongoing violations of the Covenant rights of lesbian, gay, bisexual and transgender (“LGBT”) individuals in Sri Lanka.

This report proceeds in three sections:

Section I will discuss the relevant legal framework in Sri Lanka and will show that Sri Lanka’s Constitution and laws fail to adequately protect the human rights of LGBT individuals:

- Same sex sexual conduct is criminalized;
- Neither the Constitution nor any law specifically prohibit discrimination on the grounds of sexual orientation or gender identity; and
- The right of transgender people to legal recognition of their gender identity is not adequately protected by law.

As a consequence, LGBT individuals are extremely vulnerable to harassment, arbitrary arrest and violence by the police, violence and harassment by non-State actors, and discrimination by all sectors of society. Additionally, transgender people find it impossible, or nearly so, to obtain birth certificates and official ID cards that correspond to their gender identity; this exposes these individuals to constant humiliation and harassment when they are required to show official documents that do not match their gender identity.

¹ International Covenant on Economic, Social, and Cultural Rights, 16 Dec. 1966, 993 U.N.T.S 3 [hereinafter “Covenant”].

² 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.

By failing to enact appropriate laws to protect the rights of LGBT individuals, Sri Lanka is violating its Covenant obligations.

As this Committee has recognized in its General Comment No. 22 on the Right to Sexual and Reproductive Health, the Article 12 Right to Health includes the right of LGBT individuals to protection from the State against violence and discrimination³. LGBT individuals have the right to be “fully respected for their sexual orientation, gender identity and intersex status”⁴. States parties therefore have an “obligation to combat homophobia and transphobia”⁵. As this report will show, Sri Lanka is failing to comply with these obligations.

Section II of this report will discuss violations of the right to non-discrimination in employment, housing, health care, and education (Articles 2(2), 6, 7, 11, 12, and 13) and the right to be married only with the person’s own free consent (Article 10(1)).

Section III will suggest questions for inclusion on the list of issues for Sri Lanka.

We hope that this Committee’s dialogue with Sri Lanka will contribute to the adoption and implementation of much-needed reforms, so that in the future the Covenant rights of LGBT Sri Lankans are fully protected and ensured.

I. Sri Lanka’s Constitution and laws fail to adequately protect the human rights of LGBT individuals, making LGBT individuals vulnerable to the frequent abuse of their rights by State actors and private individuals

A. The Sri Lankan Penal Code criminalizes same-sex sexual conduct and laws against “cheating by personation” and vagrancy are used to target LGBT individuals

Section 365 of the Sri Lankan Penal Code makes it a criminal offense to engage in “carnal intercourse against the order of nature”⁶. This offense is widely understood to apply to sexual acts between two individuals of the same sex. The penalty for violation of § 365 is up to ten years imprisonment and a fine⁷.

Section 365A of the Penal Code criminalizes “any act of gross indecency with another person”⁸. Violation of § 365A is punishable by up to two years in prison, a fine, or both⁹. Prior to being amended in 1995, § 365A read as follows:

³ Committee on Economic, Social and Cultural Rights, *General Comment No. 22 (2016) on the Right to Sexual and Reproductive Health (Article 12 of the International Covenant on Economic, Social and Cultural Rights)*, ¶ 59, U.N. Doc. E/C.12/GC/22 (2 May 2016) [hereinafter “General Comment No. 22”], available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2FC.12%2fGC%2f22&Lang=en.

⁴ *Id.*, ¶ 23.

⁵ *Id.*

⁶ Sri Lankan Penal Code § 365.

⁷ *Id.*

⁸ Sri Lankan Penal Code § 365A.

⁹ *Id.*

“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”¹⁰.

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 conduct¹¹. 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.

Although there have been no convictions under §§ 365 and 365A since Sri Lanka gained its independence in 1948, these laws have the effect of perpetuating discrimination, harassment, violence, and unequal treatment of LGBT individuals in Sri Lanka. Police have used threats of prosecution under these laws to harass and extort LGBT individuals, and the existence of these laws makes LGBT crime victims unwilling to report crimes to the police.

These laws serve as a pretext for denying sexual minorities a range of rights to which they are entitled under the Covenant, and they legitimize the stigma of sexual minorities in Sri Lanka, who face pervasive societal discrimination.

In addition to §§ 365 and 365A, other Sri Lankan laws also have been used to target LGBT individuals. Section 399 of the Penal Code makes it an offense to “cheat by personation:”

“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”¹².

Police have used this law to arrest transgender individuals¹³.

Similarly, LGBT individuals have been arrested under Sri Lanka’s Vagrants Ordinance¹⁴, which “prohibits soliciting or committing acts of ‘gross indecency,’ or being ‘incorrigible rogues’ procuring ‘illicit or unnatural intercourse’”¹⁵.

¹⁰ See EQUAL GROUND, *Strengthening of Legal Protection for LGBT in Sri Lanka: Road to Decriminalization: Situation Analysis*, p. 2 (2012) [hereinafter “Situation Analysis”].

¹¹ 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 26 Aug. 2016).

¹² Sri Lanka Penal Code, Section 399.

¹³ Human Rights Watch, *All Five Fingers Are Not the Same: Discrimination on Grounds of Gender Identity and Sexual Orientation in Sri Lanka* (2016), p. 16, available at https://www.hrw.org/sites/default/files/report_pdf/srilanka0816web.pdf [hereinafter “Human Rights Watch 2016”].

¹⁴ *Id.*; Situation Analysis, *supra* note 10, p. 12.

¹⁵ Human Rights Watch 2016, *supra* note 13, p. 16.

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 her¹⁶.

Other legal provisions such as Section 353 of the Penal Code relating to abduction are also used against individuals in homosexual relationships¹⁷.

B. Neither the Constitution nor the laws of Sri Lanka expressly prohibit discrimination on the basis of sexual orientation or gender identity

Neither the Constitution nor the laws of Sri Lanka explicitly prohibit discrimination on the basis of sexual orientation or gender identity. Article 12(1) of the Constitution states, “All persons are equal before the law and are entitled to the equal protection of the law”¹⁸. However, Article 12(2), which prohibits discrimination on the basis of various grounds, does not include sexual orientation or gender identity among the grounds upon which discrimination is prohibited¹⁹.

In 2014, the Government of Sri Lanka made the unprecedented and very welcome statement to the Human Rights Committee that Article 12 of the Constitution does protect persons from discrimination on the basis of sexual orientation and gender identity²⁰.

However, particularly given the maintenance in force of the laws against same-sex sexual conduct and the well-entrenched societal attitudes hostile to sexual minorities, Sri Lanka needs to amend its Constitution to explicitly prohibit discrimination on the grounds of sexual orientation and gender identity, in order to send a strong signal that these forms of discrimination are outlawed.

Articles 15 and 16 of the Constitution are equally worrisome. Entitled “Restrictions on fundamental rights,” Article 15(7) provides that Article 12 rights can be restricted to protect “morality” or to “meet[] the just requirements of the general welfare of a democratic society”²¹. Article 16(1) states: “All existing written law and unwritten law shall be valid and operative notwithstanding any inconsistency with the preceding provisions of this Chapter”²². Article 16(1) thus precludes any challenge to existing laws, such as the Penal Code provisions that criminalize same-sex sexual conduct, on the grounds that those laws violate the Article 12 right to equality.

¹⁶ Anonymous report to EQUAL GROUND, recorded 4 Dec. 2013.

¹⁷ Situation Analysis, *supra* note 10, p. 11.

¹⁸ The Constitution of the Democratic Socialist Republic of Sri Lanka (As amended up to 15th May 2015), Revised Edition – 2015, Art. 12(1), *available at* <https://www.parliament.lk/files/pdf/constitution.pdf> [hereinafter “Constitution”].

¹⁹ *Id.*, Art. 12(2).

²⁰ Replies of Sri Lanka to the list of issues of the Human Rights Committee, ¶ 43 (3 Sept. 2014), U.N. Doc.

CCPR/C/LKA/Q/5/Add.1, *available at*

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fLKA%2fQ%2f5%2fAdd.1&Lang=en.

²¹ Constitution, *supra* note 18, Art. 15(7).

²² *Id.*, Art. 16(1).

This is a particularly critical time for Sri Lanka to act, because the country is now engaged in the process of revising its Constitution. Sri Lanka has the opportunity, as part of this Constitutional reform, to explicitly prohibit discrimination on the basis of sexual orientation and gender identity. Sri Lanka also has the opportunity to delete the Article 15(7) provision allowing fundamental rights to be restricted on the basis of an undefined “morality,” and the Article 16(1) bar to challenging the constitutionality of existing laws that violate the Article 12 right to equality.

Sri Lanka’s laws do not ameliorate the current deficiency in its Constitution. Sri Lanka does not have a law that prohibits discrimination on the basis of sexual orientation or gender identity. Such a law is greatly needed in view of the extensive discrimination, discussed below, to which LGBT people are subjected.

C. Violations of the right to legal recognition of gender identity

Every person has a fundamental right to legal recognition of his or her self-defined gender identity²³. As the Yogyakarta Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity affirm, “[e]ach person’s self-defined . . . gender identity is integral to their personality and is one of the most basic aspects of self-determination, dignity and freedom”²⁴.

To respect and ensure the right to legal recognition of gender identity, States must have in place procedures for modifying, upon request, the gender designations on all State-issued identity documents, including (among others) birth certificates, identity cards, and passports²⁵. Because names can be a marker of gender, these procedures must allow individuals to change their legally recognized names if they wish to do so.

States may not deny or burden a person’s request to have identity documents modified to conform to their gender identity. While some transgender individuals may choose to receive hormonal or surgical treatments, these treatments cannot be made a prerequisite for legal recognition of gender identity²⁶. Nor may a State require other prerequisites such as sterilization or the dissolution of an existing marriage²⁷. As this Committee has recognized, “surgery or sterilization requirements for legal recognition of one’s gender identity” are violations of the right to sexual and reproductive

²³ Yogyakarta Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity, Principle 3 (2007), *available at* http://www.yogyakartaprinciples.org/principles_en.htm [hereinafter “Yogyakarta Principles”]. These principles “were developed and unanimously adopted by a distinguished group of human rights experts, from diverse regions and backgrounds, including judges, academics, a former UN High Commissioner for Human Rights, UN Special Procedures, members of treaty bodies, NGOs and others.” Website of the Yogyakarta Principles, “*About the Yogyakarta Principles*,” http://www.yogyakartaprinciples.org/principles_en.htm (last visited 29 May 2016).

²⁴ Yogyakarta Principles, *supra* note 23, Principle 3.

²⁵ *Id.*, Principle 3(C); Office of the U.N. High Commissioner for Human Rights, *Discrimination and violence against individuals based on their sexual orientation and gender identity*, ¶¶ 69, 70, and 79(i), U.N. Doc. A/HRC/29/23 (4 May 2015), *available at* <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/088/42/PDF/G1508842.pdf?OpenElement> [hereinafter “High Commissioner for Human Rights”].

²⁶ Yogyakarta Principles, *supra* note 23, Principle 3; High Commissioner for Human Rights, *supra* note 25, ¶ 70.

²⁷ Yogyakarta Principles, *supra* note 23, Principle 3; High Commissioner for Human Rights, *supra* note 25, ¶ 70.

health²⁸. The proper approach, as the UN High Commissioner for Human Rights has indicated, is for States to “[i]ssu[e] legal identity documents, **upon request**, that reflect preferred gender, eliminating abusive preconditions, such as sterilization, forced treatment and divorce”²⁹.

Unfortunately, Sri Lankan law does not provide a simple administrative procedure through which transgender people can obtain, upon request, a new birth certificate, which is mandatory to obtain/amend other identity documents that reflect their correct name and gender³⁰. Wide discretion has been left to government personnel in the Registrar General’s office regarding the requirements for amending the birth certificate.

Some transgender people have been told that they must submit proof of having undergone genital reconstruction surgery; others have been told to provide testimony from their parents about the person’s gender identity; others have been asked for a certificate from a psychiatrist³¹. These onerous requirements are difficult or impossible to meet. For example, not all transgender people want to undergo surgical treatments, and not all who want to can afford to do so. The overall result is that, up to now, only rarely have transgender individuals been able to amend their original birth certificates and obtain a national identity card and other official documents that correctly reflect their name and gender identity³².

In June 2016, Sri Lanka adopted a new policy under which transgender individuals can request the issuance of a “Gender Recognition Certificate,” which would allow a person to obtain an amended birth certificate with the sex designation matching the person’s gender identity. Based on the amended birth certificate, the person would be able to obtain an identity card and other legal documents that conform to the person’s gender identity³³.

While Sri Lanka is to be commended for attempting to address the problem of identity documents for transgender individuals, unfortunately, the new policy has very serious shortcomings:

- * The person must be evaluated by a psychiatrist;
- * The psychiatrist must certify that the person “was referred for hormone therapy and the necessary surgical treatment;” and
- * The psychiatrist must certify that the person “underwent the gender transformation process”³⁴.

The implication from this language is that the person must complete hormone therapy and surgical treatments before he or she can obtain a Gender Recognition Certificate. These requirements

²⁸ General Comment No. 22, *supra* note 3, ¶ 58.

²⁹ High Commissioner for Human Rights, *supra* note 22, ¶ 79(i) (emphasis added).

³⁰ Human Rights Watch, *supra* note 13, pp. 2, 21-24.

³¹ *Id.*

³² *Id.*, p. 2.

³³ Dr. P.G. Mahipala, Director General of Health Services, Ministry of Health, Nutrition and Indigenous Medicine, *Issuing of Gender Recognition Certificate for Transgender Community*, General Circular No. 01-34/2016, 16 June 2016 [hereinafter “General Circular No. 01-34/2016”].

³⁴ Gender Recognition Certificate, attached to General Circular No. 01-34/2016.

violate the human rights of transgender individuals. It is also very troubling that the General Circular announcing the new policy is not publicly available. The Ministry of Health has published on its website subsequent Circulars whilst this particular one has been left out³⁵.

The ongoing inability of transgender individuals to obtain, upon request, birth certificates and other identity documents that conform to their gender identity causes significant suffering.

In Sri Lanka, birth certificates and identity cards must be shown at many points in daily life – for example, when a person applies for a job, goes to a bank, seeks medical care at a public hospital, visits a government office, or interacts with the police. In every such situation, a transgender person whose official documents do not match his or her name and gender identity is vulnerable to humiliation and possible harassment or violence. Indeed, the lack of access to education, healthcare, and employment experienced by transgender people as a result of their inability to obtain official documents reflecting their correct name and gender designation is oftentimes the root cause of the exposure to violence and other ill treatment and abuses to which most transgender people are subject.

D. Violence, discrimination, harassment and homophobia/transphobia by state and non-state actors

Homophobia and transphobia have become institutionalized in Sri Lanka, with many State Institutions discriminating against LGBT individuals or CSOs working for LGBT rights. For instance, permits to hold a peaceful candle light vigil for the International Day Against Homophobia and Transphobia were withheld with no reasons being given for such refusal. State media, representatives of political parties and State institutions freely propagate homophobic/transphobic statements³⁶ or misrepresent the LGBT community. For example, lawmaker Nalinda Jayatissa said in a December 2015 media interview, “I am totally against lesbian, gay, bisexual and transsexual rights. This is not the need of a human being”³⁷.

The police are directly involved in many human rights violations against LGBT people. These violations include arbitrary arrests, extortion, and rape and other violent assaults. A recent Human Rights Watch report, based on interviews with 61 LGBT Sri Lankans conducted between October 2015 and January 2016, found that more than half of the respondents reported being detained by the police without cause at least once³⁸. Nearly two dozen respondents reported that they “had suffered sexual, physical, or severe verbal abuse by the Sri Lankan police”³⁹. Sixteen of the respondents reported having suffered sexual or physical abuse by the police⁴⁰.

³⁵ Ministry of Health website, <http://203.94.76.60/cmsmoh/> (last visited 28 Aug. 2016).

³⁶ Chaminda Weerawardhana, *The JVP's Jaundice: Inclination to Reactionary Politics*, Colombo Telegraph (16 Dec. 2015), available at <https://www.colombotelegraph.com/index.php/the-jvps-jaundice-inclination-to-reactionary-politics/> (last visited 26 Aug. 2016).

³⁷ *Id.*; Human Rights Watch 2016, *supra* note 13, p. 10.

³⁸ Human Rights Watch, *Sri Lanka: Challenging 'Gender Norms' Brings Abuse* (15 Aug. 2016), available at <https://www.hrw.org/news/2016/08/15/sri-lanka-challenging-gender-norms-brings-abuse> (last visited 26 Aug. 2016) [hereinafter “Challenging ‘Gender Norms’”].

³⁹ Human Rights Watch 2016, *supra* note 13, p. 30.

⁴⁰ Challenging ‘Gender Norms,’ *supra* note 38.

One example of this police abuse is the February 29, 2016, case of H., a gay man who works as a communications officer for EQUAL GROUND. On his way home from work that day, H. was approached by two men who attempted to seduce him. When H. refused, the two strangers revealed that they were police officers and demanded he come with them or they would arrest him. They took him to a super market complex in the city of Nugegoda and told him they knew all about his work with EQUAL GROUND. They showed him their police identification cards and demanded to see his identification card, which they then confiscated. They then lectured H. about how working with EQUAL GROUND is “promoting homosexuality,” and they falsely told him that joining the organization is criminal. The officers stole all of the money H. was carrying and continued to harass him, threatening to tell his family or to return and arrest him in the future. The officers’ theft left H. unable to pay his rent or send money to his family, and he lives in fear of such an event occurring again⁴¹.

A second example of police abuse involved a gay man and his boyfriend who were publicly humiliated and robbed by police officers. While walking on a public beach in Mount Lavinia, C. and his boyfriend were approached by two police officers who threatened to arrest them for illegal activities. As a crowd gathered to watch the exchange, the police officers continued to berate C. and his boyfriend, humiliating them. The police officers demanded all the money C. and his boyfriend had, and to escape the humiliating situation, they turned over what they had⁴².

With respect to non-State actors, there has been a disturbing increase in the number of hate-groups and individuals targeting LGBT individuals and the community. For example, PRIDE celebrations in Colombo, Sri Lanka, and EQUAL GROUND, as the organizer of these events, were threatened by radical groups; the authorities turned a blind eye to these threats.

In a 2012 study of 119 LGBT individuals across Sri Lanka conducted by EQUAL GROUND, 62% of respondents stated that they had been verbally insulted, harassed or threatened in the previous two years⁴³. Twenty percent of respondents stated that they had suffered physical abuse, threats, harassment, assault, rape or battery in the previous two years. These often violent expressions of homophobia or transphobia also result in emotional or psychological trauma, with 62% of the study respondents stating they had suffered such trauma in the previous two years, and 24% stating such trauma had occurred “often”⁴⁴. This trauma can have serious consequences: 27% of respondents stated that they had felt suicidal⁴⁵.

The complicity of the state institutions in actions against the LGBT community due to inaction further entrenches the stigma and marginalization of the LGBT community.

⁴¹ EQUAL GROUND, *Incident Reports of Human Rights Violations faced by LGBTIQ Community in Sri Lanka*, at pp. 70-71 [hereinafter “Incident Reports”].

⁴² *Id.*, p. 37.

⁴³ EQUAL GROUND, *Towards a Lesbians, Gays, Bisexuals, Transsexuals and Transgendered (LGBT) Stigma and Discrimination Index for Sri Lanka*, at p. 31 (2012) [hereinafter “Stigma and Discrimination Index”].

⁴⁴ *Id.*, p. 34.

⁴⁵ *Id.*, p. 52.

II. Violations of the right to non-discrimination in employment, housing, health care, and education (Articles 2(2), 6, 7, 11, 12, and 13) and the right to be married only with the person’s own free consent (Article 10(1))

A. Discrimination in employment

Articles 6 and 7 of the Covenant recognize the right to work and the right to just, favorable, and non-discriminatory conditions of employment⁴⁶. These rights must be guaranteed without discrimination on any grounds, including sexual orientation and gender identity⁴⁷. Sri Lanka has failed to ensure the equal enjoyment of these rights by LGBT individuals.

In a 2012 study of 119 LGBT individuals in Sri Lanka conducted by EQUAL GROUND, 24% of respondents reported that they had lost their job in the previous two years because of their sexual orientation or gender identity⁴⁸. Twenty-two percent of respondents indicated that they had been refused employment or other work opportunities because of their sexual orientation or gender identity⁴⁹. Twelve percent of respondents stated that they had been denied a promotion or had experienced an adverse change in their job description or the nature of their work. These clear violations of the right to work, including violations of the right to an equal opportunity to be promoted “subject to no considerations other than those of seniority and competence,” as described in Article 7 (c) of the Covenant⁵⁰, cause significant harm to the LGBT community in Sri Lanka.

The following are examples of the discrimination faced by LGBT individuals in the workplace.

In January of 2011, P., a lesbian, told EQUAL GROUND about how abuse and harassment had driven her and her girlfriend from their place of employment. While working at a garment factory in the district of Nuwara-Eliya, P. met her girlfriend, C. P’s friends turned away from her when they learned of her relationship with C. These former friends frequently harassed and insulted the two women and on one occasion physically attacked C. News of their relationship spread around the garment factory where they worked, and their coworkers harassed them relentlessly. C. and P. stopped going to work to escape the harassment; eventually they were forced to quit their jobs and elope in secret⁵¹.

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 work⁵².

⁴⁶ Covenant, *supra* note 1, Arts. 6 and 7.

⁴⁷ *Id.*, Art. 2(2); Committee on Economic, Social and Cultural Rights, *General Comment No. 18 (2005) on the Right to Work (Article 6 of the International Covenant on Economic, Social and Cultural Rights)*, ¶ 12(b)(i), U.N. Doc. E/C.12/GC/18 (6 Feb. 2006).

⁴⁸ Stigma and Discrimination Index, *supra* note 43, pp. 38-39.

⁴⁹ *Id.*, p. 39.

⁵⁰ Covenant, *supra* note 1, Art. 7(c).

⁵¹ EQUAL GROUND, *Struggling Against Homophobic Violence & Hate Crimes: A report on the documentation and research conducted by EQUAL GROUND from April 2010-June 2011*, p. 34 [hereinafter “Struggling Against Homophobic Violence”].

⁵² Interview from EQUAL GROUND Hotline, 3 Dec. 2013.

In 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 the man⁵³.

In another example, a transgender man faced verbal harassment and discrimination at his workplace until he was forced to quit. The man had moved to Colombo to work at a government job in order to escape discrimination in his hometown. Authorities in his workplace knew about his transgender status, but did not approve and disagreed with his choice to wear men's clothing. Once he began a relationship with a female coworker, the head of his office verbally reprimanded him. The verbal abuse and discrimination due to his transgender status continued for several years, until finally the man could take no more. He quit his job and was forced to become self-employed⁵⁴.

B. Discrimination in housing

The right to housing is among the rights protected by Article 11 of the Covenant. LGBT people in Sri Lanka face discrimination in obtaining and keeping housing.

In EQUAL GROUND's 2012 study of 119 LGBT Sri Lankans, 24% of survey respondents reported that, within the past two years, they had been unable to rent housing or had been forced to change their residence because of their sexual orientation or gender identity⁵⁵.

The example of H., a transgender woman, illustrates the difficulties facing LGBT people with respect to housing. When H. was banished from her home, she moved to Colombo in order to live freely as her true self. However, in Colombo she encountered many landlords who refused to rent housing to her because she was a transgender person. When H. was eventually able to find housing in a boarding house close to a busy street, she was frequently harassed on her way to and from her home. After a short time, her landlord evicted her because of her transgender status, leaving her homeless. She then had to resume the arduous search for housing, facing the same discrimination and harassment again and again⁵⁶.

C. Discrimination in health care

Article 12 (1) of the Covenant guarantees the right of every individual to the "enjoyment of the highest attainable standard of physical and mental health"⁵⁷. States parties are obliged to guarantee the exercise of this right "without discrimination of any kind"⁵⁸, including discrimination on the basis of sexual orientation⁵⁹ and gender identity. As this Committee has recently emphasized in

⁵³ Interview from EQUAL GROUND Hotline, 4 Oct. 2013.

⁵⁴ Incident Reports, *supra* note 41, pp. 65-66.

⁵⁵ Stigma and Discrimination Index, *supra* note 43, pp. 37-38.

⁵⁶ Incident Reports, *supra* note 41, p. 54.

⁵⁷ Covenant, *supra* note 1, Art. 12(1).

⁵⁸ Covenant, *supra* note 1, Art. 2(2).

⁵⁹ Committee on Economic, Social and Cultural Rights, *General Comment No. 14 (2000) on the Right to the Highest Attainable Standard of Health (Article 12 of the International Covenant on Economic, Social and Cultural Rights)*, ¶ 18, Contained in U.N. Document E/C.12/2000/4.

its General Comment No. 22, the right to health includes the right to sexual and reproductive health⁶⁰. This includes not only access to quality and affordable healthcare, but also access to healthcare that is free from “coercion and discrimination” and instead is based on dignity and respect⁶¹.

Unfortunately, in Sri Lanka, LGBT individuals face discrimination, humiliation, and disrespect when they attempt to access health care services. The following examples are illustrative:

In June of 2012, a transgender man was harassed and humiliated by nurses in a hospital in the town of Kurunegala who exposed his transgender status without his consent. While being treated for gastritis, the man was admitted to the female ward after revealing his transgender status to his doctor. When female patients demanded to know why a male patient was in the female ward, a nurse forcibly removed the man’s clothing to show the women and stated, “Look, this is a woman.” The entire medical staff of the hospital, the patients, and their visitors were all made aware of his transgender status; the man overheard them making comments about him. Nurses later asked him to sign a consent form giving them permission to expose his body to staff for “learning purposes,” and when he refused, they took his cellphone number without his permission and he received harassing phone calls even after leaving the hospital. Several months later, he ran into a medical staffer in a market. The staffer recognized the former patient and revealed his transgender status to all those present in the market⁶².

A transgender man who was recovering from hand surgery in a government hospital in Matale was denied pain medication because of his transgender status and was left to suffer severe pain. Although he had revealed his transgender status only to his surgeon, he believed his status had been revealed to nurses and staff, as he saw them pointing at him and talking. The man asked a nurse for painkillers, but she refused. He then asked other attendants, but they also refused. His many attempts to get the pain medication he needed were thwarted, and he was denied the opportunity to meet with the doctor in charge of the ward. This went on for hours, but still the man’s pain was ignored⁶³.

In 2009, G., a transgender man, was physically harassed, humiliated, and denied medical treatment while recovering from a hysterectomy in Gampola Government Hospital in Kandy. After surgery, G. was in intense pain and was brought to a ward to rest. That evening, a friend came to visit and tried to stay with G. through the night, but the head nurse made him leave. G. awoke in excruciating pain, but although he could see nurses working in the ward, his cries for help were ignored. G. eventually fell into unconsciousness covered in his own vomit. He awoke to find a male nurse and medical staffer forcibly removing his clothing to examine his genitals, with no concern for his pleas for privacy. They made slandering comments toward G. and harassed him. Over the next few days, G. overheard comments that made him realize that his transgender status had been revealed to the other patients and their visitors⁶⁴.

⁶⁰ General Comment No. 22, *supra* note 3, ¶ 1.

⁶¹ *Id.*, ¶ 5.

⁶² Incident Reports, *supra* note 41, pp. 3-4.

⁶³ *Id.*, p. 34.

⁶⁴ Incident Reports, *supra* note 41, pp. 62-63.

D. Discrimination in education

Article 13 (1) of the Covenant recognizes the right of all people to education⁶⁵. Unfortunately, in Sri Lanka LGBT students face unchecked harassment and abuse not only from their peers, but also from school administrators who shame them and disclose their LGBT status without their consent. LGBT students often live in fear of school classmates or teachers discovering their sexual orientation or gender identity, lest they inform the students' parents and subject them to discrimination and harassment.

In EQUAL GROUND'S 2012 study of 119 LGBT individuals, of the respondents who had attended school in the past two years, 75% had been dismissed, suspended or prevented from attending school on the basis of their gender identity or expression⁶⁶. Additionally, excessive bullying, marginalization and discrimination have forced many LGBT students to drop out of school⁶⁷.

The following are examples:

In October of 2010, A., a lesbian, told EQUAL GROUND that her school's disclosure of her relationship with her girlfriend had driven her girlfriend to suicide. A. had been admitted to a popular girl's school in the city of Kandy and had been accepted to stay in a hostel with many other girls. During her three years there she met and began a relationship with another girl. The relationship continued until school administrators discovered the girls' relationship and informed their parents that their daughters had a romantic relationship. A's girlfriend was so ashamed that she took poison to end her life⁶⁸.

In another case, a transgender girl was beaten and humiliated by classmates who then faced no repercussions from school officials. The girl attended an all-boys school in Colombo where she was frequently harassed because she was seen as a feminine boy. One day after school, four boys attacked her and tried to publically undress her. They beat her and tore her clothes. A teacher did rescue her, but no one punished the boys who had attacked her. The victim was too afraid to tell anyone else about the attack. No one ever took any action against the boys who had attacked her⁶⁹.

In another example, a gay man was assaulted by classmates who faced no punishment from university authorities. Six of the man's classmates looked at his Facebook account and discovered that he was gay. The classmates then went after him and attempted to sexually assault him. While the man was running away from his attackers, he fell down the stairs, injuring his spine. After returning to school, the gay man learned that the six classmates had disclosed that he was gay to other students and had told them not to interact with him. When the man confronted his classmates about this, they assaulted him, leading to another hospital stay. University employees took no action against the attackers, who continued to threaten the gay man⁷⁰.

⁶⁵ Covenant, *supra* note 1, Art. 13(1).

⁶⁶ Stigma and Discrimination Index, *supra* note 43, p. 41.

⁶⁷ EQUAL GROUND, A Report on the Situation for LGBTIQ Persons in Sri Lanka, p. 4 (5 July 2016) [hereinafter "2016 Situation Report"].

⁶⁸ Struggling Against Homophobic Violence, *supra* note 51, p. 18.

⁶⁹ Incident Reports, *supra* note 41, p. 15.

⁷⁰ *Id.*, p. 21.

In 2015, a bisexual male student at a private school in the city of Kottawa was harassed, humiliated and assaulted because of his sexual orientation. A teacher found the student's cell phone and discovered text messages and pictures the student had sent to his boyfriend. The next day in class, the teacher slapped the student and berated him in front of his classmates. When the student asked why he was being punished, his teacher slapped him again and said he did not want any homosexuals at the school because he did not want all the students to "become" homosexual. The teacher did not return the student's phone. The teacher faced no punishment for publically humiliating and assaulting the student⁷¹.

On May 25, 2016, a bisexual woman recounted how her constant abuse during school had left her "broken, bent, and bitter." The woman had attended a prestigious Buddhist girls' school where she faced a constant stream of cruel prejudices. Teachers and classmates harassed her constantly; she reported being haunted to this day by their treatment of her. Because she was tormented at a Buddhist school, an additional consequence of her ordeal was that she was robbed of her Buddhist faith⁷².

E. Forced marriage

Article 10(1) of the Covenant affirms that "[m]arriage must be entered into with the free consent of the intending spouses"⁷³. Contrary to this command, LGBT individuals in Sri Lanka, particularly lesbians, are often forced to marry against their will.

On March 15, 2011, C., a lesbian, told EQUAL GROUND that she had been forced to marry a man after her family discovered that she was living with her girlfriend. C. and her girlfriend began their relationship in 1992, and two years later they began living together. Two years after that, when their families discovered their relationship, their families forcibly returned them to their village and assaulted them. C's girlfriend was forced to marry a man in the army, and C. was forced to marry a man eight years her junior. As of 2011 when she spoke with EQUAL GROUND, C. had four children and was still living with the husband she had been forced to marry⁷⁴.

On January 7, 2011, S., a lesbian, told EQUAL GROUND that she, too, had been forced to marry a man, causing her girlfriend so much pain that her girlfriend committed suicide. S. and her girlfriend had lived together for years, taking care of S's paralyzed mother and supporting themselves with farming and domestic work. The people in their village knew they were lesbians and frequently harassed them. Despite the harassment, they continued living together until S's brother came to her with a man's marriage proposal. The brother insulted and harassed S., threatening to take away all of her property if she refused to marry the man. S. was eventually forced to give in and marry the man. She attempted to maintain her relationship with her girlfriend even after her marriage, but her husband soon discovered their secret and kept them apart. S's girlfriend could not bear it and took poison to end her life, leaving S. devastated⁷⁵.

⁷¹ *Id.*, p. 25.

⁷² 2016 Situation Report, *supra* note 67, pp. 4-5.

⁷³ Covenant, *supra* note 1, Art. 10 (1).

⁷⁴ Struggling Against Homophobic Violence, *supra* note 51, p. 25.

⁷⁵ *Id.*, p. 29.

In April 2010, R., a lesbian, told EQUAL GROUND that her girlfriend had been forcibly taken from her and forced to marry a man. R. and her girlfriend had met while in college, and their friendship became a romantic relationship. The two women did everything together and frequently slept over at each other's homes. One day, while they were in bed together at R's parents' home, R's brother burst into the room and discovered them. R's family ordered R. to leave their home. The two women lived together for a time in a rented room until the parents of R's girlfriend discovered them. R's girlfriend was forced by her family to marry a man, and she was too afraid of retaliation to refuse. R. has been left devastated. She has contemplated suicide and imagines a life of emptiness without her girlfriend⁷⁶.

On April 7, 2011, S., a lesbian, was raped by a male relative after she refused to marry a man. S. was only 16 at the time. S. now lives alone because her girlfriend was forced to marry a man⁷⁷.

III. Suggested Issues for Inclusion in the List of Issues

1. As part of the Constitutional reform process that is now underway, will the State commit to including in the equality/non-discrimination article an explicit prohibition of discrimination on the basis of sexual orientation and gender identity?
2. Will the State repeal provisions of the Penal Code that criminalize consensual, adult, same-sex sexual relations?
3. Please provide information about the new policy regarding Gender Recognition Certificates. Is it correct that under this policy, a transgender person cannot obtain a Gender Recognition Certificate without first completing hormonal therapy and genital reconstruction surgery? Is the State willing to reconsider these requirements? What steps has the State taken to train relevant State officials and employees on the proper implementation of this policy? Why is the Circular establishing this policy not published on the website of the Ministry of Health, along with other Circulars?
4. What measures will the State take to end human rights abuses by the police and other State actors against LGBT individuals and civil society organizations that work to protect the human rights of LGBT people? How will the State ensure that State actors who violate human rights are held accountable and that victims are afforded a remedy?
5. What measures will the State take to increase public tolerance and respect for sexual minorities? What training programs will be instituted for health care providers, teachers, and public employees in order to combat discrimination against and harassment of LGBT individuals, in order to ensure them the equal enjoyment of Covenant rights?

⁷⁶ *Id.*, p. 26.

⁷⁷ *Id.*, p. 28.