

**Questioning/Queer (LGBTIQ) Persons**

**Joint Submission for the 4<sup>th</sup> Cycle Universal Periodic Review of Sri Lanka**

**42<sup>nd</sup> Session of the UPR Working Group**

**EQUAL GROUND**

and

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

**8 July 2022**

**I. Introduction**

1. This submission addresses Sri Lanka's continuing violation of the human rights of LGBTIQ persons. In particular:

- 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, 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, and 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 failure to prohibit discrimination leaves LGBTIQ people vulnerable to discrimination and without recourse when such discrimination occurs. 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.

3. Regrettably, Sri Lanka has failed to implement UPR 3<sup>rd</sup> Cycle recommendations aimed at protecting the human rights of LGBTIQ persons.

- Sri Lanka received and "noted" seven recommendations to decriminalize consensual same-sex relations.<sup>1</sup>

- Sri Lanka received five recommendations to combat discrimination against LGBTIQ persons, three of which it “supported”<sup>2</sup> and two which it “noted.”<sup>3</sup>
- Sri Lanka received and “noted” one recommendation to suppress the use of degrading terms and avoid abuse and harassment by the police.<sup>4</sup>

Lamentably, none of the recommendations have been implemented, not even the ones that Sri Lanka “supported.”

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

### **A. Criminal Laws**

4. The Sri Lankan Penal Code continues to criminalize private, consensual, same-sex sexual activities.

(a) Section 365 criminalizes “carnal intercourse against the order of nature.”<sup>5</sup> 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.<sup>6</sup>

(b) Section 365A criminalizes “any act of gross indecency with another person.”<sup>7</sup> Violations are punishable by up to two years’ imprisonment, a fine, or both.<sup>8</sup> 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.

(c) Section 399 of the Penal Code makes it a criminal offense to “cheat by personation.”<sup>9</sup> 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.”<sup>10</sup> 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.

5. In addition to the Penal Code, Sri Lanka’s Vagrants Ordinance of 1841<sup>11</sup> is also used to disproportionately target LGBTIQ community members, take them into custody and even put them in prison to extort or harass them. Section 7 of the Ordinance, which criminalizes “[s]oliciting and acts of indecency in public places,”<sup>12</sup> is particularly used against LGBTIQ persons.

### **B. Impact of laws**

6. The government has taken the stance that even though the laws are in place, there have not been any convictions under §§ 365 and 365A.<sup>13</sup> 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."<sup>14</sup> 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.

7. 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, 69.2% of respondents agreed that LGBT people "are subjected to discrimination by the Police because they are LGBT persons."<sup>15</sup> 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."<sup>16</sup>

8. Among the worst abuses committed by the police are forced anal and vaginal examinations, purportedly to find proof of homosexual conduct. In 2020, Judicial Medical Officers conducted at least seven such exams on persons in custody for alleged violations of the laws against same-sex sexual conduct.<sup>17</sup> A lawyer for the six men subjected to forced anal exams said that in each case, "prosecutors submitted reports of anal exams in court as evidence of past anal penetration."<sup>18</sup> These exams are a form of sexual violence that rises to the level of torture.<sup>19</sup>

9. 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 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 disclosed in open court.<sup>20</sup>

10. 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 it hurt, he laughed and said that instead of an exam, he would light firecrackers inside their vaginas.<sup>21</sup>

11. In June 2020, police from the Narahenpita area of Colombo conducted a raid of a hotel room and arrested three gay men for alleged gross indecency in violation of § 365A. The men denied they were engaging in sexual conduct, but the police arrested them on the basis of an unopened packet of condoms found in the room, of the sort that hotels often provide along with other personal hygiene articles. The men reported that the police beat them with batons and wires until they bled.<sup>22</sup>

12. 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 him to the public area, where they beat him. The police ordered him to unlock his phone and browsed through it without his consent, and threatened to contact his parents. Throughout this encounter, they yelled at him, calling him "ponnaya" (a Sinhalese 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.

13. 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.

14. 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 illegal for two women to be in a relationship. They threatened legal action against her unless she ended her lesbian relationship.

15. Incidents like these 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. This report includes 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.<sup>23</sup>

16. 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. The clear implication is that *consensual same-sex intimacy* is an equivalent crime to *non-consensual sexual abuse*.<sup>24</sup>

17. 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 the police training curriculum.”<sup>25</sup> Unfortunately, no report or other evidence of any such revision to the police curriculum can be found in the public domain.

18. Instead, there has been evidence of police training that reinforces the worst kind of negative stereotypes of LGBTIQ people. In August 2021, a video was posted on YouTube showing a purported counsellor named Ama Dissanayake conducting a training programme

for police officers at the Police Auditorium in Kandy.<sup>26</sup> 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.”<sup>27</sup> 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.”<sup>28</sup>

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.<sup>29</sup>

### **III. Barriers to obtaining legal recognition of gender**

19. 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.

20. 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. As a result, the extremely long process for obtaining a Gender Recognition Certificate creates serious problems even for transgender people who are able to obtain one. 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.

21. 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**

22. 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.

23. Sri Lanka has stated, in the past, that the equality provision in Art. 12 of the Constitution<sup>30</sup> 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."<sup>31</sup> 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,<sup>32</sup> making it impossible to challenge the constitutionality of the laws criminalizing same-sex sexual relations.

24. 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,<sup>33</sup> but that law does 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.

25. 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.

##### **B. Continuation of discriminatory treatment**

26. The lack of any Constitutional protection or anti-discrimination laws or policies has made LGBTIQ persons vulnerable to discrimination and without recourse when it occurs. This includes discrimination in employment, housing, education, health care, and family life.

###### **1. Discriminatory treatment and harassment in the workplace**

27. 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.<sup>34</sup> 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.<sup>35</sup> Both

surveys revealed the obstacles LGBTIQ people face in the workplace.

28. 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.<sup>36</sup> Fifty percent stated that if everyone at work knew their sexual orientation or gender identity, they would face increased reprisal.<sup>37</sup> Only 12% said they would be accepted.<sup>38</sup>

29. 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.<sup>39</sup> 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.”<sup>40</sup>

30. 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.<sup>41</sup> 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.”<sup>42</sup> 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.”<sup>43</sup>

31. 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.<sup>44</sup> 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.<sup>45</sup> 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.<sup>46</sup> Seventeen percent of respondents reported having faced rape, attempted rape, or threats of rape.<sup>47</sup> Nearly a quarter of all respondents – 23% - reported having left jobs as a result of the psychological and emotional harassment.<sup>48</sup>

32. 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. For example, 42% of respondents said they were not able to wear the clothing of their preferred gender at work.<sup>49</sup>

33. 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.<sup>50</sup> 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.<sup>51</sup> 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.<sup>52</sup>

34. The experience of Nethmi (pseudonym), 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 he found out she is lesbian. He constantly asked inappropriate questions about her sexuality, he told her that she needed to marry a man to have a family, and he repeatedly insisted he could change her lifestyle. He repeatedly grabbed Nethmi's 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.

35. 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. 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, insisting 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 day, the supervisor contacted Nethmi's mother to say that her daughter was a lesbian and a disgrace. He continued to insult Nethmi for her sexual orientation. Because of her supervisor's behavior, Nethmi left the company and has had to get professional psychological help.

36. Fatima (pseudonym), a 27-year-old transgender woman, told EQUAL GROUND in 2020 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 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**

37. 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.<sup>53</sup> Two thirds of respondents – 66.5% – said that renting houses to LGBTIQ persons could threaten the community's way of life.<sup>54</sup> 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.<sup>55</sup>

38. Transgender individuals face additional problems obtaining housing when their National ID cards do not match their appearance. National ID cards are a required form of documentation for any housing transaction. As noted above, it is impossible 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.<sup>56</sup> 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.

39. 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.

40. Because of the difficulties and limited options LGBTIQ individuals face securing housing, real estate agents are able to take advantage of them 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.

41. 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 forced to vacate boarding houses twice. 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.

42. Organizations also have been forced to move to new locations. In 2020, a transgender organization had to move their office space from Kirulapone to Colombo when their landlord terminated their lease after neighborhood people had complained to him about the presence of transgender people in the neighborhood.

### **3. Discriminatory treatment and harassment in schools**

43. The existence of discrimination against LGBTIQ students is widely recognized in Sri Lanka. In the recent nationwide survey, 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."<sup>57</sup>

44. 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.

45. As another example, in 2018, Colombo International School (CIS) failed to provide an inclusive environment for a bi-sexual, gender-fluid student. Anjali (pseudonym), 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. She was also disciplined for wearing trousers (the boys' uniform) instead of a skirt (the girls' uniform). In July 2018, the school administration told her that although she was qualified for the honor of being a prefect, she could not be a prefect unless she agreed to wear a skirt.

#### **4. Discriminatory treatment and harassment in health care settings**

46. "Conversion therapy" – programs claiming they can convert people from homosexuality to heterosexuality – is a widespread practice in Sri Lanka.<sup>58</sup> 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.

47. 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."<sup>59</sup>

48. 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.<sup>60</sup> 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**

49. LGBTIQ persons often face violence and abuse by family members. For example, in 2021, a young transgender woman in Sri Lanka's Eastern Province was beaten and bullied by her brother over her gender identity. Saro (pseudonym) was shamed by her brother for participating in an EQUAL GROUND workshop and other LGBTIQ advocacy activities. He burned her feminine clothing, called her derogatory names, and hit her over the head with a glass bottle, leaving her with a gash that required twelve stitches to close.

50. Piyumi (pseudonym), a young woman living in the Gampaha district, has faced constant bullying and harassment by her brother after he found out she is a lesbian. Piyumi contacted an EQUAL GROUND hotline and was taken to a temporary safe space, but the safe house

would not allow her to stay for an extended period unless she made a complaint to the police. Fearing police harassment, Piyumi was not willing to do so. As a result, she was forced to move back in with her brother, where she is still facing harassment.

51. It is not uncommon for families to force their lesbian daughters to marry men. For example, in October 2021, Anoma (pseudonym), a lesbian from Colombo, was forced by her father to marry a man. Her father claimed the marriage would make her heterosexual.

52. 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 persons unable to seek police protection when they experience violence and abuse from family members.

## **V. Positive developments**

53. 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 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.

54. 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.

55. 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.<sup>61</sup> His tweet was the first of its kind among South Asian Heads of State acknowledging the rights of LGBTIQ people.

56. On 30 October 2020, Minister of Justice Mohamed Ali Sabry, PC posted on Facebook that LGBTIQ people have the right to live with dignity and without any discrimination.<sup>62</sup> He expressed his disgust at the forced anal and vaginal exams of persons arrested under the laws targeting LGBTIQ people, and instructed the police not to conduct such exams in the future.<sup>63</sup>

57. In May 2022, independent MP Jeevan Thondaman invited representatives of the LGBTIQ community, via Twitter, to engage in discussions with the Minister of Justice on issues of concern to the LGBTIQ community.<sup>64</sup> However, to date, no such discussions have taken place.

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 issued a press release denouncing the lecturer’s characterization of LGBTIQ status as a disease and affirming that “[m]odern

day psychiatrists do not identify or diagnose homosexuality as a mental illness or treat it as such.”<sup>65</sup>

59. EQUAL GROUND 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 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.<sup>66</sup> It sets a positive precedent in terms of ending discrimination and marginalization as well as police harassment of minority groups including the LGBTIQ community.<sup>67</sup> Of course, it remains to be seen whether the case will be 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.<sup>68</sup>

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.

## **VI. Suggested recommendations for Sri Lanka**

62. We encourage the following recommendations for Sri Lanka:

- Sri Lanka should decriminalize consensual same-sex sexual conduct by repealing Penal Code §§ 365 and 365A and ensuring that Penal Code § 399 and the Vagrants Ordinance are not misused to target LGBTIQ 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.
- Sri Lanka should develop and implement 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.

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<sup>1</sup> Recommendations 117.19 – 117.25.

<sup>2</sup> Recommendations 116.37 – 116.39.

<sup>3</sup> Recommendations 117.21; 117.25.

<sup>4</sup> Recommendation 117.24.

<sup>5</sup> Penal Code § 365, <https://www.lawnet.gov.lk/penal-code-consolidated-2/>.

<sup>6</sup> *Id.*

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<sup>7</sup> *Id.* § 365A.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*, § 399.

<sup>10</sup> *Id.*

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<sup>13</sup> 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](https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/LKA/CEDAW_C_LKA_Q_8_Add-1_26040_E.pdf).

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<sup>21</sup> *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 17.

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- <sup>53</sup> *Survey of Sri Lankan society's views*, *supra* note 15, p. 23.
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