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JOINT SUBMISSION FOR 3RD CYCLE UPR REVIEW OF SRI LANKA

COALITION OF NGOS FOR UPR - SRI LANKA (SOGI)

HUMAN RIGHTS VIOLATIONS AGAINST LGBTIQ INDIVIDUALS IN SRI LANKA

Prepared by:



EQUAL GROUND is a non-governmental, non-profit organization based in Colombo, Sri Lanka, which advocates for equal social and political rights for the lesbian, gay, bisexual, transgender, intersex, and questioning (LGBTIQ) community in Sri Lanka. EQUAL GROUND's work involves identifying and finding solutions for the numerous issues faced by the LGBTIQ community to enable LGBTIQ individuals to live fulfilling lives, free from stigma and discrimination.

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The Center for International Human Rights (CIHR) of Northwestern Pritzker School of Law is a non-governmental, non-profit organization located in Chicago, Illinois, United States. CIHR is dedicated to human rights education and to legal and policy-focused human rights advocacy within the United States and worldwide. CIHR conducts legal research, compiles reports, and represents individuals and NGOs in cases and projects addressing violations of human rights. CIHR is in consultative status with the UN Nations Economic and Social Council (ECOSOC).

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The Global Initiatives for Human Rights (GIHR) is a small, specialized unit within Heartland Alliance for Human Needs & Human Rights that seeks to protect and promote the human rights of all people – particularly those whose rights are most systematically and egregiously violated. In its work, GIHR has translated this mission to a range of programs that address violations that are motivated by one's sexual orientation, gender identity, and/or gender expression (SOGIE). In this work, GIHR partners with local lesbian, gay, bisexual, transgender, and intersex (LGBTI) civil society organizations (CSOs) and human rights defenders (HRDs) to advocate for LGBTI persons' human rights across several regions in the world. GIHR's work focuses on strengthening skills of its partners to plan, fund, and manage human rights programs, and on channeling resources to these partners to use their improved skills in a range of human rights advocacy initiatives that these partners have developed in partnership with GIHR at local, regional, and international levels.

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I. Introduction

1. This Joint Submission is submitted by the Coalition of NGOs for UPR – Sri Lanka (SOGI), which is comprised of EQUAL GROUND, the Center for International Human Rights (CIHR) of Northwestern Pritzker School of Law, and Global Initiatives for Human Rights (GIHR) of Heartland Alliance for Human Needs & Human Rights, in anticipation of the UPR Working Group’s review, at its 28th Session, of Sri Lanka’s compliance with its human rights obligations. It will focus on human rights violations based on sexual orientation and gender identity.

2. This Joint Submission proceeds as follows. Sections II and III discuss Sri Lanka’s failure to implement the two relevant recommendations made during the 2nd UPR Cycle:

(i) **Canada** (Recommendation No. 128.24): “[d]ecriminalize consenting homosexual relationships between persons over the age of consent by repealing Section 365A of the penal code;”¹ and

(ii) **Argentina** (Recommendation No. 128.53): “[s]trengthen the measures to eliminate all discriminatory treatment based on sexual orientation or gender identity.”²

Section IV addresses Sri Lanka’s failure to adopt adequate processes to ensure the right to legal recognition of gender identity. Section V takes note of initiatives by Sri Lanka’s new Government to expand opportunities for civil society to engage with policy and decision makers; unfortunately, it also notes that, thus far, these positive initiatives have not led to any substantive changes in law and policy. Section VI proposes recommendations.

II. Sri Lanka continues to criminalize adult, consensual same-sex sexual relations

A. Laws

3. Sri Lanka’s Penal Code continues to criminalize adult, consensual same-sex sexual conduct:

(a) Section 365 criminalizes “carnal intercourse against the order of nature,”³ which 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 sexual acts and displays of romantic affection between two individuals of the same sex.⁷ 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.

(c) Section 399 of the Penal Code, which makes it a criminal offense to “cheat by personation,”⁸ has been used by the Police to target LGBTIQ individuals, particularly transgender individuals.⁹

4. In addition to the above-cited sections of the Penal Code, Sri Lanka’s Vagrants Ordinance,¹⁰ which “prohibits soliciting or committing acts of ‘gross indecency,’ or being ‘incorrigible rogues’ procuring ‘illicit or unnatural intercourse,’”¹¹ has been used to arrest and harass LGBTIQ individuals.

B. Impact of Laws

5. Although there have been no convictions under §§ 365 and 365A since 1948, these laws (as well as § 399 and the Vagrants Ordinance, under which there have been convictions) still have the effect of perpetuating discrimination, harassment, violence, and unequal treatment of LGBTIQ individuals. Police officers have used threats of prosecution under these laws to harass and extort LGBTIQ individuals, and the existence of these laws makes LGBTIQ crime victims unwilling to report crimes to the police. Examples follow.

6. In February 2016, “H”, a gay man, was approached by two men who attempted to seduce him. When H refused, the two strangers revealed that they were police officers and threatened to arrest him. They lectured H, saying that working with EQUAL GROUND is “promoting homosexuality,” and they falsely told him that joining the organization is criminal. The officers stole all his money and continued to harass him, threatening to tell his family or to return and arrest him in the future.¹²

7. Also in February 2016, a transgender man in Colombo was arrested and detained for over 15 hours before being produced in court. While he was in police custody, the police made derogatory statements and threw cigarettes at him, and they asked him to remove his underwear and reveal himself to prove he was a man. When EQUAL GROUND was able to speak with him, he said he was willing to file a complaint against the police. However, after his friends warned him of possible police reprisals, since the police knew where he lived and worked, the victim refused to file a complaint.¹³

8. On another occasion in 2016, a gay man and his boyfriend were publicly humiliated and robbed by police officers while walking on a public beach in Mount Lavinia.¹⁴

9. In May 2015, a gay man, while walking with his transgender friend, was detained by two police officers. The officers drove him to a beach where one of the officers anally raped him. He did not file a complaint about this attack for fear of retribution.¹⁵

10. In early 2014, a lesbian couple from Puttalam District visited a guest house in a nearby town. The guest house staff called the police and asked them to arrest the couple. The police found the women seated together and arrested them. Fortunately, the couple was released after an EQUAL GROUND field officer heard about the arrest, went to the police station, and persuaded the police not to press charges.¹⁶

11. Incidents like these of arrest and police abuse are not uncommon. Interviews with 61 LGBTIQ Sri Lankans conducted by Human Rights Watch between October 2015 and January 2016 revealed that more than half of the respondents reported being detained by the police without cause at least once.¹⁷ Nearly two dozen respondents reported that they “had suffered sexual, physical, or severe verbal abuse by the Sri Lankan police.”¹⁸ Sixteen of the respondents reported having suffered sexual or physical abuse by the police.¹⁹

III. Sri Lanka has failed to strengthen measures to eliminate discriminatory treatment based on sexual orientation and gender identity

A. Failure to adopt laws or policies to combat discrimination

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

13. Sri Lanka has stated, in the past, that the equality provision in Art. 12 of the Constitution²⁰ does protect against discrimination based on sexual orientation and gender identity,²¹ although those grounds are not expressly mentioned. Even if this is so, however, other provisions of the Constitution nullify the effectiveness of this provision. Article 15 provides that the fundamental rights provisions of the Constitution can be made subject to restrictions in the name of “morality,”²² and Article 16 states that existing law (both written and unwritten) shall remain valid even if inconsistent with the Constitution’s fundamental rights provisions.²³

B. Continuation of discriminatory treatment

14. 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, health care, and education, in violation of Sri Lanka’s obligations under Articles 2(1) and 26 of the ICCPR,²⁴ and Articles 2(2), 6, 7, 11, 12, and 13 of the ICESCR.²⁵ There are also occasions in which LGBTIQ individuals are forced to enter into heterosexual marriages against their will, a violation of Article 10(1) of the ICESCR,²⁶ Article 23(3) of the ICCPR,²⁷ and Article 1(1) of the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages.²⁸ Examples follow.

15. In 2016, a transgender man employed at a hospital was harassed and fired from his job after his supervisor learned that he had undergone gender confirmation surgery. The victim's supervisor verbally harassed him for "going against nature" and demanded to see his genitals. Although his employment contract previously had been renewed three times, the victim was fired and forced to sign a document falsely stating that he was resigning.²⁹

16. In 2013, a transgender man was terminated from his job in a factory after a security guard went through his belongings and found EQUAL GROUND materials in his possession. The guard reported his findings to the factory management, who said they were going to call the transgender man's parents to tell them about his sexuality. They then fired him.³⁰

17. In December 2016, a gay man reported to EQUAL GROUND that he was forced to relinquish a five-year lease on property for his business when his landlord threatened to expose the man's sexuality to the police. Barely two years into the lease, the landlord received an offer from a third party to rent the property at a higher price than what the man was paying. The landlord forced the man to vacate the premises by threatening to report his sexual orientation to the police and by further threatening to persuade the man's employees to falsely testify that he was engaging in same-sex sexual conduct within the premises.

18. In 2015, a transgender man recovering from surgery in a government hospital suffered severe pain for hours when his repeated requests for pain medication were denied because of his transgender status. Although he only revealed his transgender status to his surgeon, he believed his status was revealed to nurses and staff, as he saw them pointing at him and talking.³¹

19. In 2015, a bisexual male student was harassed, humiliated and assaulted because of his sexual orientation. A teacher found the student's cell phone and discovered messages the student had sent to his boyfriend. The next day, 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, who kept the student's phone, faced no punishment for publicly humiliating and assaulting the student.³²

20. In recent years, EQUAL GROUND has received numerous reports from individuals who were forced into heterosexual marriages, usually by their family members.

21. These are but a few examples of the discriminatory treatment faced by LGBTIQ individuals. Because of the laws criminalizing same-sex sexual relations and the deep social stigma perpetuated by these laws, LGBTIQ individuals are reluctant to come forward with their complaints. As such, the actual prevalence of discriminatory treatment is likely to be much higher than the number of complaints received by EQUAL GROUND.

22. These examples illustrate the urgent need for the government to implement Argentina's recommendation by reforming the Constitution and enacting laws to specifically prohibit discrimination on the basis of sexual orientation and gender identity, by introducing policies to protect LGBTIQ individuals from discrimination in employment, housing, healthcare, education

and forced marriages, and by implementing measures to increase public tolerance and respect for sexual minorities.

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

23. 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. With the amended birth certificate, the person can obtain an identity card and other legal documents that match the person’s gender identity.³³

24. 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: (i) the person must be evaluated by a psychiatrist; (ii) the psychiatrist must certify that the person “was referred for hormone therapy and the necessary surgical treatment;” (iii) the psychiatrist must certify that the person “underwent the gender transformation process;”³⁴ and (iv) the Gender Recognition Certificate policy was published only as an administrative circular, and hence it remains in force only at the discretion of the administrative authority.

25. The language implies that the person must complete hormone therapy and surgical treatments before he or she can obtain a Gender Recognition Certificate. Under Sri Lanka’s international obligations, every person has a fundamental right to legal recognition of his or her self-defined gender identity without abusive prerequisites such as mandatory medical treatment. This was stated by the Yogyakarta Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity,³⁵ recognized by the Committee on Economic, Social and Cultural Rights in its General Comment No. 22 (2016) on the Right to Sexual and Reproductive Health,³⁶ and emphasized by the UN High Commissioner for Human Rights.³⁷

26. Argentina’s Gender Identity Law strongly adheres to these principles. Under this law, an adult may obtain a new birth certificate and national identity card reflecting the person’s chosen name and gender identity simply upon request. Procedures protective of children’s rights provide a means for persons younger than 18 to obtain such documents. The law expressly states that no surgical, hormonal, psychological or other medical treatment is required to obtain these documents.³⁸ This law represents a best practice that Sri Lanka should follow.

V. Although expansion of civil society space has been a positive development, it has not yet led to any positive changes in law or policy

27. One positive development that we wish to note is the substantial increase in civil society space since the 2015 election of a new Government headed by President Maithripala Sirisena. Whereas under the previous Government people were too frightened to openly express their opinions, since 2015 there has been some space for civil society to engage with policy makers and decision makers.

28. In particular, the Government has invited civil society submissions with respect to the adoption of national post-conflict reconciliation mechanisms, the development of a new National Human Rights Action Plan, and the reform of the Sri Lankan Constitution. Sri Lanka is to be commended for including LGBTIQ individuals and civil society organizations in these discussions. Unfortunately, as of this writing, each of these three processes has stalled,³⁹ and it appears that the Government will reject the proposals submitted by civil society voices, particularly those most directly relevant to the human rights of LGBTIQ individuals.

29. In January 2016, the Government established a Consultation Task Force on Reconciliation Mechanisms (CTF) to gather the public's views on proposed mechanisms for transitional justice and reconciliation following Sri Lanka's decades-long internal conflict.⁴⁰

30. In a positive development, the CTF readily accepted submissions from LGBTIQ individuals and defenders, including EQUAL GROUND. The CTF's November 7, 2016 report emphasized the need to include the LGBTIQ community in the design and implementation of any transitional justice mechanisms⁴¹ and highlighted concerns that specifically affected LGBTIQ individuals and their families.⁴²

31. However, there are reasons to be concerned that the government will not accept the CTF's recommendations.⁴³ For example, in a newspaper interview, the Justice Minister, Dr. Wijeyadasa Rajapakshe, condemned the CTF report as "totally unwarranted" and said that "we don't have to follow these recommendations by the CTF."⁴⁴

32. In November 2016, the Government called for public submissions regarding the development of a new National Human Rights Action Plan (NHRAP), and EQUAL GROUND made a submission. The initial draft of the NHRAP was very favorable; it included the repeal of Sections 365 and 365A of the Penal Code and the expansion of the Constitution's equality clause to expressly prohibit discrimination based on sexual orientation or gender identity.

33. Unfortunately, in January 2017 it was reported in the news media that the Government had received the draft NHRAP and that it had strong objections. According to these media reports, the Government was completely opposed to decriminalization, out of a belief that homosexuality is completely alien to Sri Lankan culture. As a consequence, according to these reports, the NHRAP was amended to remove the decriminalization provisions.⁴⁵

34. It is believed that the current draft of the NHRAP does still include the expansion of the Constitution's equality clause to expressly prohibit discrimination based on sexual orientation or gender identity, but recommendations to repeal Sections 365 and 365A have been removed. However, there has been no transparency in this review and finalization process so it is not possible to know for certain what is included. Further, despite statements made to internal bodies that the NHRAP has in fact received Cabinet approval,⁴⁶ as of 28 March 2017 a copy of the same remains unavailable to the public.

35. Hostile statements by certain Members of Parliament give reason to be concerned that Parliament will not accept the inclusion of sexual orientation and gender identity in the NHRAP's

anti-discrimination provisions. For example, Justice Minister Dr. Wijeyadasa Rajapakse, in a speech at ceremony opening a new district court complex in Tissamaharama, stated that homosexuality is a mental illness.⁴⁷ Similarly, MP Nalinda Jayatissa stated 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.”⁴⁸

36. In January 2016, the Government established a framework for adopting a new Constitution. The entire Parliament was constituted as the Constitutional Assembly, with certain Members of Parliament designated as a Steering Committee. Various sub-committees comprised of Members of Parliament were also established, including a Sub-Committee on Fundamental Rights.⁴⁹

37. The first step in the Constitutional reform process was the solicitation of the views of the public. To accomplish this, the Government established a Public Representations Committee on Constitutional Reform (PRC) to obtain the public’s views on possible constitutional reforms and to prepare a report with its recommendations. This report would be reviewed by the Sub-Committee on Fundamental Rights, which would, in turn, make its own proposals on the new Constitution to the Steering Committee, which would then make its own recommendations to the Constitutional Assembly.⁵⁰

38. EQUAL GROUND and its allies made submissions to the PRC urging the explicit inclusion of sexual orientation and gender identity in the new Constitution’s equality/non-discrimination provisions. These submissions were reflected in the PRC’s 10 May 2016 report. Specifically, the PRC report recommended that discrimination on the basis of sexual orientation and gender identity be expressly prohibited.⁵¹ It also noted the importance of guaranteeing the equal rights of LGBTIQ individuals to privacy,⁵² family life,⁵³ fair trial,⁵⁴ free expression and association,⁵⁵ and it called for decriminalization of adult, consensual same-sex sexual conduct⁵⁶ and the amendment of the Vagrants Ordinance.⁵⁷ Further, the Committee noted the recommendation it had received to revise Article 16 of the Constitution,⁵⁸ which currently protects all existing laws against any court challenge alleging that a law contravenes the Constitution’s fundamental rights guarantees.⁵⁹

39. In June 2016, EQUAL GROUND spoke before the Sub-Committee on Fundamental Rights regarding the PRC’s report. This was the first time that an LGBTIQ organization was invited to speak in Parliament.

40. Unfortunately, the Sub-Committee’s November 2016 report to the Steering Committee omitted virtually all of the comprehensive recommendations in the PRC’s report. Although it did retain the important recommendation that the Constitution prohibit discrimination on the basis of sexual orientation and gender identity, it eliminated all of the PRC’s other recommendations that were explicitly designed to ensure the human rights of LGBTIQ individuals.⁶⁰

41. Additionally, there are concerns that the recommendation to include sexual orientation and gender in the anti-discrimination provision may not survive the constitutional reform process. After all, the other equal rights protection provisions were already discarded at this early stage in the process, and the Sub-Committee’s report remains subject to the Steering Committee’s debate

and approval, and ultimately the Constitutional Assembly's.⁶¹ In view of the hostile comments noted by Members of Parliament in ¶ 35, above, there is reason for concern.

42. In sum, although it is a positive step to include LGBTIQ individuals and civil society organizations in dialogue with bodies established by the Government, it will be a meaningless one if the Government ultimately does not adopt and implement policies to ensure the equal protection of their rights under the Constitution and measures to prohibit and prevent discriminatory treatment. It is hoped that this UPR process may be a catalyst for the Government to move beyond dialogue to action.

VI. Suggested Recommendations

43. 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 or displays of affection.

44. Sri Lanka should amend its Constitution and adopt comprehensive anti-discrimination legislation to explicitly include sexual orientation and gender identity 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 expressions, and ensure their equal enjoyment of all human rights, including in particular the rights to health, education, work, safety and freedom from forced marriage.

45. Sri Lanka should develop and implement programs to educate and sensitize law enforcement and health care workers to ensure that LGBTIQ individuals are treated fairly and respectfully.

46. Sri Lanka should revise its rules governing legal recognition of gender identity to allow any transgender individual, upon request, to obtain a change in their gender designation and (if the person wishes) their name, on all identity documents, including (but not limited to) birth certificates, identity cards, and passports. The new process for changing one's gender designation and name should be based entirely on self-declaration of gender and name, and should not require any form of medical evaluation, treatment or procedures.

Endnotes:

¹ Human Rights Council, Rep. of the Working Group on the Universal Periodic Review, Sri Lanka, on Its Twenty-Six Session, U.N. Doc. No. A/HRC/22/16, 1 Nov. 2012, p. 22, ¶ 128.24.

² *Id.*, p. 24, ¶ 128.53.

³ Sri Lankan Penal Code § 365.

⁴ *Id.*

⁵ Sri Lankan Penal Code § 365A.

⁶ *Id.*

⁷ See Scott Roberts, *Former Commonwealth Head of Human Rights Condemns Sri Lanka over Gay Harassment*, Pink News (23 Sept. 2013, 13:53) available at <http://www.pinknews.co.uk/2013/09/23/former-commonwealth-head-of-human-rights-condemns-sri-lanka-over-gay-harassment/> (last visited 27 Mar. 2017).

⁸ Sri Lanka Penal Code § 399.

⁹ 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 [hereinafter “Human Rights Watch Report 2016”], available at https://www.hrw.org/sites/default/files/report_pdf/srilanka0816web.pdf (last visited 27 Mar. 2017).

¹⁰ EQUAL GROUND, *Strengthening of Legal Protection for LGBT in Sri Lanka: Road to Decriminalization: Situation Analysis*, p. 12 (2012) [hereinafter “Situation Analysis”].

¹¹ Human Rights Watch Report 2016, *supra* note 9, p. 16.

¹² EQUAL GROUND, *Incident Reports of Human Rights Violations faced by LGBTIQ Community in Sri Lanka*, at pp. 70-71 [hereinafter “Incident Reports”].

¹³ Incident reported to EQUAL GROUND in Feb. 2016.

¹⁴ Incident Reports, *supra* note 12, p. 37.

¹⁵ Human Rights Watch Report 2016, *supra* note 9, p. 32.

¹⁶ Case reported to EQUAL GROUND by Puttalam Field Officer, 2014.

¹⁷ Human Rights Watch, *Sri Lanka: Challenging ‘Gender Norms’ Brings Abuse* (15 Aug. 2016, 00:00 EDT) [hereinafter “Challenging ‘Gender Norms’”], available at <https://www.hrw.org/news/2016/08/15/sri-lanka-challenging-gender-norms-brings-abuse> (last visited 27 Mar. 2017).

¹⁸ Human Rights Watch Report 2016, *supra* note 9, p. 30.

¹⁹ Challenging ‘Gender Norms,’ *supra* note 17.

²⁰ The Constitution of the Democratic Socialist Republic of Sri Lanka (As amended up to 15 May 2015), Revised Edition – 2015, Art. 12 [hereinafter “Constitution”], available at <https://www.parliament.lk/files/pdf/constitution.pdf> (last visited 27 Mar. 2017).

²¹ Human Rights Committee, List of Issues in Relation to the Fifth Periodic Report of Sri Lanka, Addendum: Replies of Sri Lanka to the List of Issues, U.N. Doc. No. CCPR/C/LKA/Q/5/Add.1, 3 Sept. 2014, p. 10, ¶ 43.

²² Constitution, *supra* note 20, Art. 15.

²³ *Id.*, Art. 16. See also Committee on the Elimination of Discrimination against Women, Concluding observations on the eighth periodic report of Sri Lanka, U.N. Doc. No. CEDAW/C/LKA/CO/8, 3 Mar. 2017 (advance unedited version), p. 3, ¶ 10(b).

²⁴ International Covenant on Civil and Political Rights, 16 Dec. 1966, 999 U.N.T.S. 171, Arts. 2(1) and 26 [hereinafter “ICCPR”], available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx> (last visited 27 Mar. 2017). Sri Lanka acceded to the ICCPR on 11 Jun. 1980. *United Nations Treaty Collection: International Covenant on Civil and Political Rights, U.N.*, https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-4&chapter=4&clang=_en (last visited 27 Mar. 2017).

²⁵ International Covenant on Economic, Social, and Cultural Rights, 16 Dec. 1966, 993 U.N.T.S. 3, Arts. 2(2), 6, 7, 11, 12, and 13 [hereinafter “ICESCR”], available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx> (last visited 27 Mar. 2017). Sri Lanka acceded to the ICESCR on 11 Jun. 1980. *United Nations Treaty Collection: International Covenant on Economic, Social and Cultural Rights, U.N.*, https://treaties.un.org/PAGES/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-3&chapter=4&clang=_en (last visited 27 Mar. 2017).

²⁶ *Id.*, Art. 10(1).

²⁷ ICCPR, *supra* note 24, Art. 23(3).

²⁸ Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, 7 Nov. 1962, 521 U.N.T.S. 231, Art. 1(1) [hereinafter “Marriage Convention”], available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/MinimumAgeForMarriage.aspx> (last visited 27 Mar. 2017). Sri Lanka signed the Convention on 12 Dec. 1962. *United Nations Treaty Collection: Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages U.N.*, https://treaties.un.org/PAGES/ViewDetails.aspx?src=TREATY&mtdsg_no=XVI-3&chapter=16&clang=_en (last visited 27 Mar. 2017).

²⁹ Incident reported to EQUAL GROUND in Feb. 2016.

³⁰ Interview from EQUAL GROUND Hotline, 4 Oct. 2013.

³¹ Incident Reports, *supra* note 12, pp. 3-4.

³² *Id.*, p. 25.

- 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 Jun. 2016 [hereinafter “General Circular No. 01-34/2016”].
- ³⁴ Gender Recognition Certificate, attached to General Circular No. 01-34/2016.
- ³⁵ 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/principle-3/> (last visited 27 Mar. 2017).
- ³⁶ 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), 2 May 2016, p. 14, ¶ 58, U.N. Doc. E/C.12/GC/22 [hereinafter “General Comment No. 22”], *available at* http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fGC%2f22&Lang=en (last visited 27 Mar. 2017).
- ³⁷ Office of the U.N. High Commissioner for Human Rights, Discrimination and violence against individuals based on their sexual orientation and gender identity, 4 May 2015, pp. 18 and 21, ¶¶ 69, 70, and 79(i), U.N. Doc. A/HRC/29/23 [hereinafter “High Commissioner for Human Rights”], *available at* http://www.un.org/en/ga/search/view_doc.asp?symbol=A/HRC/29/23&referer=/english/&Lang=E (last visited 27 Mar. 2017).
- ³⁸ Law No. 26.743, 23 May 2012, *Establécese el Derecho a la Identidad de Género de las Personas* (Arg.), *available at* <http://servicios.infoleg.gob.ar/infolegInternet/anexos/195000-199999/197860/norma.htm> (last visited 27 Mar. 2017), *translated in* Transgender Europe, *English Translation of Argentina’s Gender Identity Law as approved by the Senate of Argentina on May 8, 2012*, *available at* <http://tgeu.org/argentina-gender-identity-law/> (last visited 27 Mar. 2017).
- ³⁹ As highlighted in the Report of the Office of the United Nations High Commissioner for Human Rights on Sri Lanka, U.N. Doc. No. A/HRC/34/20, 10 Feb. 2017 (advance unedited version), *available at* http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session34/Documents/A_HRC_34_20_EN.docx (last visited 27 Mar. 2017).
- ⁴⁰ Consultation Task Force on Reconciliation Mechanisms, *Final Report of the Consultation Task Force on Reconciliation Mechanisms, Vol. 1*, 17 Nov. 2016, p. 9, ¶ 1 [hereinafter “CTF Report”], *available at* <http://www.scrn.gov.lk/documents-reports> (last visited 27 Mar. 2017).
- ⁴¹ *Id.*, pp. 354 & 355, ¶ 205 - 207.
- ⁴² *Id.*, pp. 55 & 89, ¶ 88 & 242.
- ⁴³ See Amnesty International, *Sri Lanka: Consultation Task Force Report Must Lead to Justice* (11 Jan. 2017, 14:45 UTC) <https://www.amnesty.org/en/latest/news/2017/01/sri-lanka-consultation-task-force-report-must-lead-to-justice/> (last visited 27 Mar. 2017).
- ⁴⁴ Lahiru Pothmulla, *I Have No Confidence in the CTF: Wijeyadasa*, Daily Mirror (6 Jan. 2016, 21:01), <http://www.dailymirror.lk/article/I-have-no-confidence-in-the-CTF-Wijeyadasa-121817.html> (last visited 27 Mar. 2017).
- ⁴⁵ See Kelum Bandara, *Cabinet Rejects Moves to Decriminalize Homosexuality*, Daily Mirror (18 Jan. 2017, 06:32) <http://www.dailymirror.lk/article/Cabinet-rejects-moves-to-decriminalize-homosexuality-122311.html> (last visited 27 Mar. 2017); P.K. Balachandran, *Sri Lankan Cabinet Decides Not to De-Criminalize Homosexuality*, The New Indian Express (18 Jan. 2017, 16:40) <http://www.newindianexpress.com/world/2017/jan/18/sri-lankan-cabinet-decides-not-to-de-criminalize-homosexuality-1560925.html> (last visited 27 Mar. 2017); and *Sri Lanka Rejects Move to Legitimise Homosexuality*, Hindustan Times (18 Jan. 2017, 22:04 IST) <http://www.hindustantimes.com/world-news/sri-lanka-rejects-move-to-legitimise-homosexuality/story-13INmykPC404sKHpqZnzDI.html> (last visited 27 Mar. 2017).
- ⁴⁶ Mangala tells UNHRC, *Sri Lanka Determined to Address Concerns*, Colombo Gazette (28 Feb. 2017, 14:40), <http://colombogazette.com/2017/02/28/mangala-tells-unhrc-sri-lanka-determined-to-address-concerns/> (last visited 27 Mar. 2017).
- ⁴⁷ *Homophobic Justice Minister Wijeyadasa Should Resign: Right Activists*, Colombo Telegraph (22 Jan. 2017) <https://www.colombotelegraph.com/index.php/homophobic-justice-minister-wijeyadasa-should-resign-right-activists/> (last visited 27 Mar. 2017).
- ⁴⁸ Ishara Jayawardane, *Extreme No to Extremism*, Daily News (10 Dec. 2015, 01:00) <http://www.dailynews.lk/?q=2015/12/10/features/extreme-no-extremism> (last visited 27 Mar. 2017).
- ⁴⁹ Constitutional Assembly of Sri Lanka, *The Process*, http://english.constitutionalassembly.lk/index.php?option=com_sppagebuilder&view=page&id=13 (last visited 27 Mar. 2017).

⁵⁰ *Id.*

⁵¹ Public Representations Committee on Constitutional Reform, *Report on Public Representations on Constitutional Reform*, 10 May 2016, p. 95 [hereinafter “PRC Report”] available at <https://www.colombotelegraph.com/wp-content/uploads/2016/05/PRC-Report-English-Final.pdf> (last visited 27 Mar. 2017).

⁵² *Id.*, p. 97.

⁵³ *Id.*

⁵⁴ *Id.*, p. 113.

⁵⁵ *Id.*, p. 114.

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*, p. 95.

⁵⁹ Constitution, *supra* note 20, Art. 16.

⁶⁰ See Sub-Committee on Fundamental Rights, *Report of the Sub-Committee on Fundamental Rights*, November 2016, available at <https://www.colombotelegraph.com/wp-content/uploads/2016/11/01-Fundamental-Rights-ste-1.pdf> (last visited 27 Mar. 2017).

⁶¹ Constitutional Assembly of Sri Lanka, *supra* note 49.