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Center for International Human Rights

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**Violations by Sri Lanka
of the rights of lesbian, bisexual, transgender,
and queer (LBTQ) women
under the Convention on the Elimination
of All Forms of Discrimination against Women**

Submitted for consideration at the
86th Pre-Sessional Working Group (PSWG)
of the Committee on the Elimination of
Discrimination against Women (CEDAW)

Submitted by:

EQUAL GROUND, Sri Lanka

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

January 2023

EQUAL GROUND
and
Center for International Human Rights (CIHR)
Of Northwestern Pritzker School of Law

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1. INTRODUCTION

1.1 This report is submitted to CEDAW by EQUAL GROUND¹ and the Center for International Human Rights (CIHR) of Northwestern Pritzker School of Law,² to direct the Committee's attention to the serious and ongoing violations of the rights of Sri Lanka's LGBTQ women. These violations include, notably, the following:

- Sri Lanka continues to criminalize consensual same-sex sexual relations
- Sri Lanka imposes onerous barriers to obtaining legal recognition of gender
- Sri Lanka has failed to amend its Constitution or enact laws to prohibit discrimination based on sexual orientation and gender identity and expression (SOGIE)

1.2 As a consequence of these violations, lesbian, bisexual, transgender, and queer (LBTQ) women in Sri Lanka are extremely vulnerable to harassment, violence and discrimination by State actors and by society at large. The continued criminalization of same-sex sexual relations leads directly to arbitrary arrest, violence and other abuses by the Sri Lanka Police. At the same time, it perpetuates and reinforces the widespread societal stigma against LGBTQ women, giving license to harassment and discrimination in employment, housing, education, health care and family relations. The barriers to obtaining legal recognition of gender expose transgender individuals to further humiliation and discrimination. All this results in the gross marginalization of LGBTQ women, many of whom feel forced to hide their identities.

1.3 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 ("Convention") to respect the rights of LGBTQ women.

¹ EQUAL GROUND is a Sri Lankan non-profit organization seeking economic, social, cultural, civil and political rights for the Lesbian, Gay, Bisexual, Transgender, Intersex and Questioning/Queer (LGBTIQ) community of Sri Lanka. Founded in 2004, EQUAL GROUND is the oldest organization of this nature functioning in the country.

² The Center for International Human Rights (CIHR) of Northwestern University's Pritzker School of Law (Chicago, USA) is dedicated to human rights education and legal and policy-focused human rights advocacy within the United States and worldwide. CIHR is in special consultative status with the United Nations Economic and Social Council (ECOSOC). CIHR has worked in collaboration with EQUAL GROUND since 2013.

- 1.4 We respectfully ask the Committee to consider these areas and to highlight them in its List of Issues for the upcoming review of Sri Lanka's compliance with its obligations under the Convention.

2. LEGAL CONTEXT IN SRI LANKA

Criminal Laws

- 2.1 Sexual acts between same-sex individuals remain a criminal offense 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").³

(a) Section 365 criminalizes “carnal intercourse against the order of nature.”⁴ Although the law does not explain what constitutes “against the order of nature,” it is widely understood to apply only to sexual acts between two individuals of the same sex. The penalty for violation of Section 365 is up to ten years’ imprisonment and a fine.⁵

(b) Section 365A criminalizes “any act of gross indecency with another person.”⁶ Violations are punishable by up to two years’ imprisonment, a fine, or both. Although “gross indecency” is not defined, this law is understood to target not only sexual acts but also any displays of romantic affection between two individuals of the same sex. The breadth and ambiguity of this provision invites abuse, as what constitutes “gross indecency” is left open to interpretation by police officers, prosecutors, and judges.⁷

(c) Section 399 of the Penal Code makes it a criminal offense to “cheat by personation.”⁸ It has been used by the police to target transgender persons on the purported basis that they are pretending to be a different gender with the intent of cheating others.⁹

- 2.2 Efforts to win repeal of these laws have not been successful. In January 2017, the Government of Sri Lanka (GoSL) dropped a proposal to decriminalize same-sex sexual conduct from the Human Rights Action Plan. The State Minister of Finance at the time, Lakshman Yapa Abeywardena, stated that the President had decided to abandon

³ Penal Code § 365, <https://www.lawnet.gov.lk/penal-code-consolidated-2/> [hereinafter Penal Code]; United States Department of State, *2020 Country Reports on Human Rights Practices - Sri Lanka* (Mar. 30, 2021), <https://www.state.gov/reports/2020-country-reports-on-human-rights-practices/sri-lanka/>.

⁴ Penal Code § 365, <https://www.lawnet.gov.lk/penal-code-consolidated-2/>.

⁵ *Id.*

⁶ *Id.* § 365A.

⁷ United Kingdom, Home Office, *Country Policy and Information Note Sri Lanka: Sexual Orientation and Gender Identity and Expression* (Nov. 2021), ¶ 3.1.8, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1039053/Sri_Lanka_Final_PDF.pdf [hereinafter UK Home Office].

⁸ Penal Code, *supra* note 4, § 399.

⁹ Amnesty International, *Sri Lanka: End discrimination against LGBTI people* (Dec. 7, 2019), <https://www.amnesty.org/en/latest/news/2019/12/spectrum-sri-lanka-lgbti/>.

“culturally inappropriate” proposals.¹⁰ In November 2017, after Sri Lanka’s UPR review, then-Deputy Solicitor General Nerin Pulle pledged to change the Penal Code in Sri Lanka, stating “[t]he government is committed to ensuring that no provision in the law would be applied to persons of the LGBTIQ community in a discriminatory manner.”¹¹ However, to date, the penal code has not been changed.

- 2.3 The consequence of these laws is that LBTQ women do not have legal recognition and their rights are not protected. Sri Lanka does not provide adequate support to these individuals and there continue to be reports of arbitrary arrests by police, violence, and discrimination directed towards LBTQ women in Sri Lanka.

Impact of Laws

- 2.4 A report done by the U.S. Department of State in 2020 stated that while in its view prosecutions were rare, the threat of arrest was used by police to assault, harass, and sexually and monetarily extort LBTQ people. Transgender people faced societal discrimination, including arbitrary detention, mistreatment, and discrimination in accessing employment, housing, and healthcare.¹²
- 2.5 Incidents of police abuse against LBTQ women, including wrongful arrest, violence, and harassment, are quite common in Sri Lanka. In a recent nationwide survey of Sri Lankan public opinion commissioned by the Westminster Foundation for Democracy, 69.2% of respondents agreed that LGBT people “are subjected to discrimination by the Police because they are LGBT persons.”¹³ In another survey, conducted by EQUAL GROUND, the LGBTIQ respondents shared that “[t]heir main fear was getting identified and being arrested by the police.”¹⁴
- 2.6 Due to the existence of the discriminatory laws and their frequent abuse by police, LBTQ crime victims are deprived of normal police protection, because they are unwilling to report crimes to the police. A case referred to EQUAL GROUND in July 2021 involving a lesbian in Kiribathgoda, Western Province, provides an example. In that case, a lesbian who was constantly harassed by her brother after revealing her

¹⁰ Human Dignity Trust, *Sri Lanka Country Profile* (2022), <https://www.humandignitytrust.org/country-profile/sri-lanka/>.

¹¹ Brandon Voss, *Sri Lanka Vows To Decriminalize Homosexuality, Protect LGBT Citizens*, LOGOTV (Nov. 25, 2017), <https://www.logotv.com/news/hoj55q/sri-lanka-decriminalizing-homosexuality>.

¹² United States Department of State, *2020 Country Reports on Human Rights Practices: Sri Lanka*, sec. 6 (Mar. 30, 2021), <https://www.state.gov/reports/2020-country-reports-on-human-rights-practices/sri-lanka/>.

¹³ See Pradeep Peiris, *Knowledge, Attitudes and Perceptions Survey Report: Sri Lankan society's views about sexuality and LGBT people's experiences in Sri Lanka*, p. 23, Table 3.10 (2021) (reporting results of a survey by the Social Scientists’ Association, commissioned by the Westminster Foundation for Democracy under the Commonwealth Equality Project), <https://www.wfd.org/sites/default/files/2022-03/Final%20Report%20-%2012th%20Jan%202022.pdf> [hereinafter Survey of Sri Lankan society’s views].

¹⁴ EQUAL GROUND, *Mapping LGBTIQ Identities in Sri Lanka*, p. 9 (2021), https://www.equal-ground.org/wp-content/uploads/Report_EG-edited.pdf.

sexual orientation refused to lodge a harassment complaint with the police, for fear of further harassment and reprisal by the police themselves.

- 2.7 This reluctance to go to the police is well-founded, given the experiences other LGBTQ people have had when they did report crimes to the police. For instance, in January 2023, a 23-year-old lesbian filed a historic fundamental rights petition at the Supreme Court against the Sri Lanka Police for discrimination based on her sexual orientation.¹⁵ In her petition, she highlights that she was forcefully confined at home and abused by her parents after she revealed her sexual orientation to them and when a complaint was filed with the Welisara Mahabage Police, the petitioner cites the police conducted an inquiry into the woman's sexual orientation. Furthermore, the police have forced the petitioner to meet with a psychiatrist and have attempted to force the woman to have a Judicial Medical Officer conduct a physical examination to find proof of homosexuality.
- 2.8 In June 2022, it was reported that a lesbian couple had been arrested and held by the Akkaraipattu police. The father of one of the women had objected to the relationship, filing a complaint with the police, after which both women were arrested and produced in court. The Magistrate had ordered the police to produce the two women before a psychiatrist and submit a report and the women had to undergo a psychiatric evaluation at Kalmunai Base Hospital.¹⁶

Legal Recognition of Gender Identity

- 2.9 The ability to obtain legal recognition of one's gender identity is an important aspect of the right to privacy and to equal recognition and protection before the law. Failure to recognize the gender identity of transgender women is in breach of Articles 1, 2, 3 and 15 of the Convention.
- 2.10 Since 2016, transgender individuals have been allowed to apply for a Gender Recognition Certificate (GRC), under a circular issued that year by Sri Lanka's Ministry of Health, in consultation with the Human Rights Commission. The circular contains guidelines for medical professionals and government officials to be followed upon receipt of an application for a GRC. An individual must receive a GRC before they can obtain a national identity card and other official documents that reflect their preferred name and gender.

¹⁵ NewsWire, *Lesbian victim of police discrimination files historic FR case* (Jan. 13, 2023), https://www.newswire.lk/2023/01/13/lesbian-victim-of-police-discrimination-files-historic-fr-case/?fbclid=IwAR1-72Fxxl_dgDY2nihNsR9fjeMw_U1eUPhW-uOq2JPZzdZY48r07Vt-yWg.

¹⁶ Sri Lanka Brief, *Sri Lankan magistrate orders to produce two lesbian lovers before psychiatrist for an evaluation* (June 26, 2022), <https://srilankabrief.org/sri-lankan-magistrate-orders-lesbian-lovers-to-produce-before-psychiatrist-for-an-evaluation/>.

- 2.11 Unfortunately, the GRC process is long, complex and expensive – for many, prohibitively so. A person must undergo psychiatric evaluation by a medical professional, receive a diagnosis of “trans-sexualism” and undergo hormone and surgical treatment before they can be issued a GRC. Hormone treatment and gender confirmation surgery services are scarce and expensive.
- 2.12 The extremely long process for obtaining a GRC creates serious problems for transgender people. National Identity Cards are used throughout daily life in Sri Lanka – for example, when applying for jobs, renting an apartment, obtaining healthcare, banking, or buying train tickets. The transition process can take up to ten years, and the GoSL does not issue any form of temporary ID documentation to accommodate a change in gender identity during the transitioning process.
- 2.13 Additionally, even if one receives a GRC, the Birth Certificate that is issued by the State is a mere amended document instead of a fresh one, which would still mention the previous gender of the trans individual thus exposing them to constant and humiliating scrutiny about their gender identity.
- 2.14 A requirement that a person undergo surgery in order to obtain legal gender recognition is a form of forced medical treatment and sterilization, in breach of Articles 12 and 16 of the Convention. It is also in breach of Principle 3¹⁷ of the Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity.

Absence of constitutional or statutory provisions.

- 2.15 Although Sri Lanka acceded to the Convention in 1981, it has no enabling legislation that gives effect to the rights embodied in the treaty.
- 2.16 Sri Lanka has not adopted or implemented measures to eliminate discriminatory treatment based on SOGIE. Neither the Sri Lankan Constitution nor any law expressly prohibits discrimination based on SOGIE. Efforts to amend the Constitution to include such a prohibition have, as of this date, been unsuccessful.
- 2.17 The GoSL has previously claimed that Article 12 of the Constitution¹⁸, on equality and non-discrimination, does protect persons from stigmatization and discrimination on the basis of sexual orientation and gender identities. In practice, however, other provisions of the Constitution nullify the effectiveness of this provision. Article 15(7) provides

¹⁷ Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity, Principle 3 (Mar. 2007), http://yogyakartaprinciples.org/wp-content/uploads/2016/08/principles_en.pdf.

¹⁸ Parliament Secretariat, *The Constitution of the Democratic Socialist Republic of Sri Lanka* (As amended up to 29 October 2020), Revised Edition – 2021, Art. 12(7), <https://www.parliament.lk/files/pdf/constitution.pdf> [hereinafter Constitution].

that the Constitution's fundamental rights provisions (which include Article 12) can be made subject to restrictions in the name of "morality."¹⁹ Article 16(1) states that laws existing at the time of the Constitution's adoption (both written and unwritten) shall remain valid even if inconsistent with the Constitution's fundamental rights provisions,²⁰ making it impossible to challenge the constitutionality of the laws criminalizing same-sex sexual relations.

- 2.18 During a December 2022 meeting held at the Sri Lanka Police Headquarters between the Inspector General of Police (IGP), senior police officials and representatives of LGBTIQ organisations, IGP C.D. Wickramaratne apologised for the longstanding harassment faced by the LGBTIQ community at the hands of the police. The meeting, organized by the Ministry of Women, Child Affairs and Social Empowerment and the Sri Lanka Police, discussed the way forward towards treating all human beings equally and without discrimination.²¹ This is an encouraging development, provided that the GoSL follows through on this in practice.

3. NON-DISCRIMINATION

- 3.1 Article 2 of the Convention requires Sri Lanka to '*pursue by all appropriate means and without delay a policy of eliminating discrimination against women*'. The Committee has previously stated in its General Recommendation No. 28 that:

*"The discrimination of women based on sex and gender is inextricably linked with other factors that affect women, such as race, ethnicity, religion or belief, health, status, age, class, caste and **sexual orientation and gender identity** States parties must legally recognize and prohibit such intersecting forms of discrimination and their compounded negative impact on the women concerned and prohibit them."* (our emphasis)

- 3.2 Article 5(a) of the Convention requires Sri Lanka to 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*'. This includes prejudices grounded in stereotypical, heteronormative and/or cisgendered assumptions about the sex, sexual orientation or gender identity of women, which have the harmful effect of marginalizing LBTQ women.

¹⁹ *Id.* at Art. 15(7).

²⁰ *Id.* at Art. 16(1).

²¹ Kaushalya Sendanayaka Arachchi, *The outcomes of LGBTIQ organisations' meeting with IGP* (Dec. 2022), <https://www.themorning.lk/articles/344oKNsMZLdO3BwrR4MJ>.

4. EDUCATION, EMPLOYMENT AND HEALTH (ARTICLES 10, 11 AND 12)

- 4.1 Articles 10, 11 and 12 of the Convention require Sri Lanka to take all appropriate measures to eliminate discrimination against women in order to ensure them equal rights as men in the fields of education, employment and health.
- 4.2 Similarly, the Yogyakarta Principles affirm that everyone, regardless of sexual orientation and/or gender identity, has the right to education, the right to the highest attainable standard of physical and mental health, the right to decent and productive work, and to protection against discrimination on that basis.²²
- 4.3 The issues in Sri Lanka in these fields largely stem from the invisibility of LBTQ women, as well as social and cultural prejudice against homosexuality, gender non-conformity and intersex status. The absence of non-discrimination laws and policies is a particularly harmful manifestation of this culture, as it allows such a prejudiced social framework to remain in place unchallenged. The criminalization of same sex relations adds to the stigma and prejudice that give rise to discrimination.
- 4.4 A 2021 UK Home Office Country of Origin report on Sri Lanka, summarized the widespread discrimination faced by LGBT people, including in employment, education, healthcare, and housing. They are subjected to hate speech online, emotional violence, and physical abuse.²³

Education

- 4.5 In a 2021 study conducted by EQUAL GROUND,²⁴ LGBTIQ survey respondents described educational institutions as having an oppressive environment rather than a supportive learning environment. In another study conducted in 2021,²⁵ physical appearance, stigmatization and being different (physically/mentally) have been identified as determinants of bullying by fellow students. It is important to note that the mapping study also revealed that it is during school days that some LGBTIQ persons first started acknowledging their differences with regard to SOGIE.
- 4.6 The existence of discrimination against LGBTIQ students is widely recognized in Sri Lanka. In the recent nationwide survey referred to above, 62.3% of respondents agreed

²² Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender (Mar. 2007), http://yogyakartaprinciples.org/wp-content/uploads/2016/08/principles_en.pdf.

²³ UK Government, *Country policy and information note: sexual orientation and gender identity*, Sri Lanka (2021), <https://www.gov.uk/government/publications/sri-lanka-country-policy-and-information-notes/country-policy-and-information-note-sexual-orientation-and-gender-identity-sri-lanka-november-2021-accessible-version#fnref:108>.

²⁴ EQUAL GROUND, *Mapping LGBTIQ Identities in Sri Lanka*, p. 36 (2021), https://www.equal-ground.org/wp-content/uploads/Report_EG-edited.pdf.

²⁵ Sonali Dinushika Gunasekara et al., *Identifying Determinants of Bullying and Deciding on Measures through Engaging Adolescents in a Rural School in Sri Lanka*, Vol. 8 Issue 1 ASIAN PAC. J. HEALTH SCI. 69, 73 (2021).

that LGBT students “are subjected to discrimination by the teachers in schools because they are LGBT students,” and 87.4% agreed that “[t]hey are subjected to discrimination by other students in schools because they are LGBT students.”²⁶

- 4.7 For example, in 2020, in Colombo, a father discovered his daughter’s relationship with another girl in school and reported it to the school principal. The girl was subjected to harassment from peers and from the school administration, in an effort to get her to end the relationship. She eventually dropped out of school because of the harassment.
- 4.8 As another example, in 2018, Colombo International School (CIS) failed to provide an inclusive environment for a bi-sexual, gender-fluid student. Anjali (pseudonym), a CIS student who identifies as bi-sexual and gender-fluid, was told she could not wear a rainbow flag during a school fashion show, which she wanted to wear as a sign of pride and solidarity for the LGBTIQ community. She was also disciplined for wearing trousers (the boys’ uniform) instead of a skirt (the girls’ uniform). In July 2018, the school administration told her that although she was qualified for the honor of being a prefect, she could not be a prefect unless she agreed to wear a skirt.²⁷
- 4.9 Further, in order to access education, accurate national identity documents are required, raising problems for transgender persons in accessing identity documentation that reflects their accurate identity, as outlined above.
- 4.10 In one positive development, in 2018 Wayamba University of Sri Lanka adopted a Ragging, Bullying, Harassment and Discrimination Prevention Policy that includes sexual orientation as one of the grounds of discrimination.²⁸ Unfortunately, Wayamba University is an exception. While Sri Lanka does have a law that prohibits ragging (hazing) and other forms of violence in educational institutions,²⁹ that law does not include in its definitions of “ragging” and “sexual harassment” any mention of sexual orientation or gender identity or expression.

²⁶ See Pradeep Peiris, *Knowledge, Attitudes and Perceptions Survey Report: Sri Lankan society's views about sexuality and LGBT people's experiences in Sri Lanka*, p. 23, Table 3.10 (2021) (reporting results of a survey by the Social Scientists’ Association, commissioned by the Westminster Foundation for Democracy under the Commonwealth Equality Project), <https://www.wfd.org/sites/default/files/2022-03/Final%20Report%20-%2012th%20Jan%202022.pdf> [hereinafter *Survey of Sri Lankan society's views*].

²⁷ Colombo Telegraph Editorial Team, *Colombo International School Homophobic Bullying Saga: Victimised Student Goes Public – Activists Commend*, COLOMBO TELEGRAPH (Oct. 8, 2018), <https://www.colombotelegraph.com/index.php/colombo-international-school-homophobic-bullying-saga-victimised-student-goes-public-activists-commend/>.

²⁸ Wayamba University of Sri Lanka, *Ragging, Bullying, Harassment and Discrimination Prevention Policy* (July 26, 2018), <https://eugc.ac.lk/cgee/downloads/policies/WUSL-Prevention-of-Ragging.pdf>.

²⁹ Prohibition of Ragging and Other Forms of Violence in Educational Institutions Act (1998), <https://www.lawnet.gov.lk/prohibition-of-ragging-and-other-forms-of-violence-in-educational-institutions-2/> [hereinafter *Ragging Act*].

- 4.11 In another positive development, the ‘Trainers Guide on General Child Care Course for Careers in Child Care Giving’ developed by the National Child Protection Authority (2019) directs the trainers to put emphasis on teaching diversity of emerging sexuality (sexual and gender orientation development) to adolescents. It also suggested to use the ‘Genderbread Person’ to illustrate emerging sexual and gender orientation differences which could be seen as a positive development.³⁰

Employment

- 4.12 Lesbian, bisexual and transgender women in Sri Lanka are often subject to significant discrimination and stigma in their place of employment. This includes verbal and sexual harassment, being given worst shifts and tasks, being forced to conform to heteronormative and cis-normative social standards, disparities in salary and promotions and termination of employment due to their gender identity and sexual orientation.
- 4.13 A 2021 EQUAL GROUND study found extensive evidence of workplace discrimination against LGBTIQ individuals.³¹ Although the majority of the 193 LGBTIQ respondents had completed tertiary level education (undergraduate-31%, postgraduate-24%), most of them were not employed at higher than entry level jobs. 16% of respondents said they experienced discrimination during job interviews, 10% said they have been denied employment benefits (i.e., salary increments, promotions, transfers etc.), and 3% confirmed that they were terminated from jobs due to their Sexual Orientation and/or Gender Identity/Expression (SOGIE). When the respondents were further asked if they ever encountered any type of harassment at their workplaces, 58% stated that they have experienced verbal harassment, and 31% said they have experienced sexual harassment. Consequently, 23% of the respondents have left their jobs due to psychological and emotional harassment.
- 4.14 The case of Sanju (pseudonym), a 23-year-old lesbian who worked for a software company in Gampaha, provides an example of the mistreatment LBTQ women face in the workplace. In 2020, Sanju was physically and verbally abused by a co-worker, after revealing her sexual orientation to him. The co-worker had repeatedly grabbed her and made other physical advances, supposedly to change her sexual orientation.
- Later, in July 2021, for work purposes, Sanju had to go to Kurunegala with her supervisor. When they reached the hotel, Sanju found that the supervisor had only booked one room. Later, the supervisor tried to grab her and force himself on her. Sanju

³⁰ National Child Protection Authority Sri Lanka, *Trainers Guide General Child Care Course for Careers in Child Care Giving*, p. 25-26 (2019), [https://childprotection.gov.lk/images/pdfs/acts-guidelines/2019%20-%20Trainers%20Guide%20\(%20General%20Child%20Care%20Course%20_%20NVQ%20Level%204\)%20-%20English.pdf](https://childprotection.gov.lk/images/pdfs/acts-guidelines/2019%20-%20Trainers%20Guide%20(%20General%20Child%20Care%20Course%20_%20NVQ%20Level%204)%20-%20English.pdf).

³¹ EQUAL GROUND, *A Study on Workplace Discrimination* (2021), <http://www.equal-ground.org/wp-content/uploads/DAP-REPORT-FINAL.pdf>.

had thought to file a complaint about this harassment incident, but her family discouraged her from doing so.

Eventually, her sister along with some friends went to the said supervisor's house to talk to him. Which led to the supervisor filing a police complaint against Sanju's sister, wrongfully accusing her of making death threats to him. This led Sanju to file a police complaint and the supervisor was arrested by the police, but after two days he was released on bail; his case is still ongoing.

- 4.15 Fatima (pseudonym) is a 27-year-old trans woman who moved to Colombo in the hope of living a better life, after experiencing bullying, threats and severe harassment in her hometown of Kalmunai. But even in Colombo, she experienced persecution and discrimination. Fatima stated, 'I worked in Colombo for about 3 years. But I never got promotions like others. I was discriminated against. I wouldn't have survived those 3 years in that job if I hadn't tried to hide my femininity there. Several times I was teased and harassed by my colleagues.'

Healthcare

- 4.16 The right to health is disproportionately denied to those of LBTQ status. In particular, the provision of reproductive and sexual health care in Sri Lanka does not consider the particular needs or experiences of LBTQ women. This is compounded by the fact that because same-sex activity is still criminalized, people are less likely to be honest and transparent about their medical and personal histories to public healthcare providers, and as a result they are denied confidential and appropriate healthcare services.
- 4.17 Human rights violations pertaining to mental health include the practice of conversion therapy which is a practice that is discredited by the WHO and is considered a pseudoscientific practice. These conversion therapy practices include administration of medication, shock therapy, and masturbatory reconditioning. These practices are widespread in Sri Lanka.³² Families on occasion seek help from medical or mental health providers to 'cure' persons who manifest 'non-normative tendencies', which can lead to institutionalization, psychotherapy, medication or detention, in complete violation of these persons' human rights. These forms of treatment are in conflict with Principle 18³³ of the Yogyakarta Principles.
- 4.18 In August 2021, the Sri Lanka College of Psychiatrists also issued a statement that homosexuality was not a mental illness. They further went on to state that the myth of homosexuality being a mental illness lacked any scientific-based evidence and called

³² Zahara Dawoodbhoy, 'Homosexuality Is Wrong!': The Chilling Reality of Conversion Therapy in Sri Lanka, *ROARMEDIA* (11 Apr. 2019), <https://roar.media/english/life/srilanka-life/reality-conversion-therapy-sri-lanka> (last visited 28 May 2022).

³³ Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity, Principle 18 (Mar. 2007), http://yogyakartapinciples.org/wp-content/uploads/2016/08/principles_en.pdf.

on the relevant authorities to repeal S.365 and 365A of the Penal Code.³⁴ Yet, at present, the Sri Lankan healthcare system mostly views the healthcare needs of individuals with a heteronormative lens, resulting in health disparities when catering to the healthcare needs of LGBTQ women due to societal stigma, discrimination, and denial of civil and human rights. Transgender women especially face many challenges when accessing the healthcare sector.

5. ECONOMIC AND SOCIAL EQUALITY (ARTICLE 13)

Economic inequality

- 5.1 Same-sex relationships are not legally recognized in Sri Lanka and as a result, LGBTQ women in same-sex relationships are denied access to various social and economic entitlements and benefits, including:
 - 5.1.1 access to forms of social security available to heterosexual couples, such as the State Retirement Pension Fund;
 - 5.1.2 bank loans (because their income is not considered jointly); and
 - 5.1.3 recognition of the partnership when one of the partners dies intestate.
- 5.2 LGBTQ women face economic inequality both because of employment discrimination against them as LGBTQ women, discussed above, and because women in general do not enjoy full equality in employment in Sri Lanka. This lack of economic equality for women further prevents LGBTQ women from attaining economic independence and is also likely to be a factor that forces women to enter unwanted marriages.

Social inequality

- 5.3 In day-to-day life, LGBTQ women report reluctance to express themselves in terms of appearance and dress in the manner in which they would like. This reluctance stems from pressure to conform to traditional gender norms in the home, in the workplace and in society, as well as the existence of laws that may be used to penalise transgender persons, such as 'cheating by personation' under section 399 of the Penal Code or the Vagrancy Ordinance of 1842, which empowers authorities to detain people loitering in public on the basis of their appearance.
- 5.4 Many places in Sri Lanka – be it restaurants, cafes, or even five-star hotels – stigmatize, harass, and discriminate against LGBTQ persons. Denying entry into establishments,

³⁴ Human Rights Watch, *Out of the Shadows: Violence Against Women who Love Women* (July 23, 2022), <https://groundviews.org/2022/07/23/out-of-the-shadows-violence-against-women-who-love-women/>.

misgendering or using incorrect pronouns, hurling derogatory remarks, and other such actions are all too common.

- 5.5 A report by the UN Special Rapporteur on freedom of religion or belief, following a visit to Sri Lanka, noted that LGBT people reported that religious teaching was a significant factor in the marginalization of the community and led to deep personal struggles for those who had to attempt to reconcile their religious beliefs with their sexual and gender identities.³⁵

Housing inequality

- 5.6 LBTQ persons in Sri Lanka face substantial difficulty renting a place to live. In a recent nationwide survey of attitudes of Sri Lankans toward LGBT persons, the overwhelming majority – 87.5% – acknowledged that LGBT persons are discriminated against or face harassment when trying to obtain rental housing.³⁶ Two thirds of respondents – 66.5% – said that renting houses to LGBT persons could threaten the community’s way of life.³⁷ When asked to agree or disagree with the statement that “[r]enting my house to a LGBT person will not be a problem to me,” 59.5% indicated that it would be a problem.³⁸
- 5.7 Transgender individuals face additional problems obtaining housing when their National ID cards do not match their appearance. As was explained above, it is impossible for a Sri Lankan to obtain a new ID card without first obtaining a GRC – a process that is impossible for many and extremely drawn out for the rest.³⁹ The transition process can take up to ten years, and during this time the Sri Lanka Government does not issue any kind of temporary ID documentation. National ID cards are a required form of documentation for any housing transaction. As a result, during the years that a transgender person’s name and appearance do not match their ID card, that individual is unable to supply the necessary documentation for renting or for securing housing loans.
- 5.8 Shared housing situations (such as boarding houses), which due to their lower cost are a common form of housing for single people in Sri Lanka, pose further difficulties for transgender people. Shared housing in Sri Lanka involves renting rooms in living spaces that share common living areas, kitchens, and washrooms. This type of housing is often segregated by gender. Transgender people in shared housing who have not obtained Gender Recognition Certificates are required to live with people of the opposite gender, which creates safety issues and opens the door to harassment. They

³⁵ United States Department of State, *2020 Country Reports on Human Rights Practices - Sri Lanka* (Mar. 30, 2021), <https://www.state.gov/reports/2020-country-reports-on-human-rights-practices/sri-lanka/>.

³⁶ See *Survey of Sri Lankan society’s views*, *supra* note 13, p. 23.

³⁷ *Id.* at p. 20.

³⁸ *Id.*

³⁹ See *id.* at ¶¶ 18-19.

may be easily identifiable as targets or be forced to suppress their gender identity to blend in.

- 5.9 The difficulties LBTQ individuals face securing housing often leave them with limited options. As a result, real estate agents are able to take advantage of this situation and charge higher fees. Additionally, once housing has been secured, LBTQ people must be extra vigilant in the way they act in order to avoid giving landlords pretexts for eviction.
- 5.10 Lesbian women whose appearances and expressions do not conform to typical feminine looks get discriminated against when accessing housing and safe accommodation. Most women are either rejected for housing or are charged with higher rents.

6. MARRIAGE AND FAMILY RELATIONS (ARTICLE 16)

Marriage

- 6.1 Article 16 of the Convention provides that appropriate measures must be taken to eliminate discrimination against women in all matters relating to marriage and family relations, including the right to enter marriage, choose a spouse and have children. In violation of this article, LBTQ women in same-sex relationships in Sri Lanka are unable to marry or register a civil partnership. Further, there is evidence that some lesbian and bisexual women have been prevented by their families from having same-sex relationships and have instead been forced to marry men.⁴⁰
- 6.2 Further, same-sex partners are unable to adopt children, as the Adoption Ordinance only allows a married couple to adopt children.
- 6.3 There are no laws in Sri Lanka that protect LB women from being forced into heterosexual marriages where in many instances they suffer from physical and mental abuse, but these cases remain in the dark as the victims fear further reprisal from the police, law and family. Women forced into heterosexual marriages are also susceptible to marital rape, which is still not treated as a criminal offense under the Penal Code of Sri Lanka.
- 6.4 Women in same-sex relationships have no legal protection against domestic abuse and intimate partner violence.
- 6.5 During October 2021, Anoma (pseudonym) a lesbian from Colombo, was forced to marry a man by her father, who claimed the marriage would make her heterosexual.

⁴⁰ See *LH & IP v. The Sec'y of State for the Home Dep't* [2015] UKUT 00073 (IAC).

Chathuri (pseudonym) is in a lesbian relationship with Anoma and is married. Chathuri's husband started abusing her physically, sexually, and emotionally after it was revealed to him that she is in a relationship with Anoma. One night in November 2021, he with four other men, kidnapped Anoma and took her to a remote area. There the five men beat her, forcefully removed her clothes, verbally abused her, attempted to rape her, and left her there. Anoma didn't make a complaint about this incident to the police. After the incident, Anoma and Chathuri were both summoned to the police for an ongoing inquiry based on a complaint that had been made by Chathuri's husband earlier about the lesbian relationship. At this inquiry, even though Anoma mentioned to the police about the physical and sexual assault she faced by Chathuri's husband and others, the police did not take any action. Both Anoma and Chathuri were told that under Section 365 and 365A of the Penal Code it was illegal for two women to be in a relationship. The police threatened Anoma that she will be arrested and detained if they did not end their relationship with each other.

Family Relations

- 6.6 Coming out as a lesbian or bi-sexual woman to one's family may cause backlash among the family members that sometimes result in extreme harassment and often young girls are forced into conversion therapy and psychiatric evaluations against their will. For example, a case was filed against a lesbian woman by her parents seeking a court declaration that their daughter was mentally ill due to her sexual orientation. It was also reported that the 22-year-old girl had been illegally confined at her home by her parents where she was also subjected to abuse and harassment. The court later dismissed the application.⁴¹
- 6.7 In another example, two women in a relationship were arrested in Akkaraipattu in June 2022, following a complaint lodged by one woman's father, who had opposed their relationship.⁴²
- 6.8 Meghna (pseudonym), an 18-year-old lesbian, was subjected to physical violence and imprisonment by her parents after they learned she was lesbian and was in a relationship with another woman. In 2019, Meghna and her partner were told by both families to discontinue their relationship. In April 2020, they were caught dating and one of the women was beaten by her mother. Both women's families threatened them with violence, and Meghna was locked in her room during the day. Meghna's parents also threatened to bring in doctors to "fix" her sexual orientation.

⁴¹ Newswire, *Wattala court dismisses case filed against a lesbian* (Aug. 2, 2022), <https://www.newswire.lk/2022/08/02/wattala-court-dismisses-case-filed-against-a-lesbian/>.

⁴² Chris Kamalendran, *Indo-Lanka lesbian love: Couple held*, THE SUNDAY TIMES (June 26, 2022), <https://www.sundaytimes.lk/220626/news/indo-lanka-lesbian-love-couple-held-487294.html>.

7. **FAILURE TO IMPLEMENT RECOMMENDATIONS MADE BY CEDAW IN INDIVIDUAL CASE OF ROSANNA FLAMER-CALDERA v. SRI LANKA**⁴³

- 7.1 Rosanna Flamer-Caldera, Executive Director of EQUAL GROUND, challenged the criminalization of lesbians and bisexual women in Sri Lanka by submitting a communication to CEDAW under the Optional Protocol in August 2018. This ground-breaking case was the first time CEDAW considered an individual complaint relating specifically to the criminalization of lesbian and bisexual women.

Rosanna Flamer-Caldera sought a wide range of remedies, beginning with the repeal of criminalization of same-sex consensual relationships between adult women which is contrary to the Convention. She also sought amongst other things, the wider decriminalization of consensual same-sex activity in private between adults and effective protection from gender-based violence against women based on the intersection of their sex and sexual orientation.

The Committee decided that Rosanna Flamer-Caldera's rights had been violated by the criminalization of same-sex sexual intimacy in Sri Lanka. Specifically, the Committee found that s365A violated her right to non-discrimination (Article 2 (a) and (d)-(g)), her right to be protected from gender-based violence (Article 2(c)-(f), Article 5(a)), her right to participate in the public and political life of the country (Article 7(c)), her right to equality before the law (Article 15(1), and her family rights (Article 16). It also found that in maintaining criminalization, Sri Lanka was failing to meet its obligations to counter gender stereotypes and prejudices (Article 5(a)).

- 7.2 The Committee made the following recommendations:

"11 (a) Concerning the author of the communication:

- (i) Take immediate and effective action against the threats, harassment and abuse to which the author has been subjected, including through the adoption of preventative and protective measures and, where appropriate, initiate criminal procedures to hold those responsible to account;
- (ii) Take all appropriate measures to ensure that the author and her organisation can carry out their activism safely and freely;
- (iii) Provide the author with appropriate reparation, including adequate compensation, commensurate with the gravity and the ongoing consequences of the violations of her rights;

⁴³ See Committee for the Elimination of Discrimination against Women (CEDAW), Views adopted by the Committee under article 7 (3) of the Optional Protocol, concerning communication No. 134/2018, U.N. Doc. No. CEDAW/C/81/134/2018 (21 Feb. 2022), <https://undocs.org/Home/Mobile?FinalSymbol=CEDAW%2FC%2F81%2FD%2F134%2F2018&Language=E&DeviceType=Desktop&LangRequested=False>.

(b) *Generally:*

- (i) With respect to section 365A of the Penal Code of 1883, decriminalize consensual same-sex sexual conduct between women having passed the age of consent;
- (ii) Provide effective protection against gender-based violence against women, including by adopting comprehensive legislation prohibiting discrimination against [LBTI] women;
- (iii) Provide adequate protection, support systems and remedies, including reparation, to [LBTI] women who are victims of discrimination;
- (iv) Ensure that victims of gender-based violence against women, including [LBTI] women, have access to effective civil and criminal remedies and protection, including counselling, health services and financial support, in line with the guidance provided in the Committee's general recommendation No. 33;
- (v) Collect statistics on cases of hate crimes and gender-based violence against [LBTI] women;
- (vi) Effectively address discrimination against [LBTI] women in the workplace
- (vii) Take specific and effective measures to ensure a safe and favourable environment for women human rights defenders and female activists;
- (viii) Provide training to law enforcement agencies on the Convention, the Optional Protocol thereto and the Committee's general recommendations, in particular general recommendations Nos. 19, 21, 28, 33 and 35, to raise awareness of the human rights of [LBTI] women and so that crimes with homophobic undertones committed against [LBTI] women will be understood as gender-based violence or hate crimes requiring active State intervention.”⁴⁴

7.3 None of the CEDAW recommendations have been implemented by the GoSL thus far.

8. CONCLUSION

8.1 We urge the Committee to include the issues raised in this report in its List of Issues for Sri Lanka.

⁴⁴ *Id.* ¶ 11; See also, United Nations, *Sri Lanka: Criminalisation of same-sex sexual activity breached rights of a LGBTI activist, UN women's rights committee finds* (Mar. 23, 2022), <https://www.ohchr.org/en/press-releases/2022/03/sri-lanka-criminalisation-same-sex-sexual-activity-breached-rights-lgbti>; Human Dignity Trust, *Sri Lanka: Case before UN Committee on the Elimination of Discrimination against Women (CEDAW)* (2022), <https://www.humandignitytrust.org/what-we-do/cases/sri-lanka-case-before-un-committee-on-the-elimination-of-discrimination-against-women-cedaw/>; Kyle Knight, *UN Body Condemns Sri Lanka's Criminalization of Same-Sex Acts*, HUMAN RIGHTS WATCH (Mar. 23, 2022), <https://www.hrw.org/news/2022/03/23/un-body-condemns-sri-lankas-criminalization-same-sex-acts>.