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Home Office

Country Policy and Information Note

Sri Lanka: Sexual orientation and gender identity and expression

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Preface

Purpose

This note provides country of origin information (COI) and analysis of COI for use by Home Office decision makers handling particular types of protection and human rights claims (as set out in the [Introduction](#) section). It is not intended to be an exhaustive survey of a particular subject or theme.

It is split into two main sections: (1) analysis and assessment of COI and other evidence; and (2) COI. These are explained in more detail below.

Assessment

This section analyses the evidence relevant to this note – i.e. the COI section; refugee/human rights laws and policies; and applicable caselaw – by describing this and its inter-relationships, and provides an assessment of, in general, whether one or more of the following applies:

- A person is reasonably likely to face a real risk of persecution or serious harm
- The general humanitarian situation is so severe as to breach Article 15(b) of European Council Directive 2004/83/EC (the Qualification Directive) / Article 3 of the European Convention on Human Rights as transposed in paragraph 339C and 339CA(iii) of the Immigration Rules
- The security situation presents a real risk to a civilian's life or person such that it would breach Article 15(c) of the Qualification Directive as transposed in paragraph 339C and 339CA(iv) of the Immigration Rules
- A person is able to obtain protection from the state (or quasi state bodies)
- A person is reasonably able to relocate within a country or territory
- A claim is likely to justify granting asylum, humanitarian protection or other form of leave, and
- If a claim is refused, it is likely or unlikely to be certifiable as 'clearly unfounded' under section 94 of the Nationality, Immigration and Asylum Act 2002.

Decision makers **must**, however, still consider all claims on an individual basis, taking into account each case's specific facts.

Country of origin information

The country information in this note has been carefully selected in accordance with the general principles of COI research as set out in the [Common EU \[European Union\] Guidelines for Processing Country of Origin Information \(COI\)](#), dated April 2008, and the Austrian Centre for Country of Origin and Asylum Research and Documentation's (ACCORD), [Researching Country Origin Information – Training Manual, 2013](#). Namely, taking into account the COI's relevance, reliability, accuracy, balance, currency, transparency and traceability.

The structure and content of the country information section follows a [terms of reference](#) which sets out the general and specific topics relevant to this note.

All information included in the note was published or made publicly available on or before the 'cut-off' date(s) in the country information section. Any event taking place or report/article published after these date(s) is not included.

All information is publicly accessible or can be made publicly available, and is from generally reliable sources. Sources and the information they provide are carefully considered before inclusion. Factors relevant to the assessment of the reliability of sources and information include:

- the motivation, purpose, knowledge and experience of the source
- how the information was obtained, including specific methodologies used
- the currency and detail of information, and
- whether the COI is consistent with and/or corroborated by other sources.

Multiple sourcing is used to ensure that the information is accurate, balanced and corroborated, so that a comprehensive and up-to-date picture at the time of publication is provided of the issues relevant to this note.

Information is compared and contrasted, whenever possible, to provide a range of views and opinions. The inclusion of a source, however, is not an endorsement of it or any view(s) expressed.

Each piece of information is referenced in a brief footnote; full details of all sources cited and consulted in compiling the note are listed alphabetically in the [bibliography](#).

Feedback

Our goal is to continuously improve our material. Therefore, if you would like to comment on this note, please email the [Country Policy and Information Team](#).

Independent Advisory Group on Country Information

The [Independent Advisory Group on Country Information](#) (IAGCI) was set up in March 2009 by the Independent Chief Inspector of Borders and Immigration to support him in reviewing the efficiency, effectiveness and consistency of approach of COI produced by the Home Office.

The IAGCI welcomes feedback on the Home Office's COI material. It is not the function of the IAGCI to endorse any Home Office material, procedures or policy. The IAGCI may be contacted at:

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Information about the IAGCI's work and a list of the documents which have been reviewed by the IAGCI can be found on the Independent Chief Inspector's pages of the [gov.uk website](#).

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Assessment

Updated: 28 September 2020

1. Introduction

1.1 Basis of claim

- 1.1.1 Fear of persecution and/or serious harm by state and/or non-state actors because of the person's actual or perceived sexual orientation and/or gender identity or expression.

1.2 Points to note

- 1.2.1 This note provides an assessment of the general situation of gay men, lesbians, bisexuals, trans and intersex persons as well as those perceived as such. They are referred hereafter collectively as 'LGBTI persons', though the treatment and experiences of each group may differ.
- 1.2.2 Decision makers must also refer to the Asylum Instructions on [Sexual identity issues in the asylum claim](#) and [Gender identity issues in the asylum claim](#).

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2. Consideration of issues

2.1 Credibility

- 2.1.1 For information on assessing credibility, see the instruction on [Assessing Credibility and Refugee Status](#) and the [Asylum Instruction on Sexual identity issues in the asylum claim](#) and [Gender identity issues in the asylum claim](#).
- 2.1.2 Decision makers must also check if there has been a previous application for a UK visa or another form of leave. Asylum applications matched to visas should be investigated prior to the asylum interview (see the [Asylum Instruction on Visa Matches, Asylum Claims from UK Visa Applicants](#)).
- 2.1.3 Decision makers should also consider the need to conduct language analysis testing (see the [Asylum Instruction on Language Analysis](#)).

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2.2 Exclusion

- 2.2.1 Decision makers must consider whether one (or more) of the exclusion clauses applies. If the person is excluded from the Refugee Convention, they will also be excluded from a grant of humanitarian protection. Each case must be considered on its individual facts and merits.
- 2.2.2 For further guidance on the exclusion clauses and restricted leave, see the Asylum Instructions on [Exclusion under Articles 1F and 33\(2\) of the Refugee Convention](#), [Humanitarian Protection](#) and [Restricted Leave](#).

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2.3 Convention reason(s)

- 2.3.1 A person's actual or imputed membership of a particular social group (PSG).

- 2.3.2 LGBTI persons in Sri Lanka form a particular social group (PSG) within the meaning of the Refugee Convention because they share an innate characteristic or a common background that cannot be changed, or share a characteristic or belief that is so fundamental to their identity or conscience that they should not be forced to renounce it, and have a distinct identity which is perceived as being different by the surrounding society.
- 2.3.3 Although LGBTI persons in Sri Lanka form a PSG, establishing such membership is not sufficient to be recognised as a refugee. The question to be addressed is whether the particular person will face a real risk of persecution on account of their membership of such a group.
- 2.3.4 For further guidance on Convention reasons see the instruction on [Assessing Credibility and Refugee Status](#).

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2.4 Risk

a. General points

- 2.4.1 Paragraphs 35 and 82 of the determination of the Supreme Court's ruling in [HJ \(Iran\) and HT \(Cameroon\) v Secretary of State for the Home Department \[2010\] UKSC 31](#), heard 10,11,12 May and promulgated 7 July 2010, has set out the approach to take and established the test that should be applied when assessing a claim based on a person's sexual orientation, which can also be applied to claims based on a person's gender identity / expression.
- 2.4.2 For further information, see the Asylum Instruction on [Sexual identity issues in the asylum claim](#) and [Gender identity issues in the asylum claim](#).

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b. State treatment of LGB persons

- 2.4.3 Same-sex sexual acts for both men and women are a criminal offence under Section 365 and 365 (a) of the Penal Code. Those who are prosecuted under these sections face a term of imprisonment which may extend to 10 years and also may face a fine (see [Statutory laws](#)).
- 2.4.4 Although consensual same-sex sexual activity is criminalised in Sri Lanka, there is no information on the number of cases of persons arrested under these articles and sources report that cases are rarely prosecuted (see [Implementation and enforcement of the law](#)).
- 2.4.5 While other laws do not specifically relate to LGB person, they are sometimes arrested under the Vagrancy Ordinance, which gives the authorities the power to detain those who they consider to be loitering in public. According to one source, Section 353 of the Penal Code (which relates to abduction) is also used against those in same-sex relationships, particularly lesbians. However, no information is available amongst the sources consulted of the exact reasons for, or how frequent or widespread such arrests are (see [Other legal provisions affecting LGBTI persons](#)).
- 2.4.6 Whilst prosecutions are rare, on 15 July 2015 the Supreme Court of Sri Lanka heard and on 30 November 2016 handed-down their judgment in [Galabada Payagalaga Sanath Wimalasari and others vs Officer-in-Charge](#)

[\(SC Appeal No. 32/11\)](#). This addressed the constitutional challenge to section 365a of the Penal Code (gross indecency convictions) following a magistrates in 2003 imposing a term of imprisonment of one year (and fine of Rs.1,500) of two gay men following consensual intercourse.

- 2.4.7 The Supreme Court heard all the evidence again and concluded that there was no reason to interfere with the finding of guilt in this case. However, the Supreme Court went on to look into whether the sentence imposed on the appellant was excessive in light of the circumstances of this case. Although the Supreme court stated that whilst in some countries criminalisation of same sex acts had been repealed, they noted that in Sri Lanka it remained part of the law. However, given that the incident had taken place over 13 years previously, the appellants' lack of previous convictions or criminal history and considering the fact that the act was consensual the Supreme Court ruled that a custodial term of imprisonment did not appear to be commensurate with the offence. The one-year sentence was set aside and substituted with a sentence of 2 years rigorous imprisonment, suspended for a period of 5 years in order to offer the offenders the 'opportunity to reform'.
- 2.4.8 In November 2018 the UK Upper Tribunal dismissed the Secretary of State's appeal and held in the unreported determination in [Secretary of State for the Home Department v. MKMR \(PA/01821/2018\)](#) (heard 1 November 2018, promulgated 26 November 2018) that the Galabada case 'shows at the very least that contrary to the basis on which the Tribunal proceeded in LH and IP at [16] that the criminal law has been used in Sri Lanka, if only once but nonetheless recently and in a judgment of the Sri Lankan Supreme Court.' [para 28].
- 2.4.9 The appellant in the [MKMR](#) case was trans and gay and as such any conclusions drawn from this case should be looked at in light of these specific aspects. Notwithstanding this whilst the Upper Tribunal in this case stated that '...it was open to the judge to take the view that judgment in Galabada was cogent evidence providing strong grounds for not following LH and IP and to find that there was a reasonable degree of likelihood that the appellant would be at risk of persecution on return'[Para 32] they do not appear to be endorsing a departure from [LH and IP](#) but merely concluding that the First-tier Tribunal judge was open to do so.
- 2.4.10 Whilst the case of [Galabada](#) shows that a prosecution under Section 365(a) has occurred in recent times (17 years ago) the evidence still points to the fact that prosecutions on the basis of same sex activity are very rare. The Supreme Court in the case of [Galabada](#) took into consideration the fact that the act itself was consensual but noted that same sex activity remained illegal in Sri Lanka. The Court stated in this instance they were affording the offenders an opportunity to reform. It is unclear what was meant by reform in this particular instance and although 'conversion therapy' is available in Sri Lanka there is no evidence that this is forced upon a person by the state or was referred to in the Galabada case (see [Conversion therapy](#)).
- 2.4.11 In the country guidance case [LH and IP \(gay men: risk\) Sri Lanka CG \[2015\] UKUT 00073 \(IAC\)](#), promulgated on 18 February 2015 (heard on 6–8 August 2014) the Upper Tribunal found that in general the treatment of gay men in Sri Lanka does not amount to persecution or serious harm (para 123(3)).

- 2.4.12 The Upper Tribunal in [LH and IP](#) also found that there is a 'significant population of homosexuals and other LGBT individuals in Sri Lanka, in particular in Colombo. While there is more risk for lesbian and bisexual women in rural areas, because of the control exercised by families on unmarried women, and for transgender individuals and sex workers in the cities, it will be a question of fact whether for a particular individual the risk reaches the international protection standard, and in particular, whether it extends beyond their home area.' (Para 123(4)).
- 2.4.13 The findings in LH and IP were in part based on the US State Department's Human Rights report of 2013 which stated that the police sometimes detained, harassed, extorted money from and assaulted members of the LGBTI community. Subsequent USSD human rights reports including the most recent, covering events in 2019, have reported the same type and level of treatment. However, the evidence does not demonstrate that the situation has deteriorated since the findings in LH and IP (see [Implementation and enforcement of the law](#) and [Arrests and detention of LGB persons](#)).
- 2.4.14 Evidence does not indicate that incidences of detention of those seen to be loitering or the threat of the use of section 365 and 365 (a) are generally sufficiently serious by their nature and repetition as to amount to persecution and therefore do not warrant a departure from the finding made in [LH and IP](#).
- 2.4.15 Whilst incidents of harassment, assault, extortion through money or sexual favours by the authorities do take place, the available country evidence does not establish that a person who is open about sexual orientation is likely to face treatment that is generally sufficiently serious by their nature and repetition as to amount to persecution or serious harm.
- 2.4.16 If a person does not openly express their sexual orientation or gender identity, consideration must be given to the reasons why they do not. If it is concluded that a material reason for the person living discreetly on their return would be a fear of the persecution which would follow if they were to live openly, then, other things being equal, their application should be accepted. Each case must be considered on its facts with the onus on the person to demonstrate that they would be at real risk on return.
- 2.4.17 For further guidance on assessing risk, see the Asylum Instruction on [Assessing Credibility and Refugee Status](#).
- 2.4.18 Decision makers must also refer to the Asylum Instructions on [Sexual identity issues in the asylum claim](#) and [Gender identity issues in the asylum claim](#).

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c. State treatment of trans and intersex persons

- 2.4.19 There are no laws which specifically criminalise transgender or intersex people in Sri Lanka. However, section 399 of the Penal Code, which bans 'cheating by impersonation', is used against trans persons on the basis that their gender expression does not match the gender stated on their ID and as such the state sees them as pretending to be a different gender. The police arrest people under the Vagrancy Ordinance, which gives the authorities the

power to detain people who they consider are loitering in public (see [Trans persons](#) and [Other legal provisions affecting LGBTI persons](#)).

- 2.4.20 The Vagrancy Ordinance is also sometimes used against LGB persons, but Transgender persons are more likely to be affected by this owing to their increased visibility. Those who engage in sex work or who have a lower social economic status, particularly trans women, are more vulnerable to abuse, sexual harassment and mistreatment while in police custody (see [Arrests and detentions of trans persons](#) and [Societal norms- gender and sexual identity](#)).
- 2.4.21 The Upper Tribunal in [LH and IP](#) found that ‘...While there is more risk ... for transgender individuals and sex workers in the cities, it will be a question of fact whether for a particular individual the risk reaches the international protection standard, and in particular, whether it extends beyond their home area.’ (Para 123(4)).
- 2.4.22 The risk of arrest for trans persons is generally higher than the rest of the LGB community owing to their increased visibility. Whilst incidents of harassment by the authorities do take place, the country evidence does not indicate that they are generally sufficiently serious by their nature and repetition as to amount to persecution or serious harm. However, decision makers must consider whether there are particular factors relevant to the person which might make the treatment serious by its nature or repetition.
- 2.4.23 There is no information about the number, circumstances or treatment of intersex persons. There is, however, no reason to believe that they are treated differently from other sexual minority groups.
- 2.4.24 If a person does not openly express their sexual orientation or gender identity, consideration must be given to the reasons why they do not. If it is concluded that a material reason for the person living discreetly on their return would be a fear of the persecution which would follow if they were to live openly, then, other things being equal, their application should be accepted. Each case must be considered on its facts with the onus on the person to demonstrate that they would be at real risk on return.
- 2.4.25 For further guidance on assessing risk, see the Asylum Instruction on [Assessing Credibility and Refugee Status](#).
- 2.4.26 Decision makers must also refer to the Asylum Instructions on [Sexual identity issues in the asylum claim](#) and [Gender identity issues in the asylum claim](#).

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d. Societal treatment of LGB persons

- 2.4.27 Anti-LGB sentiment is deeply ingrained in Sri Lankan culture with most Sri Lankans holding conservative views about sexual orientation and gender identity. There is no legislation which protects LGB persons from discrimination or hate crimes (see [Societal norms](#) and [Statutory laws](#)).
- 2.4.28 LGB persons face stigma, discrimination, harassment, emotional and verbal abuse and forced heterosexual marriage. Most LGB persons do not live openly as LGB persons due to social stigma. However, treatment of

members of the LGB community varies, with those from higher economic and educated backgrounds being more likely to be open about their sexual orientation with friends and family. Those from poorer, more rural areas, particularly lesbian and bisexual women, face more family pressure to conform to gender norms (see [Societal norms](#)).

- 2.4.29 Some families pressured LGB persons to seek treatment to 'cure' their sexual orientation, considering their children's behaviour as an early indication of them being gay (see [Societal norms](#) and [Conversion therapy](#)).
- 2.4.30 LGB persons frequently face discrimination in accessing employment, housing and health services. In order to prevent discrimination and hate crimes some members of the LGB community hide their identity (see [Societal treatment, violence and discrimination](#) and [Access to services](#)).
- 2.4.31 There are no services such as restaurants, bars, shops or public spaces to socialise, that cater for openly LGB people. The online LGB community has however increased, particularly on social media sites such as Facebook, which are seen as safe areas for socialising and organising dates. The LGB activist community is small but increasingly assertive. NGO Equal Ground, who work for the LGB community, have faced discrimination when organising events and have faced difficulties in their attempts at engaging with the government on LGB issues. Other LGB activists or those working for their rights have faced threats and attacks on social media, or been denied registration (see [LGBTI 'community and society'](#), [LGBTI websites and online access](#), [LGBTI community and activists](#) and [Government recognition and restrictions](#)).
- 2.4.32 The Upper Tribunal in [LH and IP](#) found that there is a 'significant population of homosexuals and other LGBT individuals in Sri Lanka, in particular in Colombo' and that 'while there is more risk for lesbian and bisexual women in rural areas, because of the control exercised by families on unmarried women, ... and sex workers in the cities, it will be a question of fact whether for a particular individual the risk reaches the international protection standard, and in particular, whether it extends beyond their home area.' (Para 123(4)).
- 2.4.33 In general, the level of societal discrimination and abuse faced by LGB persons in Sri Lanka is not sufficiently serious by its nature and repetition as to amount to persecution or serious harm. However, decision makers must consider whether there are particular factors relevant to the person, including their ethnic or religious background, which might make the treatment serious by its nature or repetition (see also the Country Policy and Information Notes on [Sri Lanka: Minority religious groups](#) and [Sri Lanka: Tamil separatism](#)).
- 2.4.34 If a person does not openly express their sexual orientation or gender identity, consideration must be given to the reasons why they do not. If it is concluded that a material reason for the person living discreetly on their return would be a fear of the persecution which would follow if they were to live openly, then, other things being equal, their application should be accepted. Each case must be considered on its facts with the onus on the person to demonstrate that they would be at real risk on return.

- 2.4.35 For further guidance on assessing risk, see the instruction on [Assessing Credibility and Refugee Status](#).
- 2.4.36 Decision makers must also refer to the Asylum Instructions on [Sexual identity issues in the asylum claim](#) and [Gender identity issues in the asylum claim](#).

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e. Societal treatment of transgender and intersex persons

- 2.4.37 Transgender persons face threats, harassment and stigma from the community and owing to their increased visibility are more likely to face discrimination in access to services such as housing, employment and health care (see [Societal treatment, violence and discrimination](#)).
- 2.4.38 Transgender persons may face a higher risk of ill treatment at the hands of their family who may use physical and emotional violence as punishment to force gender conformity. Some families may pressure individuals to undergo conversion therapy in an attempt to get them to conform to gender norms (see [Societal norms](#) and [Conversion therapy](#)).
- 2.4.39 The Upper Tribunal in [LH and IP](#) found that there is a 'significant population of homosexuals and other LGBT individuals in Sri Lanka, in particular in Colombo' and that 'while there is more risk for ... transgender individuals and sex workers in the cities, it will be a question of fact whether for a particular individual the risk reaches the international protection standard, and in particular, whether it extends beyond their home area.' (Para 123(4)).
- 2.4.40 The level and frequency of discrimination and violence faced by transgender persons may differ according to their socio-economic status and/or geographic location (see [Societal norms](#)).
- 2.4.41 In general, trans persons in Sri Lanka face a risk of societal discrimination and violence and those who are open about their gender identity may be at risk of treatment which by its nature and repetition amounts to persecution. However, this may differ depending on an individual's socio-economic status, religion, ethnic group and geographic location (see also the Country Policy and Information Notes on [Sri Lanka: Minority religious groups](#) and [Sri Lanka: Tamil separatism](#)).
- 2.4.42 There is no information about the number, circumstances or treatment of intersex persons. There is, however, no reason to believe that they are treated differently from other sexual minority groups.
- 2.4.43 If a person does not openly express their sexual orientation or gender identity, consideration must be given to the reasons why they do not. Each case must be considered on its facts with the onus on the person to demonstrate that they would be at real risk on return.
- 2.4.44 For further guidance on assessing risk, see the instruction on [Assessing Credibility and Refugee Status](#).
- 2.4.45 Decision makers must also refer to the Asylum Instructions on [Sexual identity issues in the asylum claim](#) and [Gender identity issues in the asylum claim](#).

2.5 Protection

- 2.5.1 If the person's fear is of persecution or serious harm by the state, they will not, in general, be able to obtain protection.
- 2.5.2 If the person's fear is of serious harm or persecution at the hands of non-state agents or 'rogue' state agents, although the state is able to provide protection, in practice it is not always willing.
- 2.5.3 There are no legal safeguards to prevent discrimination based on sexual orientation or gender identity. Incidents of homophobia frequently go unreported due to people wanting to protect their identities. Police often misinterpret the laws on the basis of a person's appearance or behaviour and there have been reports of police assaulting, harassing and extorting money or sexual favours from LGBTI persons, particularly in Colombo as well as other areas (see [State attitudes and treatment](#)).
- 2.5.4 The lack of anti-discrimination legislation to protect the rights of LGBTI persons has meant that they have no recourse to a remedy when particular laws are used against them in a discriminatory manner. Such discrimination is further enabled and promoted by the continued criminalisation of same sex activity and, therefore, stigmatisation of LGBTI persons. LGBTI persons who are the victims of violence or hate crimes will often not report these crimes to the police without fear that their sexual orientation or gender identity or expression will be exposed or highlighted. This can lead to further discrimination and marginalization and to potential prosecution under articles 365 and 365A of the Penal Code (see [Implementation and enforcement of the law](#)).
- 2.5.5 Whilst there is some evidence that police provided a degree of protection at public events, such as during previous LGBTI marches, effective protection in individual cases is unavailable and in general, the state appears able but unwilling to offer effective protection. As such, the person will not be able to avail themselves of the protection of the authorities. However, each case will need to be considered on its facts (see [Official response to anti-LGBTI violence](#) and [Pro LGBTI marches/gay pride](#)).
- 2.5.6 For further guidance on assessing the availability of state protection, see the instruction on [Assessing Credibility and Refugee Status](#).

2.6 Internal relocation

- 2.6.1 If the person's fear is of persecution or serious harm by the state, they will not, in general, be able to relocate.
- 2.6.2 If the person's fear is of persecution or serious harm by a non-state actor, decision makers should consider each case on its individual circumstances to ascertain if this is localised and could be removed by internal relocation.
- 2.6.3 Sri Lanka has a total land area of 65,610 sq. km and an estimated population of 22,889,201. The law allows for freedom of internal movement and the government has generally respected these rights, although security checkpoints and roadblocks still occur in parts of the country.

- 2.6.4 The Upper Tribunal in [LH and IP \(gay men: risk\) Sri Lanka CG \[2015\] UKUT 00073 \(IAC\)](#) found that internal relocation would normally be sufficient to enable an individual to avoid the risk of serious harm/persecution since risks are usually from family, friends or neighbours especially for gay men, particularly if they relocated to the more 'gay-friendly' cities such as Colombo (paragraph 119). The Tribunal also held that 'where a risk of persecution or serious harm exists in an appellant's home area, there may be an internal relocation option, particularly for individuals returning via Colombo from the United Kingdom' (paragraph 123(5)). There are not, therefore, 'very strong grounds supported by cogent evidence' to justify a departure from the CG case.
- 2.6.5 Decision makers must give careful consideration to the relevance and reasonableness of internal relocation taking full account of the individual circumstances of the particular person.
- 2.6.6 Internal relocation is not viable if it depends on the person concealing their sexual orientation and / or gender identity/expression in the area of relocation for fear of persecution.
- 2.6.7 For further guidance on internal relocation see the instruction on [Assessing Credibility and Refugee Status](#) and the [Asylum Instruction on Sexual identity issues in the asylum claim](#).

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2.7 Certification

- 2.7.1 Where a claim is refused, it is unlikely to be certifiable as 'clearly unfounded' under section 94 of the Nationality, Immigration and Asylum Act 2002.
- 2.7.2 For further guidance on certification, see [Certification of Protection and Human Rights claims under section 94 of the Nationality, Immigration and Asylum Act 2002 \(clearly unfounded claims\)](#).

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Country information

Section 3 updated: 28 September 2020

Note: Most sources refer to LGB persons collectively, rather than individual groups. The exception is usually trans person. Therefore, because of the way reports quoted within the country information section of this CPIN have been written and set out, information about lesbians has been included within sections headed LGB persons, and transgender persons are usually considered separately.

3. Legal context

3.1 Statutory laws

3.1.1 Article 12 of the Constitution states that all persons are equal before the law and that no citizen shall be discriminated against on the grounds of race, religion, language, caste, sex, political opinion, place of birth or any other such grounds. It does not however, include sexual orientation or gender identity among the grounds upon which discrimination is prohibited¹.

3.1.2 Same-sex acts are a criminal offence in Sri Lanka even when they are consensual. Section 365 of the Penal Code states that:

‘Whoever voluntarily has carnal intercourse against the order of nature with any man, woman, or animal, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be punished with fine and where the offence is committed by a person over eighteen years of age in respect of any person under sixteen years of age shall be punished with rigorous imprisonment for a term not less than ten years and not exceeding twenty years and with fine and shall [sic] also be ordered to pay compensation of an amount - determined by court to the person in respect of whom the offence was committed for injuries caused to such person.’²

3.1.3 Section 365A of the Penal Code further states that:

‘Any person who, in public or private, commits, or is a party to the commission of, or procures or attempts [to] procure the commission by any person of, any act of gross indecency with another person, shall he [sic] guilty of an offence, and shall be punished with imprisonment of either description, for a term which may extend to two years or with fine or with both and where the offence is committed by a person over eighteen years of age in respect of any person under sixteen years of age shall be punished with rigorous imprisonment for a term not less than ten years and not exceeding twenty years and with fine and shall also be ordered to pay compensation of an amount determined by court to the person in respect of whom the offence was committed for the injuries caused to such person.’³

3.1.4 The Australian Government’s Department for Foreign Affairs and Trade’s (DFAT) ‘Country Report for 2019’ (the 2019 DFAT Report) noted that:

¹ The Parliament of Sri Lanka, ‘[The Constitution](#)’, 2015

² Sri Lanka: [Penal Code \[Sri Lanka\]](#), Chapter 19, 1 January 1885

³ Sri Lanka: [Penal Code \[Sri Lanka\]](#), 1 January 1885

‘Sections 365 and 365 (a) of the Penal Code make it a criminal offence to engage, respectively, in “carnal intercourse against the order of nature” and “acts of gross indecency”. These are commonly understood to apply to sexual acts between same-sex individuals and can attract sentences of up to 10 years’ prison and a fine.’⁴

3.1.5 The US State Department’s Country Report on Human Rights Practices, covering events in 2019 stated: ‘The law criminalizes consensual same-sex sexual conduct between adults. Those convicted of engaging in same-sex sexual activity in private or in public face 10 years’ imprisonment... Antidiscrimination laws do not prohibit discrimination based on sexual orientation and gender identity.’⁵

3.1.6 Human Rights Watch, in their World Report 2020, noted: ‘Despite agreeing to protect lesbian, gay, bisexual, and transgender (LGBT) people from discrimination, the government did not revoke sections 365 and 365A of the penal code, which criminalize same-sex conduct.’⁶

3.1.7 According to an Equal Ground publication called ‘My Rights, My Responsibility’ published in January 2020:

‘This law [section 365 and 365A] is inherently problematic for several reasons; it fails to define what amounts to “against the order of nature”, does not provide direction as to what qualifies as “gross indecency”, and fails to indicate the distinction between “public and private”. The lack of legal interpretations allows law enforcement to abuse the powers given to them by virtue of these laws to arrest, detain or harass persons of the LGBTIQ community by wilfully misinterpreting the laws and its intentions. Sections 365 and 365A specifically speak about consenting sexual relations and does not limit it to same sex acts.’⁷

3.1.8 The report continued ‘In fact, the section includes both heterosexual and same-sex acts alike and apply to any sexual act between persons if such an act falls within the interpretation of “against the order of nature and/or is grossly indecent”’.⁸

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3.2 Trans persons

3.2.1 There are no recent sources which give information on laws directly concerning trans persons (see sources consulted in the [Bibliography](#)). However, Section 399 of the Penal Code states ‘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’.⁹ Amnesty International and World Political Review noted that this law has

⁴ DFAT, ‘[Country Report](#)’, (3.148), 4 November 2019

⁵ USSD, ‘[2019 Country Report](#)’, 11 March 2020

⁶ HRW, ‘[World Report 2020](#)’, 14 January 2020

⁷ Equal Ground, ‘[My Rights, My Responsibility](#)’, 7 January 2020

⁸ Equal Ground, ‘[My Rights, My Responsibility](#)’, 7 January 2020

⁹ National Legislative Bodies/National Authorities, ‘[Penal Code](#)’, 1 January 1885

been used to target trans persons on the basis that they are pretending to be a different gender with the malicious intent of cheating others^{10 11}.

- 3.2.2 A joint Parallel Report to the UN Committee on the Elimination of Discrimination against Women of 2017 regarding Sri Lanka's Protection of the Rights of LGBTI Persons by Kaleidoscope Human Rights Foundation and Equal Ground, Sri Lanka, observed: '[T]ransgender persons in Sri Lanka often have a difficult time obtaining official documentation that reflects their preferred name and gender. This means that transgender persons are effectively prevented from accessing an accurate national identity card or passport.'¹²
- 3.2.3 A report for the UN Committee on Economic, Social and Cultural Rights regarding violations against LGBTIQ [Lesbian, Gay, Bisexual, Transgender, Intersex, Queer/Questioning] people compiled by Equal Ground and the Center for International Human Rights (CIHR), dated May 2017, stated:
- 'Sri Lanka fails to respect the gender identity of transgender people by failing to enact into law an administrative procedure whereby transgender individuals can obtain, upon simple request, identity documents that match their name and gender identity. At present, in order to obtain revised identity documents, transgender individuals must undergo psychiatric evaluation, hormone therapy and surgical treatments, which may or may not be wanted and, if wanted, may not be available due to issues of access and cost. As a result, many transgender individuals have not been able to obtain national identity cards and other official documents that accurately reflect their name and gender identity, leaving them vulnerable to humiliation, discrimination, harassment and the possibility of violence at each of the many times in daily life when such documents must be presented.'¹³
- 3.2.4 The International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA) noted in their 'Trans Legal Mapping Report- Recognition before the law' published in November 2017 that in order to change a person's sex on their birth certificate they can obtain a Gender Recognition Certificate (GIC) issued by the Ministry of Health, Nutrition and Indigenous Medicine. However, the GIC is only issued after 'the person receives psychiatric diagnosis of transsexualism based on the International Classification of Disease (10th revision), is referred for hormone and surgical treatment, and undergoes treatment in accordance to the World Professional Association of Transgender Health's Standards of Care. This is only available for those over 18 years of age.'¹⁴
- 3.2.5 In a letter dated 27 August 2018, the British High Commission in Colombo stated that
- 'Individuals are now able to have their change of gender recognised. A Gender Recognition Certificate (GRC) can be applied for which then enables the issuance of a new passport and National Identity Card. The British High

¹⁰ Amnesty International, '[Sri Lanka: End discrimination against LGBTI people](#)', 7 December 2019

¹¹ WPR, '[What's at Stake for LGBT People as Sri Lanka Reforms Its Constitution](#)', 1 August 2017

¹² Kaleidoscope and Equal Ground, '[Report](#)' (pg 7), 2017

¹³ Equal Ground, '[Report](#)' (p. 2), May 2017

¹⁴ ILGA, '[Trans Legal Mapping Report- Recognition before the law](#)', November 2017

Commission, Colombo, met someone who has gone through this process and who advised that it was handled in a relatively short period of time. The only drawback is that the new passport carries an “endorsement” that states that the bearer is a transgender person whose previous passport was issued under such name and such gender marker.’¹⁵

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3.3 Intersex

- 3.3.1 CPIT was unable in the sources consulted to find information on laws relating to intersex persons in Sri Lanka (see [Bibliography](#)).

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3.4 Other legal provisions affecting LGBTI persons

- 3.4.1 In December 2019 Amnesty International noted that ‘the Vagrants Ordinance, a 178-year-old law has been used to disproportionately target LGBTI people, allowing the police to take them into custody and even put them in prison to extort or harass them’¹⁶. Although this source does not provide evidence as to the prevalence of this continuing.
- 3.4.2 According to an Equal Ground publication called ‘My Rights, My Responsibility’ published in January 2020:
- ‘Section 353 of the Penal Code relating to abduction is also used against individuals in same sex relationships especially targeting lesbians. ...In a similar manner the vagrants Ordinance No. 4 of 1841 is also used to disproportionately target and punish community members; the intention of this archaic law is to punish those deemed to be “rogues and vagabonds” behaving in an idle and disorderly manner. Section 07 of the vagrants Ordinance is commonly used to arrest members of the community for soliciting and acts of public indecency.’¹⁷

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Section 4 updated: 28 September 2020

4. State attitudes and treatment

4.1 Implementation and enforcement of the law

- 4.1.1 Attorney-at-law Dushantha Kularathne, told Sri Lanka brief, in January 2017, that:
- ‘...homosexuality in Sri Lanka is definitely an offence, but conceded that it is indeed open to interpretation... Homosexuality, among other things, comes under “unnatural offences” or acts of a sexual nature that go against nature, as per section 365 of the Penal Code. According to Kularathne, however, no cases have been reported of anyone actually being prosecuted for being gay...
- ‘In other words, the law exists but it’s not implemented? Not exactly, says Kularathne. “I can’t say that it’s not implemented. It can be implemented. It’s

¹⁵ BHC letter, 27 August 2018, [Annex A](#).

¹⁶ Amnesty International, ‘[Sri Lanka: End discrimination against LGBTI people](#)’, 7 December 2019

¹⁷ Equal Ground, ‘[My Rights, My Responsibility](#)’, 7 January 2020

just that our courts of law and our police officers don't go up to the extent of implementing it as it is – as it's set out in the law," he said. When asked for any examples, Kularathne said that although he has not heard of anyone been prosecuted solely for being gay, there have been cases in high court for unnatural offences that included acts of a homosexual nature carried out without consent. "But with consent I have not seen a single case to date. That is very unlikely to happen. Those sort of prosecutions never happen" said Kularathne. "Not that it cannot happen – it can," he hastened to add, "but not to my knowledge."¹⁸

4.1.2 An article published by The Wire in January 2017, noted:

'Sri Lanka's cabinet rejected a proposal to end discrimination based on sexual orientation because it could legitimise homosexuality, which is illegal on the island, a government minister said on Wednesday, January 18...

'Health minister Rajitha Senaratne said the cabinet had refused to endorse a provision in a proposed human rights plan that would have undermined the code. "There was a provision referring to the sexual orientation of individuals and we clearly said it was not acceptable," said Senaratne, who is also the government spokesman. "The government is against homosexuality, but we will not prosecute anyone for practising it," the minister said, adding that the island's conservative Buddhist clergy was also opposed to the provision. He said the proposed National Human Rights Action Plan included a provision to remove "discrimination based on sexual orientation".' The article added: 'Rights activists say although there have been no known prosecutions in recent decades, Article 365 of the penal code is discriminatory and stigmatises homosexuality.'¹⁹

4.1.3 The Sri Lanka Brief, in January 2017, reported that a statement by the National Peace Council in response to the government's decision not to proceed with legal reform that decriminalizes homosexuality, said: 'We note that same sex relations are rarely if ever prosecuted in the Sri Lankan courts.'²⁰

4.1.4 A report for the UN Committee on Economic, Social and Cultural Rights regarding violations against LGBTIQ people compiled by Equal Ground and the Center for International Human Rights (CIHR), dated May 2017, stated 'Sri Lanka continues to criminalize adult, consensual same-sex sexual conduct. This leads to arbitrary arrests and detentions, police harassment and acts of extortion....'²¹

4.1.5 The Women and Media Collective report 'Disrupting the Binary Code: Experiences of LGBT Sri Lankans Online' published in December 2017 noted that '... [D]ue to the generally private contexts in which most sexual acts take place, Sections 365 and 365A are nearly ineffective against the criminalised acts themselves. Still, even without enforcement, the laws act to

¹⁸ Sri Lanka brief, '[Sri Lanka Officially Refuses To Go Gay](#)', 19 January 2017

¹⁹ The Wire, '[Sri Lanka Scuttles Move to Legitimise Homosexuality](#)', 19 January 2017

²⁰ Sri Lanka Brief, '[Protection of minority rights must include sexual minorities](#)', 30 January 2017

²¹ Equal Ground, '[Report](#)' (p. 2), May 2017

suppress the identities and relationships of people with alternative sexual orientation and/or gender identities.’²²

- 4.1.6 In a letter dated 27 August 2018 the British High Commission in Colombo stated that ‘[...] same sex relations are illegal but the FCO is not aware of any prosecutions. There have been no reports of those identifying as LGBT having their homes/hotel rooms raided by police’.²³
- 4.1.7 Amnesty considered in December 2019 that, despite every citizen having their Fundamental Right to Equality protected under Article 12 of the Constitution, LGBTI individuals continue to be ‘harassed, marginalized and abused on the basis of their real or perceived gender identity and/or sexual orientation’²⁴.
- 4.1.8 The USSD report covering 2019 stated: ‘Although prosecutions were rare, human rights organizations reported police used the threat of arrest to assault, harass, and sexually and monetarily extort LGBTI individuals.’²⁵
- 4.1.9 Although the law does not criminalise being gay, lesbian or having any particular sexual orientation Equal Ground noted in their January 2020 publication ‘My Rights, My Responsibility’ that: ‘there have been incidents reported where the police has arrested LGBTIQ individuals using threat of these laws, for socializing in public.’²⁶

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4.2 Arrests and detention of LGB persons

- 4.2.1 A 2016 Human Rights Watch (HRW) Report stated: ‘LGBTI people arrested based on their gender expression, gender identity, or sexual orientation are typically detained without proper cause or evidence, and consequently are rarely detained for extended periods of time. As a result, they may have less overall exposure to police officials in detention and may experience less abuse than Sri Lankans arrested for other crimes.’²⁷
- 4.2.2 In November 2016, the Sri Lankan Supreme Court heard a case, commonly referred to as Galabada from 2003, in which an accused appellant was charged along with another accused before the Magistrates’ Court for ‘committing an act of gross indecency between two persons in terms of Section 365A of the Penal Code’. Court documents show that the Magistrate had found the appellant and the other accused guilty despite the intercourse being consensual and imposed a term of imprisonment of one year and imposed a fine of Rs. 1,500 with a default sentence of 6 months. The Supreme Court heard all the evidence again and determined that the sentence of the one-year term of imprisonment should be set aside and substituted with a sentence of 2 years rigorous imprisonment, suspended for

²² WMC, ‘[Disrupting the Binary Code: Experiences of LGBT Sri ...](#)’, (P23), December 2017

²³ See [Annex A](#).

²⁴ AI, ‘[Sri Lanka: End discrimination against LGBTI people](#)’, 17 December 2019

²⁵ USSD, ‘[2019 Country Report](#)’, 11 March 2020

²⁶ Equal Ground, ‘[My Rights, My Responsibility](#)’, 7 January 2020

²⁷ HRW, ‘["All Five Fingers Are Not the Same" - Discrimination on ...](#)’, (p30), 15 August 2016

a period of 5 years, with the Supreme Court stating that the ‘offenders should be afforded an opportunity to reform themselves’²⁸.

- 4.2.3 Human Rights Watch reported in September 2019 that: ‘Some lesbian, gay, bisexual, and transgender (LGBT) people – particularly those who are visibly gender non-conforming – face arbitrary arrest, police mistreatment....’²⁹
- 4.2.4 The November 2019 DFAT Report noted that ‘Police have arrested individuals under these sections, but no prosecutions have occurred in recent times. According to local LGBTI sources, police use sections 365 and 365 (a) of the Penal Code or the Vagrants Ordinance (which empowers authorities to detain people considered to be loitering in public) to threaten, harass, extort money and sexual favours, and arbitrarily arrest and detain LGBTI individuals.’³⁰
- 4.2.5 Equal Ground noted in their January 2020 publication ‘My Rights, My Responsibility’ that: ‘law enforcement is known for its culture of arbitrary arrests and detention, and the wilful misinterpretation of these laws allow them to easily target the LGBTIQ community...

‘In short – the LGBTIQ community remains fearful of a police force that is known for a culture of intolerance and abuse towards them.’³¹

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4.3 Arrests and detentions of trans persons

4.3.1 The 2016 HRW Report stated:

‘Ajith Rohana, senior superintendent of police of Colombo-North, told Human Rights Watch that he was aware of concerns that transgender people have expressed about police mistreatment. Specifically, he acknowledged that police have arrested people for loitering in a public place and carrying condoms. He further noted that police occasionally arrested transgender people for “cheating by personation,” which is illegal under section 399 of the Penal Code. When this happened, transgender people were generally taken to a police station for questioning and held there for five to six hours, he said. In addition, some transgender people reported verbal abuse from police officers.

‘Rohana said that the national police training curriculum has addressed some of these concerns since 2011, initially incorporating them into refresher courses for advanced officers, and now introducing such concerns to new officers.’³²

4.3.2 The same report cited incidents where two transgender women, one from Colombo and the other from Jaffna, had been arrested for ‘cheating by personation’³³.

²⁸ Sri Lankan, ‘[Supreme Court case- SC Appeal No.32/11](#)’, 30 November 2016

²⁹ HRW, ‘[Country Profiles: Sexual Orientation and Gender Identity, Sri Lanka](#)’, 23 September 2019

³⁰ DFAT, ‘[Country Report](#)’, (3.148), 4 November 2019

³¹ Equal Ground, ‘[My Rights, My Responsibility](#)’, 7 January 2020

³² HRW, ‘["All Five Fingers Are Not the Same" - Discrimination on ...](#)’, (p36-37), 15 August 2016

³³ HRW, ‘["All Five Fingers Are Not the Same" - Discrimination on ...](#)’, 15 August 2016

- 4.3.3 Kajal, a South Asian magazine, reported in an article, dated March 2018 that: 'Public spaces in Sri Lanka are heavily policed for "decency," and LGBTQ people face arrest or extortion if they are caught.'³⁴
- 4.3.4 The 2019 DFAT report noted that: 'Transgender individuals, particularly individuals who are biologically male but have transitioned to female, by virtue of being more visibly identifiable, are considered particularly vulnerable.'³⁵
- 4.3.5 An Equal Ground publication called 'My Rights, My Responsibility' published in January 2020 noted that Section 399 of the Penal code is: 'frequently misused to abuse and arrest transgender individuals by the police, because their gender expression do not match the gender stated on their national identification documents wrongfully claiming that it is "cheating by personation" which is a definition adopted by law enforcement contrary to the intention of and the definition in law. Additionally, the law does not consider whether or not the impersonation is of a real or imaginary person.'³⁶

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4.4 Arrests and detentions of intersex persons

- 4.4.1 CPIT was unable in the sources consulted to find information on arrests and detentions of intersex persons in Sri Lanka (see [Bibliography](#)).

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4.5 Official discrimination and harassment

- 4.5.1 A report for the UN Committee on Economic, Social and Cultural Rights regarding violations against LGBTIQ people compiled by Equal Ground and the Center for International Human Rights (CIHR), dated May 2017, stated: 'The lack of any Constitutional protection or anti-discrimination laws or policies has exposed LGBTIQ individuals to pervasive discriminatory treatment in all aspects of daily life, including employment, housing, health care, education and law enforcement.'³⁷
- 4.5.2 The DFAT report for 2019 noted that: 'Equal Ground, in its 2017 mapping study, found that 46.7 per cent of LGBTI people experienced police harassment. LGBTI victims of abuse and harassment, including by the police, are generally unwilling to file complaints due to safety concerns and a reluctance to bring attention to their sexual orientation, meaning their incidence goes largely unreported.'³⁸
- 4.5.3 In June 2019, Groundviews reported that:
 '[The State of] Emergency has serious implications for LGBTQIA+, or queer, Sri Lankans in the immediate term. For a community that already faces harassment and violence by security forces while navigating their daily lives, the spectre of increased security checks and procedures is daunting. This is

³⁴ Kajal, '[New Study Recommends How to Keep LGBTQ Sri Lankans Safe Online](#)', 1 March 2018

³⁵ DFAT, '[Country Report](#)', (3.148), 4 November 2019

³⁶ Equal Ground, '[My Rights, My Responsibility](#)', 7 January 2020

³⁷ Equal Ground, '[Report](#)' (p.6), May 2017

³⁸ DFAT, '[Country Report](#)', (3.148), 4 November 2019

particularly acute for transgender Sri Lankans, who ordinarily face higher scrutiny because their official identification documents may not match their gender identity and presentation. [...].³⁹

- 4.5.4 Amnesty International also reported in October 2019, that, ‘LGBTI people routinely face harassment and discrimination at the hands of the police and other state officials.’⁴⁰

- 4.5.5 An Equal Grounds publication called ‘My Rights, My Responsibility’ published in January 2020 stated that:

‘...law enforcement is known for its culture of arbitrary arrests and detention and the wilful misinterpretation of these laws allow them to easily target the LGBTIQ community. The tumultuous relationship between the police and the LGBTIQ community is also evident in the way police officers hurl homophobic slurs at these individuals often in very public places- “ponnaya (faggot), come here samanalaya (butterfly derogatively used to mean queer or pansy) where did you go!” When such abuse is perpetrated by the same institutions that are meant to protect the peace and security of all citizens, it is no surprise that LGBTIQ individuals hesitate to actually lodge complaints of the violence and discrimination they are subject to. In short- the LGBTIQ community remains fearful of a police force that is known for a culture of intolerance and abuse towards them.’⁴¹

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4.6 Official response to anti-LGBTI violence

- 4.6.1 Outright International, following its study of interviewing 33 lesbians, bisexual women and trans people (LBT), published its findings in May 2016.

‘This research thus suggests that incidents of physical violence, both in the public and private spheres, remain under-reported and undocumented, and that LBT people who experience physical violence rarely seek compensation, redress or even counselling from mental health service providers who work with women who have experienced violence – such as domestic violence programs or support groups.’

‘When they were the victims of violence in a public space, such as on the street, at community gatherings, in public transport, or at the workplace – and targeted for their gender non-conformity or sexual orientation – there was reluctance to report the violence for fear of being personally exposed as LBT. Even when the crime is not related to their sexuality or gender identity, LBT individuals feel vulnerable because of a Penal Code provision that can be read to criminalize adult consensual same sex sexual activity. In fact, some of the LBT people we spoke to specifically cited both Section 365A of the Penal Code and the Vagrants Ordinance as reasons used to target them for arrest and harassment.’

‘Police in Sri Lanka are generally perceived by the LBT community as dangerous. A reason for this perception is that police officers use blackmail

³⁹ Groundviews, [‘Pride under Emergency’](#), 28 June 2019

⁴⁰ AI, [‘Sri Lanka: Human rights must be at the heart of next presidency’](#), 18 October 2019

⁴¹ Equal Ground, [‘My Rights, My Responsibility’](#), 7 January 2020

and violence against people who they perceive to be homosexual, bisexual or transgender.'

'In this context, interviews revealed that LBT persons doubted the possibility of getting redress for violence by police.

'Additionally, the court system in Sri Lanka is generally not victim-friendly. Court hearings are open to the public, which deters most people from reporting violence they experience to the police so as to avoid going to court. They fear that their sexual orientation and gender identity could be exposed in open court when the reasons for the violence are revealed. Furthermore, as mentioned earlier in this chapter, the Human Rights Commission, the Police Commission, the Public Services Commission, and the Judicial Services Commission are not trusted to function independently since these commissions are made up of presidential appointees.'⁴²

- 4.6.2 In July 2016, delegates from a UK Home Office Fact Finding Mission to Sri Lanka (the 2016 UK FFM) met with a representative from Equal Ground (EG), a non-profit organisation seeking human and political rights for LGBT community of Sri Lanka. The UK FFM delegates asked Equal Ground whether the government, police or judiciary provided LGBTI persons with security and justice, but were told:

'No they do not. But during the 2016 Pride celebration there were a lot of threats from Sinhala Buddhist nationalists particularly towards a public event Equal Ground (EG) was planning to hold to publicise Colombo Pride 2016. EG made a complaint to a police station about the threats, and plain clothes police officers were sent to protect them. The police took no action against the Buddhist nationalists. The Buddhist nationalists never turned up, but all threats are taken seriously... On an individual basis police do not protect. In fact, they are the main perpetrators of violence and discrimination against LGBTI persons.'⁴³

- 4.6.3 A report for the UN Committee on Economic, Social and Cultural Rights regarding violations against LGBTIQ people compiled by Equal Ground and the Center for International Human Rights (CIHR), dated May 2017, stated 'Sri Lanka continues to criminalize adult, consensual same-sex sexual conduct. This leads to arbitrary arrests and detentions, police harassment and acts of extortion, reluctance on the part of LGBTIQ people to report crimes to the police, and, more generally, the perceived legitimization of violence and discrimination based on sexual orientation and gender identity.'⁴⁴

- 4.6.4 In March 2019, the Sri Lanka Daily Mirror reported that: 'Speaking to the Daily Mirror, LGBTIQ Rights Activist Rosanna Flamer-Caldera said ...that people have erroneously made up their minds against females and the LGBTIQ community in Sri Lanka. She stated that there is too much impunity in Sri Lanka and there is no legal action being taken against those

⁴² Outright International, '[Violence: Through the lens of LBT people](#)' (pp. 25/26), 6 May 2016

⁴³ UK Home Office's '[Fact Finding Mission to Sri Lanka](#)' (p. 51), 11 – 23 July 2016

⁴⁴ Equal Ground, '[Report](#)' (p. 2), May 2017

who harass women and LGBTIQ people which ultimately contributes to such incidents.⁴⁵

- 4.6.5 Amnesty International noted in a report dated 7 December 2019, discussing the release of a comic book detailing the experiences of four LGBTI people, that: ‘The stories that highlight the experiences [...] show the alarming and various ways the police handle cases that involve LGBTI people, often treating them like criminals when they are the ones being victimized... individuals in Sri Lanka continue to face discrimination, abuse and a complete lack of protection for their real or perceived sexual orientation or gender identity.’⁴⁶
- 4.6.6 DFAT noted in November 2019 that ‘According to local sources, police protection of LGBTI individuals at public events such as LGBTI marches has increased since 2015. Local sources identified extremist Buddhist and Muslim groups as posing particular threats to the LGBTI community.’⁴⁷

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4.7 Official views on sexual orientation and gender identity

- 4.7.1 The 2019 ILGA report on State-sponsored Homophobia stated that:
- ‘In 2013, the then President Mahinda Rajapaksa denied a spousal visa to the Norwegian ambassador’s same-sex wife. In a discussion with representatives from the Bodhu Bala Sena, he explained that the country’s “Sinhala Buddhist identity would come to an end if we allow these actions.”
- ‘In a January 2017 interview the Minister for Justice Wijeyadasa Rajapaksa, basing his argument on the religious nature of Sri Lankan society, said regarding 365 and 365A, “under no circumstance are we going to change that law”. Elsewhere, he called “homosexuality” a “mental disorder”, a comment that sparked public outcry. In August 2017, he said that lesbianism “equals sadism” and advocated the rape of lesbians by convicted sexual offenders to “cure” them. He added, “Lesbianism is at least an act of gross indecency and unnatural”.’⁴⁸
- 4.7.2 The same report also noted:
- ‘In November 2018, the Sri Lanka president accused his political opponent of rejecting national values for a “butterfly life” and claimed that his decisions were led by a “butterfly caucus”. The Sinhalese term for “butterfly” is used as a derogatory term alluding to LGBT people. This led to a protest in Colombo by LGBT activists protesting the president’s “insidious references degrading the LGBTIQ community” as well as a media statement condemning the president’s statements.’⁴⁹
- 4.7.3 The 2019 DFAT report stated:
- ‘Local sources told DFAT that the current government [now the previous government] is more open than the previous one to the concerns of the

⁴⁵ Daily Mirror, [‘Closing the door on sexual abuse’](#), 8 March 2019

⁴⁶ AI, [‘Sri Lanka: End discrimination against LGBTI people’](#), 7 December 2019

⁴⁷ DFAT, [‘Country Report’](#), (3.154), 4 November 2019

⁴⁸ ILGA, [‘State Sponsored Homophobia 2019’](#) (p473)

⁴⁹ ILGA, [‘State Sponsored Homophobia 2019’](#) (p473)

LGBTI community. The government accepted recommendations to combat discrimination against LGBTI individuals as part of its most recent Universal Periodic Review at the HRC (November 2017), including specific recommendations to amend sections 365 and 365 (a) of the Penal Code, although it rejected recommendations to decriminalise same-sex conduct. A Pride parade has been held in Colombo since 2005, albeit in a low-key manner because of security concerns. The Colombo Pride parade was not held in 2019, following the Easter Sunday terrorist attacks, although a festival of other LGBTI events did proceed. The media discusses LGBTI issues openly and some LGBTI individuals have adopted a high profile, particularly in Colombo.⁵⁰

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4.8 Ombudsman/Complaints' mechanism(s)

- 4.8.1 According to an Equal Ground publication called 'My Rights, My Responsibility' published in January 2020 which focuses on the rights and laws that affect the LGBTIQ community in Sri Lanka, 'There is no specific legal device to address the rights and protections of the LGBTIQ community and therefore common law applies. However, the Sri Lankan Constitution grants Fundamental Rights (FR) to all citizens and these rights should not be violated other than in exceptional situations specifically mentioned in the Constitution and within the emergency laws of the country which allows specific restrictions.'⁵¹
- 4.8.2 The article went on to note that: 'Any action violating your rights in Chapter III of the Constitution which lists your Fundamental Rights, is grounds enough for you to file a FR Petition in the Supreme Court.'⁵²
- 4.8.3 The same article also noted that complaints can also be lodged with the Human Rights Commission of Sri Lanka, the National Authority for the Protection of Victims of Crimes and Witnesses and the National Police Commission⁵³.

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Section 5 updated: 17 August 2020

5. Societal norms

5.1 Overview

- 5.1.1 The number of LGBTI persons in Sri Lanka could be as high as 5% of the population, according to a Daily Mirror (Sri Lanka) in on line article published in January 2018. The article noted:

'A mapping study recently conducted by Equal Ground reported that 19.6% percent [sic] of people over 18 living in Colombo, Matara, Nuwara Eliya & Galle identify as LGBT. This may seem a rather large proportion and the report does mention that this number may be slightly skewed for the simple

⁵⁰ DFAT, '[Country Report](#)', (3.153), 4 November 2019

⁵¹ Equal Ground, '[My Rights, My Responsibility](#)', 7 January 2020

⁵² Equal Ground, '[My Rights, My Responsibility](#)', 7 January 2020

⁵³ Equal Ground, '[My Rights, My Responsibility](#)', 7 January 2020

reason that the enumerators conducting the mapping were “LGBTIQ” [lesbian, gay, bisexual, transgender/transsexual, intersex and queer/questioning] friendly and therefore approached more LGBTIQ persons for the study. It also mentions that LGBT persons felt more comfortable with these enumerators and therefore felt free to identify themselves.’⁵⁴

5.1.2 Rosanna Flamer-Caldera, the executive director of Equal Ground, the main LGBT organisation in Sri Lanka, described in the Daily Mail article the situation for LGBT people Sri Lanka, noting that ‘stigma and discrimination’ forced LGBT persons underground, making it difficult to determine accurate numbers of those who identify as LGBT⁵⁵.

5.1.3 Roar Media reported in 2018 that ‘Younger LGBTIQ activists tell us that revealing their true gender identity is easier in Colombo. The community is larger, and the general populace are more tolerant as a result.’⁵⁶

5.1.4 The same article also noted however, that:

‘... according to Tanya, the Acting Executive Director of Heart to Heart Lanka, it is still difficult for people from poorer families to come out, find jobs, or be treated with dignity. “It’s very hard, in reality. It’s quite alright for the posher Colombo 07 people; they can be doctors and lawyers and such. The poorer people have it harder and are often mistreated, which is why they leave their families or live a life of secrecy. It’s also really hard to find work thanks to societal perceptions, which again is why you get many trans people who are engaged in sex work or who are dancers,” she added.

‘When Roar Media queried as to why the trans community claimed Colombo to be more open and accepting if it wasn’t so, Tanya told us that it was because where most of the trans community converge.

“There’s more of a network here, and there are a lot more facilities than there are outstation. You do get a lot of closeted people in Colombo as well, but you also get a good support system. You won’t see hundreds of us in public though, because we’re a relatively small community in a country with an already small population. It’s not like in America or India and all,” she concluded.

‘This isn’t to say that there is enough trans visibility in Colombo; the activists tell us that transmen have a harder time revealing their gender identity.’⁵⁷

5.1.5 In a letter dated 27 August 2018 the British High Commission in Colombo stated that “There remains significant social exclusion for being LGBT which is perpetuated by stigma, cultural taboos and conservative, traditional and religious attitudes”.⁵⁸

5.1.6 The 2019 DFAT report noted that:

‘Reliable figures on the size of Sri Lanka’s LGBTI community are not available. Equal Ground, a local NGO advocating for LGBTI rights, estimates

⁵⁴ Daily Mirror (Sri Lanka), [‘Counting in LGBT’](#), 22 January 2018

⁵⁵ Daily Mirror (Sri Lanka), [‘Counting in LGBT’](#), 22 January 2018

⁵⁶ Roar Media, [‘Fitting In As A Transwoman In Sri Lanka’](#), 26 June 2018

⁵⁷ Roar Media, [‘Fitting In As A Transwoman In Sri Lanka’](#), 26 June 2018

⁵⁸ See [Annex A](#)

that between 5 and 10 per cent of Sri Lanka's total population could be LGBTI...

'According to local sources, the LGBTI community faces threats, harassment and forced heterosexual marriage from family and members of the community. Some middle and upper class, educated, and urban Sri Lankans are open about their sexuality within their family and community circles; however, risks are higher for lesbian and bisexual rural women due to more traditional familial expectations and values.

'...many LGBTI individuals – especially Muslims – hide their identity to avoid harassment. Local sources told DFAT that some families pressure LGBTI individuals to seek treatment to 'cure' their homosexuality at dedicated profit-making centres or through witchcraft.

'...Local sources told DFAT that hostility toward LGBTI individuals was 'across the board' and was not confined to a particular ethnic group or geographic area. Colombo (Western Province), Kandy (Central Province) and Galle (Southern Province) are considered more tolerant of sexual orientation relative to other parts of Sri Lanka. Some LGBTI individuals have chosen to relocate to these centres, which have larger LGBTI communities and support networks.

'According to local sources, anti-LGBTI sentiment is deeply ingrained in Sri Lankan culture and society, particularly in rural areas. The majority of Sri Lankans hold conservative views about sexual orientation and gender identity, and many prioritise collective values over individual rights. DFAT assesses that LGBTI individuals in Sri Lanka face a moderate risk of official discrimination and a moderate level of societal discrimination on a day-to-day basis. The level and frequency of discrimination differs, depending on the socioeconomic status, religion and geographic location of the individual. DFAT further assesses that transgender individuals face a high level of official and societal discrimination compared to other members of the community, and a moderate risk of violence.⁵⁹

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5.2 Societal norms- gender and sexual identity

- 5.2.1 In an undated page on Sri Lanka's 'Customary norms, religious beliefs and social practices that influence gender-differentiated land rights' the Food and Agricultural Organisation of the United Nations (FAO) noted that 'The gender division of household labour is deeply ingrained though it is more flexible in the lower castes and classes. Women generally make decisions on household matters, education of children and health. Men make other major decisions such as buying and selling of assets. Traditionally women engage in household work and income generation within the home and contribute to the household economy by working in family farms.'⁶⁰
- 5.2.2 Outright International, following its study of interviewing 33 LBTs, published its findings in May 2016 and noted that:

⁵⁹ DFAT, '[Country Report](#)' (paras 3.147, 3.151 and 3.156), 4 November 2019

⁶⁰ FAO, '[Sri Lanka- Customary norms, religious beliefs and social...](#)', undated

'Twelve out of 33 interviews highlighted the constant pressures that butch lesbians and transgender people face in having to perform and live according to culturally expected gender norms—from being forced to marry, to having to wear particular clothes and maintaining certain hairstyles—all of which were experienced as psychological and emotional violence. Cultural and gender norm enforcement was also experienced as violence when interviewees were quizzed about their gender identity when using public toilets. Similarly, some interviewees were forced to keep their sense of self a secret and not look “too gay” in order to keep the family reputation intact. Some interviewees also spoke of being denied jobs or promotions on the basis of their gender expression – “not looking feminine enough” – and losing employment because their identity cards did not match their appearance.’⁶¹

- 5.2.3 According to the Institute for Participatory Interaction in Development (IPID) report ‘Rapid Situation Assessment of Transgender Persons in Sri Lanka’ published in December 2016 ‘The Sri Lankan transgender community use the term “Nachchi” to identify themselves, similar to Hijras in India, which they use to recognise the male-to-female transgenders, although generally the term transgender includes various groups including cross dressers, transsexuals, and gender non-confirming persons. Some transgender persons experience a fluidity of identities.’⁶²

- 5.2.4 As specified in the Human Rights Watch report, “All Five Fingers Are Not the Same” - Discrimination on Grounds of Gender Identity and Sexual Orientation in Sri Lanka’, 15 August 2016:

‘In Sri Lanka, ideas about the way men and women should look and act are deeply entrenched. Those who challenge gender norms—including many lesbian, gay, bisexual, transgender, and intersex (LGBTI) people—may face a range of abuses from ... private individuals that compromise the quality and safety of their daily lives, and their ability to access services that are central to their realizing basic human rights.

‘The abuses experienced by transgender people are part of a broader picture of discrimination faced by gender non-conforming people in Sri Lanka. LGBTI people in general may face stigma and discrimination in housing, employment, and health care, in both the public and private sectors.

‘Social standing plays a significant role in the discrimination that LGBTI people face: those who are poor, who engage in sex work, or who obviously do not adhere to rigid gender norms are most vulnerable to abuse, including physical assault or arrest.’⁶³

- 5.2.5 In July 2016, delegates from a UK Home Office Fact Finding (The 2016 UK FFM) mission to Sri Lanka met with a representative from Equal Ground (EG), a non-profit organisation seeking human and political rights for LGBT community of Sri Lanka who stated: ‘Three quarters, if not more, of the LGBTI communities in Sri Lanka live a double life. They hide their sexual

⁶¹ Outright International, [‘Violence: Through the lens of LBT people’](#) (p. 17), 6 May 2016

⁶² IPID, [‘Rapid Situation Assessment of Transgender Persons in Sri...’](#), (p27), December 2016

⁶³ HRW, [“All Five Fingers Are Not the Same”](#) (p. 1 & 4), 15 August 2016

orientation. Quite often they are forced into heterosexual marriages. Some of them actually get into heterosexual marriages because they think that is the right thing to do, so that it hides their sexual orientation. Mostly those are gay men. Lesbian and bisexual women are pretty much forced by families to get married to men against their will.’⁶⁴

5.2.6 A World Political Review article from 2017 noted that ‘Social standing plays a significant role in the discrimination that LGBTI people face: Those who are poor, who engage in sex work, or who obviously do not adhere to rigid gender norms are most vulnerable to abuse.’⁶⁵

5.2.7 The Women and Media Collective report ‘Disrupting the Binary Code: Experiences of LGBT Sri Lankans Online’ published in December 2017 noted that:

‘This state of invisibility and isolation is broadly a result of Sri Lankan “conservatism”, in which attitudes towards and discourses on sexuality and sexual relationships are heavily controlled by societal and cultural forces opposed to sexual and gender diversity. Sexual conservatism in Sri Lanka regulates individuals through gender roles based on a rigid, male/female binary construct; sex is restricted by a “logic of reproduction”. Sexuality is restricted to marriage, and those who pursue sexual activity outside the confines of a marriage, especially women, are vilified. Sexual issues are “privatised” to such an extent that discussion in the public sphere is discouraged. Sex education in public schools is virtually non-existent and only exists in a few private schools.’⁶⁶

5.2.8 The 2019 DFAT report stated that ‘According to local LGBTI sources, homosexual women face added difficulties in being open about their sexuality. Sources told DFAT that being a woman in Sri Lanka, as a patriarchal society, was challenging in itself, and the challenge of being a homosexual woman was greater still.’⁶⁷

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5.3 Societal norms- marriage

5.3.1 The IPID, report of December 2016 stated:

‘In Sri Lankan society, heterosexual marriage is the only norm while divorce and separation is discouraged, and family violence as well as partner violence is invisible. Given that this environment actively discourages female independence, especially sexual autonomy and gender difference, and limits women’s access to and exposure in the public sphere. The private space of the family is a primary locus of the control of women, and perhaps the most oppressive institution for them. For Lesbian, Bisexual and Transgender (LBT) persons, these circumstances are compounded by the fact that they have no other forms of support (for e.g. they may not be able to request help from friends and colleagues, and cannot approach religious communities or

⁶⁴ UK Home Office’s, ‘[Fact Finding Mission to Sri Lanka](#)’ (p. 51), 11 – 23 July 2016

⁶⁵ WPR, ‘[What’s at Stake for LGBT People as Sri Lanka Reforms Its Constitution](#)’, 1 August 2017

⁶⁶ Women and Media, ‘[Report](#)’ (pg 20-21), December 2017

⁶⁷ DFAT, ‘[Country Report](#)’, (3.152), 4 November 2019

government institutions such as the police and even women's sheltering services).⁶⁸

- 5.3.2 Equal Ground, in its shadow report to the CEDAW Committee, 2016, stated: 'Sri Lankan law does not protect LGBTI individuals from being forced into heterosexual marriages, and lesbian and bisexual women are often coerced into marriage, and threatened with violence or removal of their property if they refuse.'⁶⁹
- 5.3.3 Rosanna Flamer-Caldera, described in the Daily Mail (Sri Lanka) in January 2018, that results from a mapping study conducted by Equal Ground showed: 'Some respondents reported being forced to marry someone of the opposite sex even though they were not physically or emotionally attracted to them. The study reported that 27.2% of the LGB respondents were married. Sexual and physical abuse have also been reported over and over again, especially by lesbian and bisexual women in forced marriages.'⁷⁰
- 5.3.4 The 2019 DFAT report noted that 'Homosexual women are reportedly pressured into heterosexual marriage and face harassment in public, including on public transport.'⁷¹

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5.4 Pro LGBTI marches/gay pride

- 5.4.1 According to a 2019 article in Ceylon Today, 'Pride Month is celebrated in June... Equal Ground works very hard to provide for the needs of the community and each year, giving the LGBTIQ community of Sri Lanka the space to stand up tall and be proud of who and what they are. Pride in Sri Lanka is currently on a small scale... Pride celebrations take place as private, yet very public functions attended by persons from all over Sri Lanka.'⁷²
- 5.4.2 Details of Sri Lanka's annual Pride events can be found on the [Colombo Pride facebook page](#).

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Section 6 updated: 24 August 2020

6. Societal treatment, violence and discrimination

6.1 Overview

- 6.1.1 Reporting on the use of hate speech and hate campaigns, the Report of the Office of the United Nations High Commissioner for Human Rights on Sri Lanka, 10 February 2017, stated: 'Organizations working on LGBT rights have also reported threats and attacks on social media against groups and individuals on the basis of sexual orientation.'⁷³

⁶⁸ IPID, '[Rapid Situation Assessment of Transgender Persons in Sri Lanka](#)', December 2016

⁶⁹ OHCHR, '[Equal Ground – Human Rights Violations Against Lesbian and ...](#)', (p2), 2016

⁷⁰ Daily Mirror (Sri Lanka), '[Counting in LGBT](#)', 22 January 2018

⁷¹ DFAT, '[Country Report](#)', (3.152), 4 November 2019

⁷² Ceylon Today, '[Nothing but Pride](#)', 26 June 2019

⁷³ UNHRC, '[Report](#)', 10 February 2017

- 6.1.2 In 2019 Sinhala artist Iraj Weerarante released a video titled '[Mathinta Api UNP](#)' in which according to a report on the Sunday Morning news website Weerarante mocks the previous UNP Government and previous President Maithripala Sirisena by dressing in a women's wig and dress, which according to the report is: 'meant to be a crude depiction of the LGBTQ community.'⁷⁴
- 6.1.3 The 2019 DFAT report noted that:
- 'No legislation exists to protect LGBTI individuals from discrimination or hate crimes. According to local sources, LGBTI individuals are widely seen as "sexual deviants" and routinely experience discrimination and bullying in the workplace and the education and health care systems. Local LGBTI sources told DFAT that openly-gay couples face obstacles to securing housing and accommodation. As a result, many homosexual persons seek to conceal their sexual orientation.
- 'DFAT considers reports of violence in the home and public spaces to be credible and many LGBTI individuals – especially Muslims – hide their identity to avoid harassment
- 'Hate speech against the LGBTI community is common on social media, including against those who advocate for LGBTI rights. In 2016, critics, notably Sinha Le, published threatening comments on social media relating to the 12th Annual Gay Pride Festival and prevented Equal Ground from holding a promotional event at the Good Market in Colombo. Organisers cancelled some public events; police provided protection for participants at others. Authorities "misplaced" paperwork for one public event celebrating International Day Against Homophobia and Transphobia (IDAHOT) in 2016 and the event could not proceed.'⁷⁵
- 6.1.4 Human Rights Council's report on the visit to Sri Lanka of the Special Rapporteur on freedom of religion or belief, published in February 2020, noted that:
- 'Members of LGBT+ community also reported that religious teaching is a significant factor in the marginalization of the LGBT+ communities and leads to deep personal struggles for those who attempt to reconcile their religious identity with their sexuality. Often, the perspectives of LGBT+ and women are excluded from inter-religious dialogues and processes of reconciliation. Efforts for reconciliation, refracted through ethnic and religious lenses, without considering gendered impacts, are not inclusive.'⁷⁶

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6.2 Discrimination and violence against LGB persons

- 6.2.1 Outright International, following its study of interviewing 33 LBTs, published its findings in May 2016 and noted that:
- 'All LBT people interviewed for this study reported experiencing emotional violence.

⁷⁴ The Sunday Morning, '[Campaigning spills over to social media](#)', 20 October 2019

⁷⁵ DFAT, '[Country Report](#)', (3.149, 3.151 & 3.154), 4 November 2019

⁷⁶ HRC, '[Visit to Sri Lanka; Report of the Special Rapporteur on freedom of....](#)', 28 February 2020

'The ways that LBT individuals experience the harassment, humiliation, power and control associated with emotional violence were many.

'This violence primarily involved an invasion of privacy (more than three fourths, reported by 26 of the 33 respondents); non-verbal or silent contempt and hostility (more than half, reported by 19 of the respondents); and emotional manipulation (more than half, reported by 18 respondents). More than half, (18 respondents) reported experiencing restrictions on socializing, such as their phone calls and letters being monitored; having "curfews" imposed on them when their sexuality became suspect; being chaperoned when leaving the house; and being confined to the house due to their sexual orientation or gender identity. Approximately one third (13) had been forced to end their same-sex relationships, and one third (13) believed that their sexual orientation or gender identity was met with silent hostility or was invisibilized in one way or another (e.g., they were treated as if they were not in the room and/or were spoken about in the third person).

'Interviewees reported facing a high degree of peer teasing that often escalated into verbal harassment and bullying, in addition to intentional emotional abuse from peers, teachers, work colleagues, supervisors, friends and state actors.

'Verbal abuse, a specific means of belittling and demeaning someone through a barrage of insults, derogatory comments and hate speech, was a common experience across all age groups. Perpetrators of verbal abuse ranged from family members to neighbours, other members of the LGBT community, ex-partners, employers and prospective employers.'⁷⁷

6.2.2 Daily Mirror (Sri Lanka) online reported in 2018 that:

'According to a study conducted by the Equal Ground with responses from 470 individuals who identified as lesbian, gay, bisexual, heterosexual and transgender, the majority of these LGBT persons face stigma and discrimination in government services including education and healthcare.

'Some have also been physically attacked and verbally abused in public because of their sexual orientation and/or gender identity/expression. Stigma is deep-rooted and even though numbers being just a few, some LGBT persons themselves feel that they are mentally ill (8.7%) and/or abnormal (3.3%) because they associate themselves with the LGBT identity. However, even though the law criminalizes consenting sexual relations between members of the same sex in Sri Lanka, no LGBT person believes he or she should be punished by the law because of sexual orientation.'⁷⁸

6.2.3 The February 2019 report by the Office of the United Nations High Commissioner for Human Rights (UNHCHR) provided the following overview covering October 2015 to January 2019: 'The High Commissioner is deeply concerned at the aggravation of intercommunal tensions, in particular at several attacks conducted by militant Buddhist groups targeting cultural,

⁷⁷ Outright International, '[Violence: Through the lens of LBT people](#)' (pp. 14/15), 6 May 2016

⁷⁸ Daily Mirror online, '[Removing barriers for LGBT + people in Sri Lanka](#)', 6 July 2018

religious (including the Muslim community and evangelical Christians) or sexual minorities [...].'⁷⁹

6.2.4 The November 2019 DFAT report noted that:

'According to local sources, the LGBTI community faces threats, harassment and forced heterosexual marriage from family and members of the community. Some middle and upper class, educated, and urban Sri Lankans are open about their sexuality within their family and community circles; however, risks are higher for lesbian and bisexual rural women due to more traditional familial expectations and values. ...

'...Local sources told DFAT that hostility toward LGBTI individuals was 'across the board' and was not confined to a particular ethnic group or geographic area. Colombo (Western Province), Kandy (Central Province) and Galle (Southern Province) are considered more tolerant of sexual orientation relative to other parts of Sri Lanka. Some LGBTI individuals have chosen to relocate to these centres, which have larger LGBTI communities and support networks.'⁸⁰

6.2.5 Equal Ground noted in their January 2020 publication 'My Rights, My Responsibility' that: 'Most gay and lesbian individuals face violence and harassment at the hands of their family and spouses. There have been many reports of LGBTIQ individuals – especially lesbians – being coerced to enter into a marriage by their parents, often resulting in them being abused by their spouses.'⁸¹

6.2.6 Gay Star News reported on 18 May 2020 about research conducted by Kaleidoscope Trust, which drew on LGBT+ organisations across 37 countries. The report noted that: 'By speaking to 34 LGBT+ charities working in those countries, it found that 85% were worried about their service users' wellbeing...The report also uses examples from Kiribati and Sri Lanka where LGBT+ people are 'in lockdown with relatives who discriminate against and stigmatise them'. This is a 'threat to their mental and physical health''⁸²

6.2.7 INFORM issued a report on 'Repression of Dissent in Sri Lanka' which covered 'before and during curfew 1st February 2020 - 30th April 2020' which recorded that 'there were hate speech campaigns online targeting LGBTIQ community and at least one LGBTIQ activist and several individual LGBTIQ persons.'⁸³

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6.3 Discrimination and violence against transgender individuals

6.3.1 The 2019 DFAT report noted that: 'Transgender individuals are more likely to experience discrimination. Employers are reluctant to hire transgender individuals, and DFAT heard accounts of transgender individuals being

⁷⁹ UNHCHR, '[Report of the Office of the UN High Commissioner for HR](#)', 8 February 2019

⁸⁰ DFAT, '[Country Report](#)' (paras 3.147, 3.151 and 3.156), 4 November 2019

⁸¹ Equal Ground, '[My Rights, My Responsibility](#)', 7 January 2020

⁸² Gay Star News, '[Coronavirus causing a humanitarian crisis for people...](#)', 18 May 2020

⁸³ INFORM, '[Repression of Dissent in Sri Lanka: Before and during COVID19...](#)', 30 May 2020

dismissed from their jobs due to their sexual orientation and gender identity.’⁸⁴

- 6.3.2 According to the 2019 USSD report ‘Transgender persons continued to face societal discrimination... mistreatment, and discrimination accessing employment, housing, and health care.’⁸⁵

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6.4 Discrimination and violence against intersex individuals

- 6.4.1 CPIT was unable in the sources consulted to find information on discrimination and violence of intersex persons in Sri Lanka (see [Bibliography](#)).

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6.5 Conversion therapy

- 6.5.1 Roar media, a services news platform covering South Asia, reported in April 2019 that:

‘Conversion therapy—or programmes designed to “convert” people in the LGBTIQ spectrum—is widely practised in Sri Lanka, by both medical and religious institutions. Since homosexuality is illegal in the country, the practitioners of conversion therapy are allowed to operate freely and without question...

“Many parents will take their child’s behaviour as an indication of being gay, and seek out advice from professionals on how to ‘undo’ it when their child is still young” said Thushara Manoj, Senior Manager for advocacy at the Family Planning Association. “Usually, before they take their children for treatment, a parent will go to a therapist themselves. The first thing they’re advised to do is cut off their child from social media, from their phones, and to monitor their communications.”

‘According to Manoj, this is especially likely to happen to young boys who behave in an effeminate manner. In some cases, parents perceive their child’s homosexual “behaviours” as externally influenced, and are told to cut off their child’s communication with the friends they believe are responsible. They are also advised to remove posters of anyone of the same sex that the child may have in his or her personal space, and replace them with posters of people of the opposite sex...

‘Many private hospitals also have psychiatrists who administer hypnotic and shock therapies on their patients to “counter” homosexuality...

‘These forms of malpractice are not solely relegated to the field of Western medicine. Many ayurvedic doctors offer their own forms of conversion therapy as well, and are often very open about providing it. Ads are often posted in the newspapers, with claims that they are able to ‘fix’ homosexual tendencies in children.’⁸⁶

⁸⁴ DFAT, ‘[Country Report](#)’, (3.150), 4 November 2019

⁸⁵ USSD, ‘[2019 Country Report](#)’, 11 March 2020

⁸⁶ Roar Media, ‘[Homosexuality Is Wrong!': The Chilling Reality of Conversion...](#)’, 11 April 2019

- 6.5.2 CPIT were unable to find any sources which state that conversion therapy is forced on individuals by the state (see [Bibliography](#)).

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Section 7 updated: 17 August 2020

7. Access to services

7.1 Healthcare

- 7.1.1 The IPID report on the Situation of Transgender Persons in Sri Lanka published in December 2016 stated that ‘As the existence of transgendered persons in Sri Lankan society is not taken into consideration in designing healthcare, there is a lack of information on services such as sex reassignment operations by public health providers. In Sri Lanka, health services are provided by public hospitals free of charge or at subsidized rates. However, services on sex reassignment are not made available in these hospitals.’⁸⁷

- 7.1.2 The Women and Media Collective Shadow Report, Discrimination of Lesbians, Bisexual Women and Transgender Persons in Sri Lanka, presented to the 66th Session of CEDAW 13 February – 3 March 2017, observed:

‘While the basic health needs of LGBT people and the general population are the same, their sexual orientation and gender identity and expression is a barrier to LGBT individuals accessing health related entitlements. LBT women in Sri Lanka continue to face challenges in exercising their basic right of access to health care, including reproductive health and avoid or delay receiving health care or receive inappropriate or inferior care in general and health care settings. The high visibility of LGBT persons in HIV prevention intervention programmes is considered to pose a barrier to recognizing their need for services for general and reproductive health problems as for the general population.’⁸⁸

- 7.1.3 Further adding:

‘Members of the transgender community report complete disregard and lack of concern for protecting the confidential details of their medical histories by State run healthcare facilities. Information has been shared with non-medical hospital personnel such as cleaners and security staff. Some transgender persons report intimidation and harassment by hospital staff. 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. Transmen (female to male) are often left out of HIV awareness

⁸⁷ IPID, ‘[Rapid Situation Assessment of Transgender Persons in Sri Lanka](#)’, December 2016

⁸⁸ Women and Media Collective, ‘[Report](#)’, (p9) 13 February – 03 March 2017

programmes since often only transwomen are categorised as men having sex with men by HIV service providers.’⁸⁹

7.1.4 Human Rights Watch reported in September 2019 that: ‘Some lesbian, gay, bisexual, and transgender (LGBT) people – particularly those who are visibly gender non-conforming – face ... discrimination in accessing health care, employment, and housing.’⁹⁰

7.1.5 In the November 2019 report DFAT noted that:

‘Transgender individuals are also more likely to encounter obstacles gaining access to basic services that require identity documents. In 2016, the Ministry of Health established a Gender Recognition Certificate, which allows an individual to change their legal gender and amend government-issued identity documents, including NICs. This is a long and complex process; according to the International Lesbian, Gay, Bisexual, Trans and Intersex Association, one must undergo psychiatric evaluation by a medical professional, receive a diagnosis of “trans-sexualism” based on the International Classification of Disease, and undergo hormone and surgical treatment before being issued a Gender Recognition Certificate. A Gender Recognition Certificate is available only to individuals 18 years or older. Hormone treatment and gender reassignment surgery services are scarce and expensive. Local sources have identified the Kalubowila government hospital near Colombo as a transgender-friendly hospital; it conducted the first sex reassignment surgery in Sri Lanka in 2017.’⁹¹

7.1.6 For more information on access to healthcare for LGBTI persons see also the Country Policy and Information Note on [Sri Lanka: Medical treatment and healthcare](#)

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7.2 Documentation

7.2.1 According to Bertelsmann Stiftung however, in its Transformation Index (BTI) 2020 Country Report Sri Lanka, there is little evidence that the procedure to change someone’s gender on their documents is in use⁹².

7.2.2 A European Parliament report on the 2019 Presidential election published in January 2020 noted that:

‘The LGBT community is still stigmatised by criminalisation. The Ministry of health issued a circular in 2016 aimed at enabling transgender persons to change their birth certificate, a document key to obtaining identity and other legal documents. However, the certificate is only available to persons who are commencing medical transition procedures. The formalisation of transgender status through law and procedures for changed ID cards remain unclear, thereby creating obstacles to voting rights and protection from discrimination.’⁹³

⁸⁹ Women and Media Collective, [‘Report’](#), (pg10)13 February – 03 March 2017

⁹⁰ HRW, [‘Country Profiles: Sexual Orientation and Gender Identity, Sri Lanka’](#), 23 September 2019

⁹¹ DFAT, [‘Country Report’](#), (3.150), 4 November 2019

⁹² Bertelsmann Stiftung, [‘BTI 2020 Country Report Sri Lanka’](#), (p10), 29 April 2020

⁹³ European Parliament, [‘Final Report Presidential election- 16 November 2019’](#), January 2020

7.3 Employment

- 7.3.1 A 2014 report by Kaleidoscope, noted: 'Discrimination, among other things, limits access to employment, housing and health services. There have been reports of LGBTI individuals being fired from jobs, refused accommodation or forced to leave, because of their real or perceived sexual orientation or gender identity.'⁹⁴
- 7.3.2 At an European Union sponsored business roundtable on the 'challenges and benefits of the diversity in the workplace' at the Taj Samudra on 14 June 2017, with Equal Ground spearheading the event, the EU Delegation in Colombo, said that: "Evidence was provided to establish the existence of discrimination of employees on the basis of sexual orientation and gender identity, and, the economic costs, such as lower productivity, increased-employee absenteeism and employee turnover to underscore the importance of an open and accepting corporate culture."⁹⁵
- 7.3.3 Amnesty International noted in a report dated 7 December 2019, discussing the release of a comic book detailing the experiences of four LGBTI people, that: 'Societal taboo has been punishing for LGBTI individuals when it comes to their jobs, homes and schools – compromising their ability to access services that are central to realizing their human rights.'⁹⁶
- 7.3.4 Equal Ground noted in their January 2020 publication 'My Rights, My Responsibility' that: 'Prejudices and discrimination based on sexual orientation or gender identity and/or expression often lead to individuals of the LGBTIQ community failing to find suitable employment or remain unemployed due to harassment at workplaces.'⁹⁷

Section 8 updated: 17 August 2020

8. LGBT groups, civil society and human rights NGO's

8.1 LGBTI community and activists

- 8.1.1 The Women's Support Group (WSG), a Colombo-based non- governmental organization (NGO) provided support for lesbians, bisexual women and transgender people⁹⁸.
- 8.1.2 Equal Ground, founded in 2004, are an organisation based in Sri Lanka who fight for the equal rights for the LGBTIQ community. Information on their work can be found on their website <https://www.equal-ground.org/>.
- 8.1.3 Reporting on the use of hate speech and hate campaigns, the Report of the Office of the United Nations High Commissioner for Human Rights on Sri Lanka, 10 February 2017, stated: 'Organizations working on LGBT rights

⁹⁴ Kaleidoscope, '[Report](#)' (p. 4), September 2014

⁹⁵ The Island, '[SL urged to repeal laws against lesbians...](#)', 15 June 2017

⁹⁶ Amnesty International, '[Sri Lanka: End discrimination against LGBTI people](#)', 7 December 2019

⁹⁷ Equal Ground, '[My Rights, My Responsibility](#)', 7 January 2020

⁹⁸ The International Gay and Lesbian Human Rights Commission, '[Report](#)', 2014

have also reported threats and attacks on social media against groups and individuals on the basis of sexual orientation.’⁹⁹

- 8.1.4 Human Rights Watch, in their World Report 2020, noted that the UN special rapporteur on freedom of peaceful assembly and association reported in 2019 ‘concerns that, particularly in the north and the east, associations proposing to work on subjects including LGBTI rights, disappearances, land rights, and post-conflict reconciliation, were denied registration, and were subject to surveillance and intimidation. Activists said that these problems increased after the Easter Sunday attacks.’¹⁰⁰
- 8.1.5 The DFAT report noted in November 2019 that ‘The LGBTI activist community is small but increasingly assertive; in November 2018, members held a press conference to protest remarks perceived as derogatory toward LGBTI individuals made by President Sirisena during a government rally in Colombo.’¹⁰¹

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8.2 Government recognition and restrictions

- 8.2.1 A report for the UN Committee on Economic, Social and Cultural Rights regarding violations against LGBTIQ people compiled by Equal Ground and the Center for International Human Rights (CIHR), dated May 2017, stated:

‘Equal Ground, as an organization working for the LGBTIQ community, has faced discrimination when seeking approval for events from public authorities and the police. For instance, Police permission to hold a public vigil in commemoration of the victims of homophobia, biphobia and transphobia for the International Day Against Homophobia, Biphobia and Transphobia (IDAHOT) in 2016, was withheld with no explanation for such actions. Attempts to sensitize the Police on a national level have been refused, on the grounds of LGBTIQ issues being a ‘non-issue’ to the Sri Lanka Police.

‘It is interesting to note also that any attempts made by EQUAL GROUND to engage with government authorities are either ignored, or are responded to by the authorities only via indirect, informal avenues of communication, even in instances where other civil society organizations are acknowledged or contacted directly. This highlights a “non-recognition issue” whereby the LGBTIQ community is not recognized as a minority with legitimate problems in Sri Lanka, resulting in the community being excluded from policy consultations. This, in turn, leads to discrimination and exclusion from the enjoyment of economic and social rights enjoyed by other citizens.’¹⁰²

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⁹⁹ UNHRC, ‘[Report](#)’, 10 February 2017

¹⁰⁰ HRW, ‘[World Report 2020](#)’, 14 January 2020

¹⁰¹ DFAT, ‘[Country Report](#)’, (3.153), 4 November 2019

¹⁰² Equal Ground, ‘[Report](#)’ (p. 8), May 2017

8.3 LGBTI 'community and society'

- 8.3.1 The Women and Media Collective report 'Disrupting the Binary Code: Experiences of LGBT Sri Lankans Online' published in December 2017 noted that:

'Meeting each other has always been difficult for Sri Lankan LGBTQ people, and continues to be so even today. Rampant stigma and discrimination, and the associated fears of exposure, exclusion, and harm, deter many LGBTQ Sri Lankans from publicly seeking out the company and friendship of others who think and feel like them. The lack of tolerant, safe spaces to meet and socialise with each other exacerbates this issue; public spaces are heavily policed for "decency" in Sri Lanka, even for heterosexual couples, but unlike for them, people perceived to be "homosexual" face the possibility of arrest, or at least extortion under threat of arrest. Such prohibitive realities force many LGBTQ people to navigate public spaces with extreme care, exerting an adverse effect on their willingness and ability to seek out friendships and relationships with other members of the LGBTQ community.'¹⁰³

- 8.3.2 In an interview with Nomadic Boys, a gay travel blog, an author based in Colombo stated in June 2020 that 'Whilst there are no official gay bars or clubs in Sri Lanka, unofficial underground events take place from time to time.'¹⁰⁴

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8.4 LGBTI websites and online access

- 8.4.1 The study by Women and Media Collective, published in December 2017, found:

'[A] number of unofficial yet Sri Lanka-specific sources of information, such as (for example) the Sakhi Collaboration, "Accept – Sri Lanka", and Equal Ground, are available online. While Sakhi and Accept operate on Facebook, Equal Ground maintains its own website in addition to its social media presence. Sakhi operates through a personal profile on Facebook, sharing informative posters on LGBTQ issues, circulating local and international news on the topic, critiquing mainstream media handling of LGBTQ-related news, as well as creating informational content, such as a condom-use demonstration through photos offered in all three languages. Unlike Sakhi, Accept operates through a "page", allowing any Facebook user to view its content without sharing their own profiles' content with the platform. Its main project seems to be an outreach campaign, featuring LGBTQ supportive quotes from well-known Sri Lankan personalities, such as actors, novelists and human rights activists. The page also features "memes" incorporating Sri Lankan current affairs, designed in a manner to promote LGBTQ rights and to challenge established notions of "cultural" values in the country. The page also circulates local and international news postings. Unlike Sakhi and Accept, which are both operated by voluntary "admins" working in their personal capacities, Equal Ground's platforms are run by a non-governmental organisation by the same name, featuring a number of research publications, periodicals, and advocacy materials, most of it being

¹⁰³ Women and Media, '[Report](#)' (pg 46), December 2017

¹⁰⁴ Nomadic Boys, '[Gay life in Sri Lanka: interview with local boy Kaluu from...](#)', 1 June 2020

available in all three languages. A key limitation of the website is that most documents may only be opened through a third-party platform (www.issuu.com), on which both navigation and downloading of documents are significantly restricted.¹⁰⁵

- 8.4.2 Further noting: ‘Self-censorship extends to the creation and use of anonymous profiles. An important phenomenon among LGBTQ Sri Lankans is the widespread use of anonymous and pseudonymous profiles to navigate stigma and discrimination on social media.’¹⁰⁶

- 8.4.3 Adding:

‘In Sri Lanka, and within the LGBTQ community, social media platforms such as Facebook loom large. The ability to share content and socialise online, the ability to carry on private conversations away from the wider online community, the ease with which new connections can be made, and the considerably large network of anonymous LGBTQ profiles that exist on Facebook, mean that such social media platforms provide a convenient and (mostly) safe alternative to the risks of socialising and seeking partners in the physical world, which is remarkably hostile to sexuality and gender minorities.

‘In addition to social media platforms, however, applications specifically designed for “dating” and “hooking up” have also emerged, combining geo-positioning technology with photo-sharing and instant messaging technologies, allowing individuals to meet each other based on a combination of their preferences and their physical proximity to each other. While most such platforms exist for people of all sexual orientations and gender identities, platforms specifically targeting LGBTQ people also exist. These platforms, especially in a context where LGBTQ Sri Lankans do not have access to public spaces in the physical world as social and sexual beings, have proved to be useful in multiple ways.’¹⁰⁷

- 8.4.4 An online article published by Kajal magazine in March 2018, reported: ‘Private Facebook groups are key sites for safe discussion and organising. Vocal LGBTQ activists reported that they are regularly contacted via social media for information, such as for details of gay friendly health clinics or local meet ups.’¹⁰⁸

- 8.4.5 Commenting on a 2018 study into internet use, ‘Disrupting the Binary Code: Experiences of LGBT Sri Lankans Online’, produced by Sri Lanka’s Women and Media Collective as part of a project by the EROTICS South Asia Network, Kajal, noted:

‘Many Sri Lankan LGBTQ individuals self-censor. 25 percent of respondents have more than one internet profile for reasons related to sexual orientation or gender identity. “Fake” profiles used to meet lovers online without revealing identifying details were common, as were “fake” profiles

¹⁰⁵ Women and Media, [‘Report’](#) (pg 36), December 2017

¹⁰⁶ Women and Media, [‘Report’](#) (pg 42), December 2017

¹⁰⁷ Women and Media, [‘Report’](#) (pg 48-49), December 2017

¹⁰⁸ Kajal, [‘New Study Recommends How to Keep LGBTQ Sri Lankans Safe...’](#), 1 March 2018

with staged heterosexual content for the benefit of colleagues and conservative family members...

'Worryingly, Sri Lanka's state surveillance laws, which allow the government to demand private information from Internet Service Providers (ISPs), are unclear and difficult to access. Respondents showed a low level of understanding around internet security and safety, highlighting the need for community education initiatives.'¹⁰⁹

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¹⁰⁹ Kajal, '[New Study Recommends How to Keep LGBTQ Sri Lankans Safe...](#)', 1 March 2018

Annex A

Letter dated 27 August 2018 from the British High Commission in Colombo regarding the situation for lesbian, gay, bisexual, transgender and intersex persons in Sri Lanka.



British
High Commission
Colombo

27 August 2018

Country Policy and Information Team
Home Office



Migration
389, Bauddhaloka Mawatha
Colombo

Sri Lanka



Dear Colleagues,

Re: Lesbian, gay, bisexual, transgender and intersex persons (LGBTI) in Sri Lanka

1. This letter is to provide an update on the subject of LGBTI further to the Country Policy and Information note dated July 2017.
2. In 2017 Equal Ground (EG) published their study 'Mapping LGBT in Colombo, Kandy, Matara, Nuwara Eliya' which accompanies this letter. EG have suffered harassment for organising events that promote the rights of and are attended by LGBT people in Sri Lanka in the past. This has caused concerns about safety, but has mostly been in the form of online threats as opposed to direct confrontation.
3. There remains significant social exclusion for being LGBT which is perpetuated by stigma, cultural taboos and conservative, traditional and religious attitudes. The media has also been known to publish articles which are factually inaccurate and insensitive to LGBT people, fuelling negative public perceptions.
4. However, there are some improvements. Individuals are now able to have their change of gender recognised. A Gender Recognition Certificate (GRC) can be applied for which then enables the issuance

of a new passport and National Identity Card. The British High Commission, Colombo, met someone who has gone through this process and who advised that it was handled in a relatively short period of time. The only drawback is that the new passport carries an 'endorsement' that states that the bearer is a transgender person whose previous passport was issued under such name and such gender marker.

5. Further to criticism by the United Nations in November 2017 in their Universal Periodic Review concerning the criminalisation of homosexuality, the Government of Sri Lanka responded by announcing homosexuality will now be decriminalized:

"The government is committed to ensuring that no provision in the law would be applied to persons of the LGBTIQ community in a discriminatory manner, " said Nerin Pulle, Sri Lanka's Deputy Solicitor General. "Despite social, political and cultural challenges that remain with respect to reforming law, Sri Lanka remains committed to law reform and guaranteeing non-discrimination on the grounds of sexual orientation and gender identity. "

6. As reported in the Foreign Office travel advice, same-sex relations are illegal but the FCO is not aware of any prosecutions. There have been no reports of those identifying as LGBT having their homes/hotel rooms raided by police.
7. Negombo and Mount Lavinia are popular towns for LGBT persons to meet socially. In particular, the community meet at Equal Ground office, and some privately owned places. The addresses of these places are not publicly available because of the security reasons. Beside these places, there are no Gay/Lesbian clubs or community centers in Sri Lanka for the LGBT community to meet.

Should you have any questions please feel free to contact us.

Yours faithfully,

XXXXXXXXXXXXXXXXXXXXXXX

British High Commission Colombo

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Terms of Reference

A 'Terms of Reference' (ToR) is a broad outline of what the CPIN seeks to cover. They form the basis for the [country information section](#). The Home Office's Country Policy and Information Team uses some standardised ToRs, depending on the subject, and these are then adapted depending on the country concerned.

For this particular CPIN, the following topics were identified prior to drafting as relevant and on which research was undertaken:

- Legal context
 - Statutory laws
 - Transgender persons
- State attitudes and treatment
 - Implementation and enforcement of the law
 - Arrests and detention
 - Official discrimination and harassment
 - Official response of anti-LGBT violence
 - Official views on sexual orientation and gender
- Societal norms
 - Overview
 - Societal norms- gender and sexual identity
 - Societal norms- marriage
 - Pro LGBT marches/gay pride
- Societal treatment, violence and discrimination
 - Overview
 - Discrimination and violence against lgb persons
 - Discrimination and violence against transgender persons
- Access to services
 - Overview
 - Healthcare
 - Employment
- LGBT groups, civil society and human rights NGO's
 - LGBT community and activists
 - Government recognition and restrictions

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Version control

Clearance

Below is information on when this note was cleared:

- version **4.0**
- valid from **29 September 2020**

Changes from last version of this note

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