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**Human Rights Violations against Lesbian and Bisexual
Women in Sri Lanka: A Shadow Report**

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July 2016)**

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1. INTRODUCTION

- 1.1 This is a submission made by EQUAL GROUND to the Committee on the Elimination of Discrimination against Women (the "**Committee**").
- 1.2 EQUAL GROUND is a non-profit organisation based in Colombo, Sri Lanka. The organisation advocates for political and social rights for lesbian, gay, bisexual, transgender and intersex ("**LGBTI**") people.
- 1.3 Sexual acts between same-sex individuals remain a criminal offence under sections 365 and 365A of the Sri Lankan Penal Code (as amended by the Penal Code (Amendment) Act, No. 22 of 1995) (the "**Code**").¹ The consequence of this is that these individuals do not have legal recognition and their rights are not protected. Sri Lanka does not provide adequately support to these individuals and there continue to be reports of arbitrary arrests by police, violence, and discrimination directed towards lesbians and bisexual women within Sri Lanka.
- 1.4 This report has been prepared to inform the Committee of areas of concern with respect to Sri Lanka's obligations under the Convention on the Elimination of All Forms of Discrimination against Women (the "**Treaty**") to respect the rights of lesbians and bisexual women.
- 1.5 We respectfully ask the Committee to consider these areas and to highlight them in the List of Issues for the upcoming review of Sri Lanka's compliance with its Treaty obligations.

¹ Sri Lanka: Penal Code, sections 365 and 365A, available at <http://www.refworld.org/docid/4c03e2af2.html>

2. THE COMMITTEE'S STATEMENTS ON THE PROTECTION OF LESBIANS AND BISEXUAL WOMEN

- 2.1 The purpose of the Treaty is to eliminate discrimination against women, and almost every substantive article of the Treaty confirms this. It is argued that the principle of non-discrimination against women extends to the discrimination of lesbian and bisexual women on the basis of their sexuality.
- 2.2 This contention is supported by the fact that the Committee has previously applied the Treaty so as to provide protection for women who are discriminated against because of their sexuality.² In 2011 the Committee's Concluding Observations made to Sri Lanka during its forty-eighth session stated that the Committee was concerned about the lack of protection for lesbians and bisexual women in Sri Lanka:

"The Committee is further concerned that the criminalization of same-sex relationship results in women being completely excluded from legal protection. It is also concerned about the information that the law enforcement officers are allowed to arbitrarily detain them".³

The Committee recommended that Sri Lanka should *"decriminalise sexual relationships between consenting adults of same sex, and abide by the obligation of non-discrimination under the Convention".⁴*

- 2.3 The Committee has previously confirmed the importance of the decriminalisation of consensual same-sex intimacy between women in relation to other countries⁵, while in 2015, in its 33rd General Recommendation, the Committee stated that:

"Discrimination against women, based on gender stereotypes, stigma, harmful and patriarchal cultural norms and gender-based violence, which affects women in particular, has an adverse impact on the ability of women to gain access to justice on an equal basis with men. In addition, discrimination against women is compounded by intersecting factors that affect some women to degrees or in ways that differ from those affecting men or other women. Grounds for intersecting or compounded discrimination may include ... identity as a lesbian, bisexual or transgender woman or intersex person. These intersecting factors make it more difficult for women from those groups to gain access to justice."⁶

² CO Netherlands, CEDAW/C/NLD/CO/5 (2010), paragraph 25; CO Panama, CEDAW/C/PAN/CO/7 (2010), paragraphs 22-23; CO Albania, CEDAW/C/ALB/CO/3 (2010), paragraph 19 and 43; CO Russia, CEDAW/C/USR/CO/7 (2010), paragraph 41; CO Uganda, CEDAW/C/UGA/CO/7 (2010), paragraph 44; CO South Africa, CEDAW/C/ZAF/CO/4 (2011), paragraph 40; CO Costa Rica, CEDAW/C/CRI/CO/5-6 (2011), paragraph 41; CO South Korea, CEDAW/C/CRI/CO/5-6 (2011), paragraph 15; CO Paraguay, CEDAW/C/PRY/CO/6 (2011), paragraphs 12-13; CO Zimbabwe, CEDAW/C/ZWE/CO/2-5 (2012), paragraph 24; CO Norway, CEDAW/C/NOR/CO/8 (2012), paragraphs 33, 34 and 36; CO Chile, CEDAW/C/CHL/CO/5-6 (2012), paragraph 16; CO Macedonia (The Former Republic Of), CEDAW/C/MDK/CO/4-5 (2013), paragraphs 10 and 11; CO Dominican Republic, CEDAW/C/DOM/CO/6-7 (2013), paragraphs 36 and 37; CO Serbia, CEDAW/C/SRB/CO/2-3 (2013), paragraphs 16, 20 and 21; CO Colombia, CEDAW/C/COL/CO/7-8 (2013), paragraphs 35 and 36.

³ Committee on the Elimination of Discrimination against Women, "Concluding observations of the Committee on the Elimination of Discrimination against Women", CEDAW/C/LKA/CO/7 (2011), paragraph 24, available at

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fLKA%2fCO%2f7&Lang=en

⁴ Committee on the Elimination of Discrimination against Women, "Concluding observations of the Committee on the Elimination of Discrimination against Women", CEDAW/C/LKA/CO/7 (2011), paragraph 25, available at

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fLKA%2fCO%2f7&Lang=en

⁵ CO Kyrgyzstan, A/53/38 (1999), paragraphs 127-8; CO Uganda, CEDAW/C/UGA/CO/7 (2010), paragraph 44; CO Sri Lanka, CEDAW/C/LKA/CO/7 (2011), paragraph 25; CO Cameroon, CEDAW/C/CMR/CO/4-5 (2014), paragraphs 36-37

⁶ General Recommendation, No. 33 on women's access to justice, CEDAW/C/GC/33 (2015), paragraph 8, available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/GC/33&Lang=en

- 2.4 Similarly, in relation to Sri Lanka, the Committee has identified the detrimental nature of gender stereotypes and its link to discriminatory practices, and has urged Sri Lanka to implement comprehensive strategies to end stereotyping and resulting discrimination.⁷
- 2.5 This growing trend is particularly relevant to Sri Lanka in light of the ongoing violations of the human rights of LGBTI individuals in the country, as detailed below. It is imperative that the Sri Lankan Government addresses these issues in order to comply with both the spirit and substance of the Treaty. When preparing the List of Issues for Sri Lanka, EQUAL GROUND would ask that the Committee considers this report alongside its previous comments related to LGBTI legislation, and highlights the need to protect these vulnerable individuals in the face of the discriminatory legislation and practices described in this report.

3. THE CRIMINALISATION OF CONSENSUAL SAME-SEX INTIMACY BETWEEN WOMEN IN SRI LANKA

- 3.1 Sexual acts between members of the same sex remain illegal in Sri Lanka under sections 365 and 365A of the Code.⁸ These laws have been increasingly used to persecute individuals on grounds of their real or perceived sexual orientation and expression.⁹
- 3.2 Section 365 of the Code makes it a criminal offence to "*engage in carnal intercourse against the order of nature*".¹⁰ The penalty for this offence is up to ten years' imprisonment and a fine.¹¹ "*Carnal intercourse against the order of nature*" is widely understood to apply to sexual acts between same-sex individuals.¹²
- 3.3 Section 365A of the Code criminalises "*any person who, in public or private, commits, or is 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*".¹³ This goes as far as to criminalise consensual same-sex activity in private spaces. Previously, section 365A had targeted sexual conduct between homosexual men. However, the 1995 amendment of the Code substituted the words "*male person*" to the gender-neutral "*person*", thereby bringing sexual activity between women under its purview.
- 3.4 Although "*gross indecency*" is not defined by the laws or any Sri Lankan court decision, the current law embodies the same spirit as its predecessor and is commonly understood to target all homosexual conduct.¹⁴ According to Women's Support Group titled "*Not Gonna Take it Lying Down: Experiences of Violence and Discrimination as Told by LBT Persons in Sri Lanka*", where "...political and other public leaders routinely direct hostile remarks at LGBT

⁷Committee on the Elimination of Discrimination against Women, "Concluding observations of the Committee on the Elimination of Discrimination against Women", CEDAW/C/LKA/CO/7 (2011), paragraphs 22-23, available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fLKA%2fCO%2f7&Lang=en

⁸ International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA), "State-Sponsored Homophobia: A World Survey of Laws: Criminalisation, Protection and recognition of same-sex love", May 2015, Aengus Carroll and Lucas Paoli Itaborahy., (2015), page 82, available at http://old.ilga.org/Statehomophobia/ILGA_State_Sponsored_Homophobia_2015.pdf

⁹ EQUAL GROUND, "Human Rights Violations Against Lesbian, Gay, Bisexual and Transgender (LGBT) People in Sri Lanka: A Shadow Report", (2014), page 2, available at http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/LKA/INT_CCPR_ICO_LKA_15986_E.pdf

¹⁰ Sri Lanka: Penal Code, section 365, available at http://www1.umn.edu/humanrts/research/srilanka/statutes/Penal_Code.pdf

¹¹ Sri Lanka: Penal Code, section 365, available at http://www1.umn.edu/humanrts/research/srilanka/statutes/Penal_Code.pdf

¹² EQUAL GROUND, "Human Rights Violations Against Lesbian, Gay, Bisexual and Transgender (LGBT) People in Sri Lanka: A Shadow Report", (2014), page 2, available at http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/LKA/INT_CCPR_ICO_LKA_15986_E.pdf

¹³ Sri Lanka: Penal Code, section 365A, available at http://www1.umn.edu/humanrts/research/srilanka/statutes/Penal_Code.pdf

¹⁴ Pink News, "Former Commonwealth Head of Human Rights condemns Sri Lanka over gay harassment", 23 September 2013, available at [http://www.pinknews.co.uk/2013/09/23/former-commonwealth-head-of-human-rights-condemns-sri-lanka-over-gay-harassment/..](http://www.pinknews.co.uk/2013/09/23/former-commonwealth-head-of-human-rights-condemns-sri-lanka-over-gay-harassment/)

communities, it is likely that 'gross indecency' is associated with same-sex relations in the public imagination."¹⁵

- 3.5 In 2014, there had been no convictions under either section 365 or 365A of the Code since Sri Lanka gained independence in 1948.¹⁶ However, regardless of whether these laws are enforced, they have the effect of perpetuating and legitimising discrimination of, and violence against, lesbians and bisexual women in Sri Lanka.
- 3.6 Such provisions pave the way for police and anti-gay groups to brand all persons who engage in non-heterosexual behaviour or practice as 'perverts' and criminals.¹⁷ Fear of being apprehended and identified as a lesbian or bisexual woman leads to a cycle of silence, thus making such women vulnerable to a range of abuses, as further detailed below.¹⁸
- 3.7 In the 1978 Constitution of Sri Lanka, the principle of non-discrimination is enshrined at Article 12 which states that "*all persons are equal before the law and are entitled to the equal protection of the law*" and "*no citizen shall be discriminated against on the grounds of race, religion, language, caste, sex, political opinion, place of birth or any one of such grounds*".¹⁹
- 3.8 While this Article does not explicitly protect persons from discrimination on the basis of sexual orientation, at the United Nations Human Rights Committee on 7-8 October 2014 in Geneva during a review of its record on civil and political rights, the Government of Sri Lanka repeatedly stated that LGBTI persons in Sri Lanka are constitutionally protected from discrimination, under Article 12.²⁰
- 3.9 The protection afforded by legislation is only as effective as its enforcement mechanism. Despite the aforementioned provisions in the Constitution and the assurances provided by the Sri Lankan Government, this report demonstrates beyond doubt that systematic discrimination against lesbian and bisexual women is present in Sri Lanka. According to OutRight Action International (formerly known as the International Gay and Lesbian Human Rights Commission), "*the Sri Lankan Constitution's lack of specific anti-discrimination language on sexual orientation and gender identity places LGBT people at a disadvantage in accessing rights, protections and legal guarantees*".²¹

4. VIOLATIONS OF THE TREATY

¹⁵Women's Support Group, "Not Gonna Take it Lying Down: Experiences of Violence and Discrimination as Told by LBT Persons in Sri Lanka", (2014), page 31, available at: <https://www.outrightinternational.org/sites/default/files/SriLankaCC.pdf>

¹⁶US Department of State, Bureau of Democracy, Human Rights and Labor, "Country Reports on Human Rights Practices for 2015: Sri Lanka", available at <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2015&dliid=252975>

¹⁷Women's Support Group, "Not Gonna Take it Lying Down: Experiences of Violence and Discrimination as Told by LBT Persons in Sri Lanka", (2014), page 31, available at: <https://www.outrightinternational.org/sites/default/files/SriLankaCC.pdf>

¹⁸Women's Support Group, "Not Gonna Take it Lying Down: Experiences of Violence and Discrimination as Told by LBT Persons in Sri Lanka", (2014), page 31, available at: <https://www.outrightinternational.org/sites/default/files/SriLankaCC.pdf>

¹⁹The Constitution of the Democratic Socialist Republic of Sri Lanka (as amended up to 15 May 2015), Revised Edition – 2015, available at <http://www.parliament.lk/files/pdf/constitution.pdf>

²⁰OutRight Action International, "Sri Lanka Government Says LGBT Rights Are Constitutionally Protected", 20 October 2014, <https://www.outrightinternational.org/content/sri-lanka-government-says-lgbt-rights-are-constitutionally-protected>

²¹OutRight Action International, "Sri Lanka Government Says LGBT Rights Are Constitutionally Protected", 20 October 2014, <https://www.outrightinternational.org/content/sri-lanka-government-says-lgbt-rights-are-constitutionally-protected>

4.1 Article 2 of the Treaty places obligations on signatory states to prevent discrimination by enacting legislation and pursuing good practice,²² as well as ensuring that discrimination is not performed by any persons or organisations.²³ For example, State obligations include:

- Adopting appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women (Article 2(b)).
- Ensuring that public authorities and institutions shall refrain from engaging in any act of practice of discrimination against women (Article 2(d)).
- Taking all appropriate measures to eliminate discrimination against women by any person, organisation or enterprise (Article 2(e)).

4.2 Article 3 of the Treaty states that:

"States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men."

4.3 Article 5(a) of the Treaty states that signatory States shall take all appropriate measures:

"To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women"

4.4 Sections A-D below highlight how Sri Lanka has not complied with these obligations by permitting practices which lead to discrimination against lesbian and bisexual women, actively promote stereotypical views of such individuals and prevent their development and advancement.

A. ARBITRARY ARRESTS AND DETENTIONS AND ABUSIVE AND VIOLENT POLICE BEHAVIOUR

4.5 There have been a number of reports, by both individuals and NGOs, of institutional discrimination against lesbians and bisexual women within the Sri Lankan police. For instance, EQUAL GROUND has been victim to such institutionalised discrimination. Requests to the Police requesting permission to host public events, or to obtain additional security have been unreasonably withheld or delayed. Furthermore, requests to meet the Inspector General of Police to bring to his attention the police discrimination that EQUAL GROUND has encountered have been refused.

4.6 Although sections 365 and 365A of the Code allow arrests only when there is evidence of the offences, Sri Lankan police have been known to conduct arbitrary arrests on the purported

²²Convention on the Elimination of All Forms of Discrimination against Women, Article 2(a), 2(b), 2(f) and 2(g), available at <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm>

²³Convention on the Elimination of All Forms of Discrimination against Women, Article 2(d) and 2(e), available at <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm>

grounds that those arrested will commit same-sex sexual acts in the future, in the absence of evidence.²⁴

- 4.7 Similarly, Sri Lanka's Vagrancy Ordinance of 1842, which empowers authorities to detain people loitering in public, is often used to harass, arrest and detain individuals on the basis of their appearance (for example, 'masculine-looking' women who are perceived to be lesbians). Release from detention is often conditional upon payment of a bribe.²⁵
- 4.8 A 2014 EQUAL GROUND Shadow Report to the Human Rights Committee provides an example of a lesbian charged with vagrancy when the police found her walking back to her motorcycle on a beach near Colombo. The police commented on the fact that she was wearing trousers and her perceived masculine appearance, and interrogated her about her decision to ride a motorcycle. She was detained for approximately five hours before release.²⁶
- 4.9 There are reports of arbitrary arrests and detention by law enforcement officials and violent and abusive police behaviour.²⁷ The US State Department's 2014 Sri Lanka Country Report on Human Rights Practices noted that:
- "Human rights organizations reported that, while not actively arresting and prosecuting members of the LGBTI community, police harassed and extorted money or sexual favors from LGBTI individuals with impunity and assaulted lesbians in Colombo and other areas".*²⁸
- 4.10 As mentioned above, in its 2011 Concluding Observations for Sri Lanka, the Committee noted that it was crucial to adopt comprehensive legislation to criminalise all forms of violence against women, including the arbitrary detention of women police custody.²⁹
- 4.11 Furthermore, in its 33rd General Recommendation in 2015, the Committee expressed concern that lesbian and bisexual women were disproportionately criminalised owing to their situation or status and that it was difficult for such women to gain access to justice. It was recommended that effective measures be taken to protect women against secondary victimisation in their interactions with law enforcement.³⁰
- 4.12 However, the examples provided above demonstrate that insufficient steps have been taken to respond to the Committee's comments. Similarly the practices employed by the police force in Sri Lanka raise concerns with respect to Articles 2(d) and 3 of the Treaty, and is not addressing gender stereotyping as outlined in Article 5(a) of the Treaty.

²⁴EQUAL GROUND, "Human Rights Violations Against Lesbian, Gay, Bisexual and Transgender (LGBT) People in Sri Lanka: A Shadow Report", (2014), page 5 available at

http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/LKA/INT_CCPR_ICO_LKA_15986_E.pdf

²⁵Women's Support Group, "Not Gonna Take it Lying Down: Experiences of Violence and Discrimination as Told by LBT Persons in Sri Lanka", page 24, available at <https://www.outrightinternational.org/sites/default/files/SriLankaCC.pdf>

²⁶EQUAL GROUND, "Human Rights Violations Against Lesbian, Gay, Bisexual and Transgender (LGBT) People in Sri Lanka: A Shadow Report", (2014), page 5 available at

http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/LKA/INT_CCPR_ICO_LKA_15986_E.pdf

²⁷EQUAL GROUND, "Human Rights Violations Against Lesbian, Gay, Bisexual and Transgender (LGBT) People in Sri Lanka: A Shadow Report", (2014), page 5, available at

http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/LKA/INT_CCPR_ICO_LKA_15986_E.pdf

²⁸US Department of State, Country Reports on Human Rights Practices for 2015: Sri Lanka, (Section 6 - Acts of Violence, Discrimination, and Other Abuses Based on Sexual Orientation and Gender Identity), available at <http://www.state.gov/documents/organization/253187.pdf>

²⁹Committee on the Elimination of Discrimination against Women, "Concluding observations of the Committee on the Elimination of Discrimination against Women", CEDAW/C/LKA/CO/7, (2011), paragraph 25, available at

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fLKA%2fCO%2f7&Lang=en

³⁰General Recommendation, No. 33 on women's access to justice, CEDAW/C/GC/33, (2015), paragraph 8, 51, available at

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/GC/33&Lang=en

B. VIOLENCE AGAINST LESBIANS AND BISEXUAL WOMEN

- 4.13 It is submitted that Sri Lanka fails to protect lesbians and bisexual women against discrimination, harassment, violence and other wrongful acts committed by private persons. Human Dignity Trust's report titled *"Breaking the Silence"* states that *"the intersection between sex and sexual orientation leads to particular forms of violations that often occur in the private sphere and are therefore seemingly invisible"*.³¹ In Sri Lanka, it has been found that *"lesbian and bisexual women in the Sri Lankan society who are found out to be homosexuals can face a high level of violence in the home"*.³² The Prevention of Domestic Violence Act, No. 34 of 2005 cannot be used by women in same-sex relationships. In the event women do attempt to report violations of this law or any other law, EQUAL GROUND have been informed that the reports aren't taken seriously or the women are exposed to harassment at the point of reporting.
- 4.14 This failure to protect lesbian and bisexual women from domestic violence is further exacerbated by the lack of response from the Sri Lankan Government. This empowers the perpetrators to continue to abuse lesbians and bisexual women, as found by EQUAL GROUND:
- "The lack of visibility of this mistreatment or any meaningful State protection against it, which in itself is a violation of the State's legal duty to protect against abuses by private citizens, means those perpetrators can often exert control over and commit violence against lesbians and bisexual (and all other) women with impunity"*.³³
- 4.15 A number of lesbians and bisexual women have found that their families attempt to severely restrict their actions and control their social lives, including:
- "Confining them to the home and restricting them from contacting the outside world including friends... restricting their use of cell phones or internet... destroying the[ir] personal property... especially clothes for women who wear clothes assumed to be only for the opposite gender"*.³⁴
- 4.16 Many lesbians and bisexual women also report emotional violence in the form of invasions of privacy including non-verbal contempt and hostility, and emotional manipulation.³⁵ An example of such emotional violence in the home is given by one individual, who *"referred to an incident where her mother had taken her to a mental health professional to try and "cure" her gender non-conformity and her lesbianism"*.³⁶
- 4.17 A number of lesbians and bisexual women have reported experiences of verbal abuse, from a range of perpetrators, including *"family members, neighbours, other members of the LGBT community, ex-partners, employers and prospective employers"*.³⁷ This abuse includes

³¹Human Dignity Trust, "Breaking the Silence - Criminalisation of Lesbians and Bisexual Women and its Impacts", (2016), page 7, available at http://www.humandignitytrust.org/uploaded/Library/Other_Material/Breaking_the_Silence-Criminalisation_of_LB_Women_and_its_Impacts-FINAL.pdf

³²EQUAL GROUND, "Homophobic Violence and Hate Crimes", (2011), page 7.

³³EQUAL GROUND, "Homophobic Violence and Hate Crimes", (2011), page 14.

³⁴EQUAL GROUND, "Homophobic Violence and Hate Crimes", (2011), page 10.

³⁵Women's Support Group, "Not Gonna Take it Lying Down: Experiences of Violence and Discrimination as Told by LBT Persons in Sri Lanka", (2014), pages 14-15, available at: <https://www.outrightinternational.org/sites/default/files/SriLankaCC.pdf>.

³⁶Women's Support Group, "Not Gonna Take it Lying Down: Experiences of Violence and Discrimination as Told by LBT Persons in Sri Lanka", (2014), page 15, available at: <https://www.outrightinternational.org/sites/default/files/SriLankaCC.pdf>.

³⁷Women's Support Group, "Not Gonna Take it Lying Down: Experiences of Violence and Discrimination as Told by LBT Persons in Sri Lanka", (2014), page 15, available at: <https://www.outrightinternational.org/sites/default/files/SriLankaCC.pdf>.

derogatory slang and verbal threats, including threats of harm against the individual or their loved ones. In 1999 the newspaper *The Island* advocated the rape of women attending a conference for lesbians. When a complaint was filed against the newspaper, the Press Council of Sri Lanka defended the newspaper, and condemned consensual same-sex intimacy between women as "*sadistic and salacious*".³⁸

- 4.18 Lesbians and bisexual women are also subjected to physical violence, including sexual violence. LGBTI persons in Sri Lanka have reported such violence being perpetrated not only by strangers, but also by partners. A number of the individuals interviewed by the Women's Support Group outlined how they had been physically abused. For instance, one woman described her relationship with a male partner who knew she was bisexual as featuring both sexual abuse ("*I felt that... he was raping me*"³⁹) and beatings ("*he slapped me, and... tried to choke me*"⁴⁰). Another woman reported being attacked by a group of strangers,⁴¹ while two others both reported sexual violence by strangers.⁴²
- 4.19 Lesbians and bisexual women feel there is a complete lack of redress for physical violence committed against them and this exacerbates violence faced by the LGBTI community. Where the perpetrator is a family member, or an intimate partner, women can be reluctant to report the violence, especially if it took place in the private space of the family home. Even if the violence has taken place in a public area, women will often not report it out of fear of being exposed as lesbian or bisexual. Individuals interviewed by the Women's Support Group "*were reluctant to report violence in the home to police because this would entail placing a family member in the hands of the law*" and "*some interviewees did not want the risk of unwelcome publicity*".⁴³
- 4.20 Lesbians and bisexual women often do not believe that the police will investigate crime if it is reported and fear the consequences of engaging with the police. For instance, an individual interviewed by the Women's Support Group stated "*[I] couldn't go to the police...it was just going to get me into more trouble*".⁴⁴ As outlined above, there are reports of police officers using blackmail and violence against LGBTI persons. In addition, the court system is open to the public, which deters many lesbians and bisexual women from reporting violence, as they are likely to face exposure of their sexuality in open court.⁴⁵
- 4.21 Self-inflicted violence can arise from the guilt and shame lesbians and bisexual women are made to feel through the internalisation of their sexuality. In many cases they have grown up in religious, traditional and cultural practices where perceptions of homosexuality are negative.⁴⁶ Human Dignity Trust's aforementioned report states that:

³⁸Women's Support Group, "Not Gonna Take it Lying Down: Experiences of Violence and Discrimination as Told by LBT Persons in Sri Lanka", (2014), page 16-17, available at: <https://www.outrightinternational.org/sites/default/files/SriLankaCC.pdf>,

³⁹Women's Support Group, "Not Gonna Take it Lying Down: Experiences of Violence and Discrimination as Told by LBT Persons in Sri Lanka", (2014), page 16, available at: <https://www.outrightinternational.org/sites/default/files/SriLankaCC.pdf>,

⁴⁰Women's Support Group, "Not Gonna Take it Lying Down: Experiences of Violence and Discrimination as Told by LBT Persons in Sri Lanka", (2014), page 21, available at: <https://www.outrightinternational.org/sites/default/files/SriLankaCC.pdf>,

⁴¹Women's Support Group, "Not Gonna Take it Lying Down: Experiences of Violence and Discrimination as Told by LBT Persons in Sri Lanka", (2014), page 17, available at: <https://www.outrightinternational.org/sites/default/files/SriLankaCC.pdf>,

⁴²Women's Support Group, "Not Gonna Take it Lying Down: Experiences of Violence and Discrimination as Told by LBT Persons in Sri Lanka", (2014), page 19, available at: <https://www.outrightinternational.org/sites/default/files/SriLankaCC.pdf>,

⁴³Women's Support Group, "Not Gonna Take it Lying Down: Experiences of Violence and Discrimination as Told by LBT Persons in Sri Lanka", (2014), page 19, available at: <https://www.outrightinternational.org/sites/default/files/SriLankaCC.pdf>,

⁴⁴Women's Support Group, "Not Gonna Take it Lying Down: Experiences of Violence and Discrimination as Told by LBT Persons in Sri Lanka", (2014), page 25, available at: <https://www.outrightinternational.org/sites/default/files/SriLankaCC.pdf>,

⁴⁵Women's Support Group, "Not Gonna Take it Lying Down: Experiences of Violence and Discrimination as Told by LBT Persons in Sri Lanka", (2014), page 25, available at: <https://www.outrightinternational.org/sites/default/files/SriLankaCC.pdf>,

⁴⁶EQUAL GROUND, "Homophobic Violence and Hate Crimes", (2011), page 7.

"The societal pressures on women particularly in respect of dependence on their families, social and economic limitations and the imperative to marry into a heterosexual union, as well as physical and sexual violence, can add unique psychological stresses on young lesbians and bisexual women that can lead to suicide".⁴⁷

- 4.22 This manifests itself in some women through self-harming behaviour and EQUAL GROUND has received reports of this. For instance, one individual *"cut... herself and burn[t] herself with cigarette butts"*,⁴⁸ while others reported that they had experienced suicidal ideation.⁴⁹ This can eventually lead to the act of suicide, as committed by one interviewee's girlfriend, who could not stand the shame brought upon her by her sexual orientation.⁵⁰
- 4.23 The violence and discrimination highlighted in this section calls into question the extent to which Sri Lanka is complying with Articles 2(e) and 3 of the Treaty, allowing persons and organisations to discriminate and perpetrate violence against individuals on the basis of their sexuality.

C. FORCED MARRIAGE

- 4.24 Sri Lankan law does not protect LGBTI individuals from being forced into heterosexual marriages. Lesbian and bisexual women's sexuality is generally not recognised by their families, and they are expected to marry men. Individuals are often coerced and threatened, and this has a significant impact on their wellbeing.
- 4.25 Examples of forced heterosexual marriages are found in the EQUAL GROUND report titled *"Struggling Against Homophobic Violence & Hate Crimes"*. The report includes the story of a lesbian from Anuradhapura who, along with her partner, was forced out of her local village. When she was found by her parents they brought her back to the village and assaulted her. She was forced to marry a man eight years her junior, and since then has had four children.⁵¹
- 4.26 A similar example found in the report is that of a woman from Nuwara Eliya District who was in a same-sex relationship. She lived with her girlfriend and looked after her own ailing mother. When her mother passed away, the woman's brother forced her to marry a man by threatening to take away all the property that had been bequeathed to her if she did not agree to a heterosexual marriage. Her marriage to a man took such a toll on her girlfriend that her girlfriend committed suicide.⁵²
- 4.27 Article 16 of the Treaty says that *"States shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations"*, while

⁴⁷Human Dignity Trust, "Breaking the Silence - Criminalisation of Lesbians and Bisexual Women and its Impacts", (2016), page 29, available at http://www.humandignitytrust.org/uploaded/Library/Other_Material/Breaking_the_Silence-Criminalisation_of_LB_Women_and_its_Impacts-FINAL.pdf

⁴⁸Women's Support Group, "Not Gonna Take it Lying Down: Experiences of Violence and Discrimination as Told by LBT Persons in Sri Lanka", (2014), page 23, available at: <https://www.outrightinternational.org/sites/default/files/SriLankaCC.pdf>,

⁴⁹Women's Support Group, "Not Gonna Take it Lying Down: Experiences of Violence and Discrimination as Told by LBT Persons in Sri Lanka", (2014), page 27, available at: <https://www.outrightinternational.org/sites/default/files/SriLankaCC.pdf>,

⁵⁰EQUAL GROUND, "Homophobic Violence and Hate Crimes", (2011), page 9.

⁵¹EQUAL GROUND, "Homophobic Violence and Hate Crimes", (2011), Case Study 1, page 25.

⁵²EQUAL GROUND, "Homophobic Violence and Hate Crimes", (2011), Case Study 5, page 29.

Article 16(b) states that women shall have "*the same right freely to choose a spouse and enter into marriage only with their free and full consent*".⁵³

- 4.28 Article 12 of the Treaty guarantees the elimination of discrimination in the field of health care while a 2014 Committee statement explicitly stated that the right to health included the right to bodily autonomy, as well as sexual and reproductive freedom.⁵⁴
- 4.29 The lack of state protection against forced marriage gives rise to a suggestion that Sri Lanka could be in breach of both Articles 12 and 16 of the Treaty. The principles of choice and consent related to marriage cannot be realised where a State sanctions or permits forced heterosexual marriage, and such activity is manifestly in breach of a right to bodily autonomy and sexual and reproductive freedom. The lack of legislative and practical action by the Sri Lankan Government in relation to this issue calls into question the extent to which Sri Lanka has implemented Articles 2 and 3 of the Treaty. The promotion of gender stereotypes also raises concerns with respect to Article 5(a) of the Treaty.

D. DISCRIMINATION IN EMPLOYMENT

- 4.30 Lesbians and bisexual women in Sri Lanka are often subject to significant discrimination in the course of their employment. Non-heterosexual sexual orientation is not readily accepted or recognised in the Sri Lankan workplace, making it extremely difficult for individuals to express their sexual identity without fear of abuse or persecution.
- 4.31 A 2014 EQUAL GROUND Shadow Report to the Human Rights Committee highlighted that:
- "For LGBT individuals in Sri Lanka, workplace discrimination takes many forms. LGBT individuals have been (1) assigned the worst shifts and tasks, (2) required to meet higher quotas than their peers, (3) forced to dress against one's gender identity, (4) subjected to taunting, (5) sexually harassed, or (6) fired. Some sexual minorities have opted to be self-employed – driving taxis or operating small shops – just to avoid discrimination in the workplace".*⁵⁵
- 4.32 In terms of specific examples, the Shadow Report highlights the case of a female tea picker who's employer found out she was a lesbian. The woman was then assigned to work one of the most treacherous, steep slopes, but had no other employment opportunities and thus had to continue performing this dangerous work.⁵⁶
- 4.33 The aforementioned EQUAL GROUND report "*Struggling Against Homophobic Violence and Hate Crimes*" also highlights the issue through specific case studies. One of these tells the story of two women, who were working in a factory in the Nuwara Eliya District between 2008 and 2010. Despite their efforts to conceal their relationship, their co-workers began to

⁵³Convention on the Elimination of All Forms of Discrimination against Women, Article 16, available at <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm>

⁵⁴Committee on the Elimination of Discrimination against Women, "Statement of the Committee on the Elimination of Discrimination against Women on sexual and reproductive health and rights, Beyond 2014 ICPD review", 10-28 February 2014, available at <http://www.ohchr.org/Documents/HRBodies/CEDAW/Statements/SRHR26Feb2014.pdf>

⁵⁵EQUAL GROUND, "Human Rights Violations Against Lesbian, Gay, Bisexual and Transgender (LGBT) People in Sri Lanka: A Shadow Report", (2014), page 8 available at http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/LKA/INT_CCPR_ICO_LKA_15986_E.pdf

⁵⁶EQUAL GROUND, "Human Rights Violations Against Lesbian, Gay, Bisexual and Transgender (LGBT) People in Sri Lanka: A Shadow Report", (2014), page 8 available at http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/LKA/INT_CCPR_ICO_LKA_15986_E.pdf

suspect that the two were a couple. This suspicion led to such a high level of harassment by fellow employees that the two women felt forced to leave their jobs.⁵⁷

- 4.34 Non-discrimination in employment is enshrined in Article 11(1) of the Treaty,⁵⁸ while Article 12 of the Sri Lankan Constitution purportedly prohibits discrimination on a number of grounds (including sex), and ensures both equality before the law and equal protection of the law.⁵⁹
- 4.35 The state failure to prevent harassment of LGBTI individuals in the workplace raises concerns with respect to Articles 2, 3 and 11(1) of the Treaty, as well as the non-discrimination provisions in the Sri Lankan Constitution. Due to the aforementioned laws criminalising homosexuality, sexual minorities are hesitant to come forward and challenge any discrimination they encounter as a result of their sexuality. The lack of protective legislation and/or state-sponsored training to combat these issues means the issue is exacerbated and any challenge to the discrimination would be difficult to sustain, even if in theory the Constitution includes grounds for such a challenge.

5. CONCLUSION

- 5.1 In light of the above, it is clear that not enough is being done by the Sri Lankan Government to protect lesbian and bisexual women in the country.
- 5.2 The criminalisation of consensual same-sex intimacy between women denies these women any access to justice, either for abuses committed against them on the basis of their sexuality or in general. Discrimination and violence towards these individuals is rife, and ranges from police action to employment practices,. This calls into question the extent to which Sri Lanka is complying with Articles 2, 3, 5, 11, 12 and 16 of the Treaty
- 5.3 Sri Lanka's obligations under the Treaty can only be discharged, and protection of these vulnerable individuals can only be assured, through proper implementation of the recommendations listed below.
- 5.4 Any assertions that lesbians and bisexual women are protected by the Constitution are erroneous in light of the gross human rights violations listed above. Whilst the anti-discrimination provisions in the Constitution are positive, the lack of protective legislation, practice and policy supporting them has led to a situation where lesbian and bisexual women are not able to express their sexuality.

6. RECOMMENDATIONS

- 6.1 In response to the issues in his report, we recommend that the Committee encourages the Sri Lankan Government to:

⁵⁷EQUAL GROUND, "Human Rights Violations Against Lesbian, Gay, Bisexual and Transgender (LGBT) People in Sri Lanka: A Shadow Report", (2014), page 8 available at

http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/LKA/INT_CCPR_ICO_LKA_15986_E.pdf

⁵⁸Convention on the Elimination of All Forms of Discrimination against Women, Article 11(1), available at <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm>

⁵⁹The Constitution of the Democratic Socialist Republic of Sri Lanka (as amended up to 15 May 2015), Revised Edition – 2015, available at <http://www.parliament.lk/files/pdf/constitution.pdf>

- Repeal sections 365 and 365A of the Sri Lankan Penal Code and expressly legalise consensual same-sex sexual activity.
- Recognise intersecting forms of discrimination, including on the basis of sex and sexual orientation, and take active measures to prohibit such discrimination.
- Include sexual orientation, gender identity and intersex status as prohibited grounds for discrimination under Article 12 (2) of the Constitution, and provide for a right to privacy within the Constitution.
- Enact national legislation and policies to protect against discrimination in various forms on the grounds of sexual orientation and gender identity, for example in the workplace.
- Take legislative and other measures to eliminate violence against lesbian and bisexual women and to punish perpetrators including State and non-State actors who perpetrate these hate crimes.
- Take particular measures to prevent forced or pressured heterosexual marriages of lesbian and bisexual women and to provide social services and information to women needing to escape from family or community pressures to enter into unwanted marriage.
- Amend the Vagrants Ordinance 1842 so it is not used discriminatorily and arbitrarily against sexual minorities.
- Create awareness-raising, education and training programmes to combat stigma, prejudice and discrimination against LGBTI persons and provide these in particular to police, employers and judges.