

Written Submission

in support of the Penal Code (Amendment) Bill¹ to decriminalize adult, consensual, same-sex sexual activity in Sri Lanka

Submitted by *Human Rights Defenders Against 365/365A*²

Introduction

We wish to begin by expressing our deep concern over the continued delays in fulfilling the government's election manifesto commitment to decriminalize consensual same-sex sexual activity between adults. While we acknowledge that the manifesto included language recognizing the hardships faced by the LGBTQ+ community, we are disappointed by the lack of progress in advancing the Penal Code Amendment Bill introduced in the last Parliament, which has already been ruled as constitutional by the Supreme Court.

We draw your attention to the fact that this Bill would enable all members of the citizenry, including LGBTQ+ persons, to live a full life and contribute to the development of this country. While we understand that several legislative efforts are underway to improve the lives of women and minorities, we must highlight that such laws should be enacted only after a comprehensive, inclusive, and transparent consultation. In contrast, this Penal Code (Amendment) Bill has already undergone these critical stages and has received constitutional validation.

Furthermore, the Human Rights Commission of Sri Lanka, which regularly receives complaints from members of the LGBTQ+ community regarding human rights violations, has formally recommended — by letters dated 22 May 2025, 13 August 2024 and 22 November 2023 — that the Minister of Justice support the enactment of this Private Member's Bill and consider adopting it as a government bill to facilitate its swift passage.

¹ See Annex 1 for Private Member's Penal Code (Amendment) Bill which seeks to reform Section 365 and repeal Section 365A.

² Human Rights Defenders for Repeal of 365/365A is a network that includes over 40 human rights organizations and independent activists including Ambika Satkunanathan, Aruvi Malaiyaga Queer Network, At Humanity Sri Lanka, Community Welfare & Development Fund, Denuka Jayasinghe, Denver Peterson, Équit , Everystory Lanka, Hashtag Generation, Heart to Heart, Human & Nature Resource Development Foundation (Galle), Imasha Perera Kumarawadu, Jaffna Queer Sangam, Jaffna Transgender Network, PARIVARTAN, Positive Hopes Alliance, Prana Transgender Collective, Sankranthi Foundation, Shyama Perera, The Family Planning Association of Sri Lanka, The Law and Society Trust, Venasa Transgender Network, Women and Media Collective, Women's Solidarity Network, Yellowdot Community, Young Out Here Sri Lanka and Youth Pride among others.

For over three decades, human rights defenders in Sri Lanka have been tirelessly advocating for the reform and repeal of colonial-era laws that criminalize adult, consensual same-sex sexual activity.

Over the past decade, there has been some notable progress in advancing the protection of LGBTQ+ rights in Sri Lanka. This includes circulars issued by the Ministry of Health and the Sri Lanka Police, guidelines released by the Human Rights Commission of Sri Lanka, the recognition of sexual orientation and gender identity in newly enacted legislation, and, most significantly, the landmark 2023 Supreme Court determination on the Penal Code (Amendment) Bill.

However, despite these advancements, the continued existence of Sections 365 and 365A of the Penal Code constitutes an ongoing violation of the fundamental rights of LGBTQ+ individuals. These provisions are frequently used arbitrarily to arrest, intimidate, extort sexual favours, solicit bribes, and perpetrate harm and abuse against members of the LGBTQ+ community.

This Written Submission aims to document both the progress made so far, as well as the continued negative impact of Sections 365 and 365A on the lives of Sri Lankan people.

1. ‘A Thriving Nation – A Beautiful Life’ – NPP Policy Statement (2024)³

Section 2.3 of ‘A Thriving Nation – A Beautiful Life’ states:

“Gender identities and sexual orientations are diverse. However, in Sri Lanka, these groups often face violence, marginalization, and stigmatization. Additionally, outdated colonial laws, institutional frameworks, and regressive cultural beliefs contribute to the denial of justice to these communities. In a just society that treats everyone equally, no group should be marginalized because of their gender identity or sexual orientation.”

Within this context, we are encouraged by your government’s recognition of these challenges and its stated commitment to revising discriminatory laws, including Sections 365 and 365A of the Penal Code. We also note with appreciation the specific pledges made in the Policy Statement, which include:

- Legislation that ensures fair and equal treatment for all marginalized groups
- Revising discriminatory laws, including Penal Code sections 365 and 365A that oppress women, children and other marginalized groups.
- Expanding constitutional protections to ensure no discrimination based on gender identity or sexual orientation.
- Increasing access to state services, including healthcare, legal assistance, social protection, and justice for the LGBTQ+ communities.
- Creating a dedicated secretariat to protect the rights of marginalized groups.

³ See Annex 2 for NPP Policy Statement (Pages 43 & 45)

2. 2023 Supreme Court determination on the Penal Code (Amendment) Bill

In April 2023, the Supreme Court of Sri Lanka delivered a landmark determination on the Penal Code (Amendment) Bill, concluding that *"as a whole, or any provision thereof, [it] is not inconsistent with the Constitution"* (SC SD 13/2023, p. 43). In a unanimous opinion delivered by a three-judge bench, including the Chief Justice, the Court strongly affirmed the constitutional rights to dignity, equality, and privacy.⁴ It held that the Bill "would, in fact, enhance the fundamental rights guaranteed under the Constitution" for affected individuals.

A brief summary of the Petitioners' four arguments and the Supreme Court's counter arguments are as follows:

No.	Petitioners' Arguments	Supreme Court's Counter Arguments
1	That the Bill reduced safeguards for children.	The Court ruled that these concerns were legally unfounded, as existing laws—such as Sections 365B and 345 of the Penal Code—already provide strong protections against grave sexual abuse and sexual harassment of minors.
2	That the Bill undermines the 'Rule of Law'.	The Court found no evidence linking the proposed amendments to a threat to the Rule of Law and dismissed the Petitioners' argument as unsubstantiated.
3	That passing this Bill will lead to an increased spread of HIV/AIDS, weakening public health and national security.	The Court rejected the argument, citing evidence that HIV is not limited to homosexual males and that criminalising homosexuality worsens healthcare access and HIV spread. It concluded that decriminalisation would help improve healthcare outreach and lower infection rates among high-risk groups.
4	That the Bill is contrary to the principles of Buddhism.	The Court concluded that decriminalising homosexuality does not threaten Buddhism, as its core teachings support equality and its moral rules for monks do not apply to laypeople.

A critical element of this determination is how the judges then proceeded to argue that the Bill is in fact in line with Article 12(1) of the Constitution, in that it seeks to promote the Right to Equality, which cannot be assured unless the Right to Dignity and the Right to Privacy are also guaranteed. A few excerpts from the determination are as follows:

⁴ For more details see Annex 3a for the Supreme Court's Special Determination on the Penal Code (Amendment) Bill (SC SD 13/2023) and Annex 3b for a Summary of the Supreme Court Determination.

Human Dignity

“We are of the view that the decriminalisation of sexual activity amongst consenting adults irrespective of their sexual orientation only furthers human dignity and as such this cannot be considered as being an offence that must be maintained in the statute book.”

(SC SD 13/2023, p. 31)

Equality under Article 12(1) of the Constitution

“... The removal of criminalisation of intimate acts between consenting adults, which crime was based on moral imperatives of a bygone Victorian era, would be in conformity with Article 12(1) and would uphold the dignity of human beings.” (SC SD 13/2023, p.36)

Privacy of the Individual

“Sexual orientation is an innate part of the identity of LGBT persons. Sexual orientation of a person is an essential attribute of privacy.” (SC SD 13/2023, p.38)

“Given that the right to privacy is a facet of the right to live with dignity, there is simply no basis for this Court to come to the conclusion, that there is a constitutional obligation to criminalise homosexual activities engaged in private, by consenting adults, as that is a matter that is inherently private and intimate. If Parliament wishes to decriminalise such activities, this Court cannot stand in its way.” (SC SD 13/2023, p.40)

Conclusion and Determination by the Court

“The provisions of the Bill would in fact ensure that all persons shall be equal before the law, and be entitled to the equal protection of the law, irrespective of their sexual orientation, and that the Bill would, in fact, enhance their fundamental rights guaranteed to them under the Constitution, and enable them to live in society with dignity. We are of the view that the submissions of the Petitioners, are in fact fanciful hypotheses, and have no merit.” (SC SD 13/2023, p.42)

“We are of the opinion that the Bill as a whole or any provision thereof is not inconsistent with the Constitution.” (SC SD 13/2023, p.43)

3. New legislation that recognize Sexual Orientation & Gender Identity

We endorse the Women Empowerment Act, No. 37 of 2024 and welcome measures to fully implement the Act. According to section 2(d) of the Act, one of the objects of the Act is ‘to protect women from all forms of discrimination based on *gender and sexual orientation*’ (emphasis added)⁵. Through this Act therefore, a person's right to non-discrimination on the grounds of sexual orientation has been formally recognised in Sri Lanka's legal framework.

The recent passage of the Women Empowerment Act is a step in the right direction in terms of statutorily recognising a limited right to non-discrimination on the grounds of sexual orientation. Parliament, by enacting such a provision, has clearly indicated that such a right is

⁵ See Annex 4 for Women Empowerment Act No. 37 of 2024 (Page 2).

consistent with Sri Lanka's Constitution and the past determinations of the Supreme Court. This legislative development also makes the continued retention of Sections 365 and 365A in the Penal Code incongruous.

Additionally, the Assistance to and Protection of Victims of Crime and Witnesses Act, No. 10 of 2023⁶ recognises 'sexual orientation' as a factor that may determine the vulnerability of a victim of crime or witness.

4. Human Rights Commission of Sri Lanka – Guidelines and Recommendations

Since March 2023, the Human Rights Commission of Sri Lanka (HRCSL) has issued a series of guidelines and recommendations aimed at protecting the rights of LGBTQ+ persons and advocating for the decriminalization of consensual same-sex sexual activity between adults in Sri Lanka.

Date	Topic	Brief Summary
22/05/2025	Second Follow Up Recommendation Letter to Ministry of Justice on Sections 365 and 365A. ⁷	Second Follow Up Recommendation to the Ministry of Justice to reiterate the previous HRCSL Recommendations that the Ministry considers adopting the Private Member's Bill as a government legislative proposal to ensure its expeditious passage.
13/08/2024	Follow Up Recommendation Letter to Ministry of Justice on Sections 365 and 365A. ⁸	Follow Up Recommendation to the Ministry of Justice to support the enactment of the Penal Code (Amendment) Bill and consider adopting the Bill as a government proposal to ensure its expeditious passage.
22/11/2023	Recommendation Letter to Ministry of Justice on Sections 365 and 365A of Penal Code. ⁹	Recommendation to the Minister of Justice, Prison Affairs and Constitutional Reforms to Repeal / Amend Sections 365 and 365A of the Penal Code, in accordance with international human rights norms and standards.
02/01/2023	Guidelines for Police Officers to Protect the Rights of Transgender Persons. ¹⁰	12 Guidelines to be followed by Police and law enforcement authorities when dealing with transgender people. The Guidelines call for the Police to recognize the preferred gender identity of transgender people,

⁶ See Annex 5 for Assistance to and Protection of Victims of Crimes and Witness Act No. 10 of 2023 (Pages 27 & 28).

⁷ See Annex 6 for Second Follow Up Recommendation Letter to Ministry of Justice on Sections 365 and 365A, 22 May 2025.

⁸ See Annex 7 for Follow Up Recommendation Letter to Ministry of Justice on Sections 365 and 365A, 13 August 2024.

⁹ See Annex 8 for Recommendation Letter to Ministry of Justice on Sections 365 and 365A of Penal Code, 22 Nov 2023.

¹⁰ See Annex 9 for HRCSL Guidelines for Police Officers to Protect the rights of Transgender Persons, 2 January 2023.

		ensure non-discrimination, personal security and the right to privacy.
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5. Sri Lanka Police – Guidelines & Circulars

In March 2025, the Sri Lanka Police launched a series of training programmes to enhance Police Officers' understanding of LGBTQ+ individuals. This series of training programmes are being conducted with support from the Netherlands Embassy.

In response to the social media backlash that occurred due to the Sri Lanka Police's announcement to conduct LGBTQ+ Trainings, the Sri Lanka Police reiterated its commitment to protecting the rights of all persons, including LGBTQ+ people, by issuing a Police Circular (dated 14 March 2025) outlining the 12 Guidelines recommended by the Human Rights Commission of Sri Lanka in 2023.

Date	Topic	Brief Summary
14/03/2025	Guidelines for Police Officers to Protect the Rights of Transgender Persons. ¹¹	12 Guidelines to be followed by Police and law enforcement authorities when dealing with transgender people. The Guidelines call for the Police to recognize the preferred gender identity of transgender people, ensure non-discrimination, personal security and the right to privacy.
27/12/2022	Police Circular: Matters to be considered when dealing with transgendered persons and persons who have undergone gender transition. ¹²	Inspector General's Circular (2740/2022) and Crime Circular (03/2022) outlining instructions to ensure that appropriate measures are taken by the Sri Lanka Police to protect the fundamental rights of transgender persons or persons who have undergone gender transition and to uphold Article 12 of the Constitution.

6. Health related Circulars, Statements & National Policies

In June 2016, the **Ministry of Health, Nutrition and Indigenous Medicine issued a General Circular (01-34/2016)**¹³ on the establishment of services for transgender persons, which

¹¹ See Annex 10 for Guidelines for Police Officers to Protect the Rights of Transgender Persons, 14 March 2025.

¹² See Annex 11 for Inspector General's Circular (2740/2022): Matters to be considered when dealing with transgendered persons and persons who have undergone gender transition, 27 December 2022.

¹³ See Annex 12 for Circular (01-34/2016) on Issuing of Gender Recognition Certificate for Transgender Community, issued by the Ministry of Health, Nutrition and Indigenous Medicine, 16 June 2016.

outlines procedures for assessment, counselling, and the issuing of a Gender Recognition Certificate (GRC) to facilitate the amendment of the sex designation on birth certificates. It acknowledges that transgender individuals in Sri Lanka are often socially, economically, politically, and legally marginalized, and face discrimination, violence, and harassment—particularly when accessing public spaces. The Circular further recognizes that the ability to amend one’s birth certificate is a critical step in enabling transgender persons to align their legal identity with their gender identity, thereby gaining access to essential identity and legal documents.

The ***National HIV/STI Strategic Plan – Sri Lanka (2023-2027)***¹⁴ identifies the reform of Sections 365 and 365A of the Penal Code—which criminalize gay and bisexual men as well as transgender persons—as a priority. Under Strategic Direction 5.1, the Plan emphasizes the creation of an enabling legal environment through the removal of punitive and discriminatory laws and policies that hinder effective HIV/STI prevention and control efforts.

The ***College of Community Physicians issued a statement (dated 8 May 2023)***¹⁵ in support of repealing Sections 365 and 365A of the Penal Code. Their statement reiterates that “decriminalization of non-heteronormative gender identities” is a priority in the previous National HIV/STI Strategic Plan of the Ministry of Health (2018-2022), as well as in the current National HIV/STI Strategic Plan of the Ministry of Health (2023-2027). The statement notes that “decriminalization will increase access to health care, screening and treatment services and support the principles of equity and equality in the Sri Lankan health system”.

The ***Sri Lanka College of Psychiatrists issued a Press Statement (dated 18 August 2021)***¹⁶ regarding human sexuality and mental illness, in which they categorically stated that they “do not endorse the view that homosexuality is due to a disease of the mind or body.” The statement further noted that “according to modern day medical knowledge and social values, the lifestyle choices of the LGBTIQ community are to be respected and not discriminated against.” The statement concludes by strongly urging the authorities to decriminalize homosexuality and abolish archaic laws, such as Section 365 of the Penal Code.

7. CEDAW Concluding Observations (February 2025)

In February this year, the UN Committee on the Elimination of Discrimination Against Women (CEDAW Committee) reviewed Sri Lanka’s 9th Periodic Report to CEDAW. In its 2025 Concluding Observations¹⁷, recalling recommendations made in 2011 and 2017, the CEDAW Committee once again recommended that the Sri Lankan government abides by its obligations under the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and “decriminalizes adult, consensual, same-sex relationships by repealing Sections 365 and 365A

¹⁴ See Annex 13 for Ministry of Health National HIV/STI Strategic Plan – Sri Lanka 2023-2027 (See page 67)

¹⁵ See Annex 14 for Statement by College of Community Physicians, 8 May 2023.

¹⁶ See Annex 15 for Press Statement by Sri Lanka College of Psychiatrists, 18 August 2021.

¹⁷ See Annex 16 for CEDAW Concluding Observations on the 9th Periodic Report of Sri Lanka (Pages 20 & 21).

of the Penal Code of 1883”. The CEDAW Committee also recommended that the Sri Lankan government “takes all measures necessary to fully implement the views adopted by the Committee in *Rosanna Flamer-Caldera v. Sri Lanka*¹⁸ (CEDAW/C/81/D/134/2018)”.

8. Rosanna Flamer-Caldera v. Sri Lanka (March 2022)

In a landmark decision (*Rosanna Flamer-Caldera v. Sri Lanka*) delivered in March 2022, the CEDAW Committee stated that the continued criminalization of adult, consensual, same-sex sexual activity between women under section 365A of the Sri Lankan Penal Code violated their right to non-discrimination under Article 2 of the CEDAW Convention, and called on the Sri Lankan authorities to decriminalize consensual, same-sex sexual activity between adult women. The Committee further found that Sri Lankan authorities had subjected Flamer-Caldera to gender-based discrimination and violence and had not taken any measures to respect her right to a life free from gender-based violence.

The CEDAW Committee made recommendations to Sri Lanka specifically in relation to Flamer-Caldera - recommending that the State ensure her safety and provide her with appropriate reparation for the violation of her rights - and also generally recommending that the State decriminalize consensual same-sex sexual activity between adult women; provide protection against gender-based violence to lesbian, bisexual, transgender and intersex (LBTI) women, including by adopting anti-discrimination legislation; provide support systems and civil and criminal remedies for LBTI victims of violence; ensure that LBTI women have access to counselling, health services and financial support, in line with the guidance provided in the CEDAW Committee’s General Recommendation No. 33; to collect statistics on hate crimes and gender-based violence against LBTI women; to create a safe environment for women human rights defenders and activists including in the workplace; and to provide training to law enforcement agencies on CEDAW and its General Recommendations.

9. Universal Periodic Review (UPR)

We wish to recall that, at its Third Universal Periodic Review in 2017, Sri Lanka voluntarily pledged to ensure and strengthen respect for fundamental rights of all persons, including those from the LGBTIQ community, and address concerns raised in that regard.

In 2023, during its Fourth UPR at the Human Rights Council, Sri Lanka recalled this pledge in its National Report¹⁹ and stated that a number of criminal proceedings are being revisited on grounds of non-discrimination based on sexual orientation. The Working Group of the UPR made recommendations to decriminalize same-sex sexual conduct.²⁰

¹⁸ See Annex 17 for *Rosanna Flamer-Caldera v. Sri Lanka* (CEDAW/C/81/D/134/2018).

¹⁹ See Annex 18 for Sri Lanka National Report presented during the Fourth UPR Review (See Page 7).

²⁰ See Annex 19 for Report of the Working Group on UPR to Sri Lanka (See Pages 22 & 23)

10. UN Human Rights Committee

The Sri Lankan government made representation before the UN Human Rights Committee in 2022, affirming that Article 12 of the Constitution included non-discrimination on the basis of sexual orientation. The Human Rights Committee in its Concluding Observations on Sri Lanka (26 April 2023), observed that the continued criminalisation of same-sex activity under sections 365 and 365A of the Penal Code violated Articles 2 and 26 of the ICCPR. It also observed that such continued criminalisation, the arrest and detention of persons under these sections, and the ill-treatment of suspects, violated the right to freedom from torture or cruel, inhuman or degrading treatment (Article 7), the right to liberty and security of persons (Article 9), and the right to privacy (Article 17) guaranteed under the ICCPR. It accordingly recommended the repeal of sections 365 and 365A of the Penal Code.²¹

11. Decriminalisation through Legislative Reform: Global Trends with a focus on Asia

Since the late 20th century, there has been a trend which has seen a growing number of countries decriminalise colonial-era sodomy laws through legislative reform or through judicial intervention. This has included Parliamentary initiatives which repealed or amended criminalising provisions in several Asian countries, including Singapore (2022), Bhutan (2021), China (1997) and Hong Kong (1991). Other Asian countries have decriminalised through the courts, notably India (2018) and Nepal (2007). There are numerous examples of countries outside Asia which have decriminalised through legislative reform, including most recently Niue (2024) and the Cook Islands (2023), continuing on from trends that began as early as the 1940s and 1950s.²²

12. Impact of criminalization

From October 2023 to October 2024, a total of 326 cases of rights violations were documented by the Bridge to Equality Project²³, with 226 complaints being submitted to the Human Rights Commission of Sri Lanka. Focused on marginalized communities, the project highlights systemic discrimination faced particularly by transgender women, gay men and other LGBTQ+ people. The data reveals patterns in perpetrators, victim demographics, and locations, helping inform future policy to protect fundamental rights and improve access to justice.

Key Findings: All documented cases involve violations of the constitutional Right to Equality (Article 12), with many also involving cruel or degrading treatment (Article 11). The police were the main perpetrators in 194 cases, followed by hospital staff in 45 cases. Geographically, most incidents occurred in Colombo (99 cases) and Gampaha (91

²¹ See Annex 20 for Human Rights Committee's Concluding Observations to Sri Lanka (See Page 5)

²² See Annex 21 for Brief on 'Decriminalisation through Legislative Reform' for more details on global trends with a focus on Asia.

²³ The BRIDGE to Equality Project aims to improve the protection of human rights for LGBTQ+ people in Sri Lanka through the use of international human rights law. It is jointly implemented by Diversity & Solidarity Trust (DAST), Sankranthi Foundation and Young Out Here in partnership with the International Commission of Jurists. See Annex 22 and www.bridge2equality.org for more documented cases of human rights violations faced by LGBTQ+ people in Sri Lanka.

cases), with Anuradhapura showing the highest number of cases outside the Western Province (15 cases, 4.6%).

The majority of survivors were trans persons attracted to the opposite gender (53%), followed by gay men (34%). Trans women made up the largest gender identity group among survivors (42%), followed by gay men identifying as male (33%). Most survivors were Sinhala Buddhists, likely due to the high Sinhala Buddhist population in the Western Province, but a significant minority (45 survivors) were Tamil Hindus.

In terms of education levels, over half of the survivors had completed their A/Ls (53%), with another third completing their O/Ls (35%). In terms of income, most survivors earned Rs. 21,000–30,000 per month, though 20% did not disclose their income. High-income earners (above Rs. 50,000) were rare. The most affected age group was 21–30 years (59%), followed by 31–40 years (22%).

Survivor Testimonies:

M.P. was discriminated due to her sexual orientation at the STD clinic where she was ridiculed and insulted:

“The doctor then proceeded to scold me very harshly, asking me why I was in need of getting tested so often: ‘Do you have that much sex?’ ‘Are you that depraved to have sex all the time?’ ‘Why are you having sexual relations with other men?’ he also asked ‘If you are in such dire need of sex and are so depraved then why not get married?’

G.T was unlawfully arrested, discriminated, humiliated and sexually abused by Police Officers:

“After going through my purse they found two condoms and they announced that we must come with them now to the police station. They hit us on the head a few times as well. We then asked the Officer if it is illegal to have condoms with us and they replied saying that it is none of our business and we shouldn’t be retorting with them and giving them attitude. The two Officers then took us to a nearby bush and asked us to do them a sexual favour. We were forced to perform oral sex on them. The Officers were in uniform this whole time, and they even lit a cigarette during the act. Because we were too scared and unfamiliar with what would happen, we did as they demanded.”

Prison statistics from 2011 to 2023²⁴ state that people continue to be arrested and convicted for ‘unnatural offences’ and ‘gross indecency’ under Penal Code Sections 365 and 365a. In 2023, there were 17 people who were convicted for ‘unnatural offences’, while 4 people were

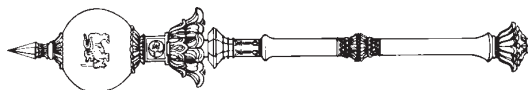
²⁴ See Annex 23 for Admissions of unconvicted and convicted prisoners by type of accusation / offence (2011-2023).

convicted for 'gross indecency.' The same year, a total of 56 people were arrested and listed as 'unconvicted' for 'unnatural offences (27 people) and 'gross indecency' (29 people). It is very likely that LGBTQ+ persons constitute a majority of these persons.

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**PARLIAMENT OF THE DEMOCRATIC
SOCIALIST REPUBLIC OF
SRI LANKA**

PENAL CODE (AMENDMENT)

**A
BILL**

to amend the Penal Code (Chapter 19)

*Presented by the Hon. Premnath C. Dolawatte, M.P.
for Colombo District on 04th of April, 2023*

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Penal Code (Amendment)

AN ACT TO AMEND THE PENAL CODE (CHAPTER 19)

BE it enacted by the Parliament of the Democratic Socialist Republic of Sri Lanka as follows:-

1. This Act may be cited as the Penal Code Short title (Amendment) Act, No. of 2023.

5 2. Sections 365 and 365A, of the Penal Code (Chapter 19) (hereinafter referred to as the “principal enactment”) is hereby amended as follows:-

Amendment of the provisions regarding unnatural offences (i) Section 365 in the principal enactment is hereby repealed and it is amended by substituting the following section:

10 “Whoever voluntarily has carnal intercourse against the order of nature with an animal, shall be punished with imprisonment of either description for a term which may extend to ten years and shall also liable to fine.”.

15

Explanation: Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section.

20 Repealing of provisions regarding Gross Indecency between person (ii) Section 365A of the principal enactment is hereby repealed.

Repeal of Section 365A of the principal enactment

Further disclaimer of doubts clause (iii) The intent of the legislature in enacting this legislation must be considered as amending the provisions that makes sexual orientation a punishable offence.

25

3. In the event of any inconsistency between the Sinhala and Tamil texts of this Act, the Sinhala text shall prevail.

Sinhala text
to prevail in
case of
inconsistency

A Thriving Nation A beautiful Life



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தேசிய மக்கள் சக்தி
JATHIKA JANA BALAWEGAYA (NPP)



A Thriving Nation A Beautiful Life

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Unemployed graduates:

Graduates who have been unemployed for a long period will be employed as follows. Thereafter, a mechanism will be developed to create new job opportunities for graduates as the economy expands.

- 20,000 to the teaching profession.
- 3,000 STEM graduates and 9,000 non-STEM graduates to the information technology sector.
- Another 3,000 to the Inland Revenue Department, Customs Department, Foreign Service, and tourism industry.

2.3 Impartial Human Identity

Gender Equality in social-life

Introduction

Although women are an integral part of society, they consistently occupy an unequal position due to marginalization within major socio-economic, cultural, and political systems. This inequality occurs across all sectors, including the home, community, workplace, and politics. In recent decades, the situation has worsened due to neoliberal economic policies. Despite women being the primary earners of foreign remittances, the necessary structural and ideological changes for equality and justice have not yet taken place. Instead, the commodification of women's identities and their marginalization in the labor market have intensified.

Overall, factors such as the marginalization of both women and men as vulnerable workers, the direct impact on women due to the weakening of public services like education and healthcare, and the enactment of laws controlling women's bodies amidst militarization and ethno-religious extremism highlight women's issues as a broader social crisis. Therefore, the current issues faced by women in Sri Lanka must be understood through an intersectional perspective. The NPP proposes a political practice that represents all marginalized groups in society, aiming to realize the aspirations of a just society, a free country, and free women by securing all rights. Hence, its policies on women are intrinsically linked to its other policies.

Gender identities and sexual orientations are diverse. However, in Sri Lanka, these groups often face violence, marginalization, and stigmatization. Additionally, outdated colonial laws, institutional frameworks, and regressive cultural beliefs contribute to the denial of justice to these communities. In a just society that treats everyone equally, no group should be marginalized because of their gender identity or sexual orientation.

Principles

- Economic justice as a cornerstone for achieving gender equality.
- State policies acknowledging the value of unpaid care work within the national economy.

- Legislation that ensures fair and equal treatment for all marginalized groups.
- Enhanced women's political representation, participation, and roles in society.
- Condemning all forms of violence, including systemic violence, across all settings.
- Prioritized public services in policy development to alleviate the pressures on women.
- Women's involvement in creating sustainable environmental conservation strategies.
- A society free from regressive stereotypes perpetuated by social institutions and practices.
- Equal access to state services, rights, and justice for all identity groups, including women.
- Domestic laws with the standards set by the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Convention on the Rights of the Child (CRC).

ACTIVITIES

- Identifying and addressing gender pay gap in the workforce.
- Tackling legal and practical obstacles that adversely affect women's land rights.
- Revising existing labor laws and introduce new regulations to address specific challenges faced by working women and ensure job security.
- Taking measures to alleviate the burden of predatory microfinance loans with high interest rates on women.
- Enhancing the access to banking and financial services to support women's entrepreneurship.
- Institutionalizing national labor force surveys to recognize and account for unpaid care work, including childcare, elderly care, and support for the people with disabilities.
- Reducing the burden of unpaid care work on women
- Increasing women's political participation through political education and organizing.
- Enacting laws and policies to ensure at least 50% representation of women gradually, in political institutions.
- Improving education, healthcare, transportation, and other public services to ease the challenges faced by women.
- Implementing the Law Commission's 2012 recommendations to ensure safe termination of pregnancy.
- Offering comprehensive sexual and reproductive health education and services tailored to all age groups.
- Combating period poverty by providing women and girls tax relief, financial support, and other essential resources.

- Revising laws and procedures to guarantee protection from gender-based violence and harassment in workplaces, public transport, and other places.
- Revising discriminatory laws, including panel code 365 and 365 (a) that oppress women, children and other marginalized groups.
- Expanding constitutional protections to ensure no discrimination based on gender identity or sexual orientation.
- Increasing access to state services, including healthcare, legal assistance, social protection, and justice for the LGBTIQ+ communities.
- Implementing legal and institutional reforms in relevant bodies, such as the Human Rights Commission and Legal Aid Commission, to safeguard the rights of marginalized groups.
- Developing a code of conduct and establish standards for state officials, including law enforcement, on interacting with gender identity groups.
- Creating a dedicated secretariat to protect the rights of marginalized groups.

2.4 A safe world for children A creative future generation

Introduction

By 2023, Sri Lanka's population was 22,037,000 and 6,642,331, which is 30.14% of the total population, were children under 18 years of age, according to the definition of the United Nations. Today, children face significant issues such as weak justice systems, inadequate protection services, educational challenges, and malnutrition. The judicial process for children who fall victim to crimes often drags on for excessively long periods, sometimes extending even 6 to 10 years.

Currently, the Department of Prisons transports children to and from court alongside adult offenders, endangering their safety and privacy. Decades-old laws like the Vagrants Ordinance, which has been in force since colonization, continue to infringe on individuals' freedom of movement, violating the rights of children and their families. A comprehensive review of the Children and Young Persons Ordinance, which has undergone only minor amendments over the decades, is also necessary.

Education is crucial in developing the skills and mindset needed for children's success in a rapidly changing world, but Sri Lanka's current education system is failing to meet this need. The frustrations and lack of trust in the future caused by corruption and bribery in the country have driven many young people to seek opportunities abroad.

The absence of a well-organized and adequate human and physically resourceful social service system in Sri Lanka has made child welfare a significant challenge. Although field officers are assigned to social protection and related duties, gaps in identifying and assisting at-risk children and families have weakened the services. The NPP's policy on child protection and welfare presents a comprehensive approach to ensure the safety of children in Sri Lanka through increased budget allocations, improved health and safety measures, legal reforms, and advancement of education.

IN THE SUPREME COURT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA**“PENAL CODE (AMENDMENT) BILL”****SC SD No. 13/2023****Petitioners:**

1. K. Athula H. De Silva, Brigadier (Retd.),
No. 590/2, Ekamuthu Mawatha,
Madiwela Road, Thalawathugoda.
2. Shenali D. Waduge,
No. 27, Ratmal Mawatha,
Sirimal Uyana, Ratmalana.
3. Jehan Hameed,
No. 1, Manthri Road,
Colombo 5.

Counsel:

Dharshana Weraduwege with Danushi
Kalupahana and Ushani Atapattu

vs.

- 1) Hon. Attorney General,
Attorney General's Department,
Colombo 12.

Counsel for the State:

Ms. Harippriya Jayasundara, PC, ASG with
Yuresha De Silva, DSG, Sureka Ahmed Jayasinghe,
SSC, Ishara Madarasinghe, SC and M.B.M. Sajith
Bandara, SC for the Hon. Attorney General

- 2) Hon. Premanath C. Dolewatta, MP,
No. 50, Ihala Bomiriya, Kaduwela.

Counsel for the 2nd Respondent: Sanjeeva Jayawardena, PC with Lakmini Warusevitane and Rukshan Senadheera

Intervenant Petitioner: Bandisattambige Primal Nilhan Paul Fernando,
No. 288/8, Hokandara Road, Victory Garden
Stage 2, Hokandara.

Counsel: S. Vijith Singh

Intervenant Petitioner: Marlon Dan Buultjens,
RC Ceylon Pentecostal Mission, No. 3,
Seethagama Stage 2, Avissawella.

Counsel: Canishka Witharana

Intervenant Petitioners: Women and Media Collective,
No. 56/1, Sarasavi Lane,
Castle Street, Colombo 8.

Professor Savitri Goonesekere,
No. 22/2, Obahena Road, Madiwela, Kotte.

Radhika Coomaraswamy,
No. 27 1/C, Pedris Road, Colombo 3.

Natasha Thiruni Jayasekera Balendra,
No. 168/1, Inner Flower Road, Colombo 3.

Samanpriya Ramani Muttettuwegama,
No. 7/12, Sulaiman Terrace, Colombo 5.

Yamindra Watson Perera,
No. 130, Reid Avenue, Colombo 4.

Nirupa Irani Karunaratne,
No. 32, Alfred Place, Colombo 3.

Counsel: Sanjeeva Jayawardena, PC with Prashanthi Mahindaratne, Dilumi De Alwis, Lakmini Warusevitane and Rukshan Senadheera

Intervenient Petitioners: Hewa Kaluwela Mullage Thushara Manoj Kumara,
No. 27/2/34, Araliya Mawatha,
Attygala, Hanwella.

Nawagamuwa Bandaralage Adhil Suraj Vimukthi Bandara,
No. 81/51, Meegoda Estate, Panaluwa,
Watareka, Padukka.

Equite Sri Lanka Trust,
No. 29/1, Woodland Avenue,
Kalubowila, Nugegoda.

Counsel: Prasanth Lal De Alwis, PC with Dineth Kaushalya and Chamara Wannisekera

Intervenient Petitioner: Visakesa Chandrasekeram,
No. 62/3, Mayura Place, Colombo 6.

Radika Guneratne,
No. 136/1/1, Old Kesbewa Road,
Delkanda, Nugegoda.

Thenu Ranketh,
No. 75/1, Pepiliyana Mawatha, Kohuwela.

Counsel: Nilshantha Sirimanne with Deshara Goonetilleke

Intervenient Petitioners: Chandana Kapila Ranasinghe,
No. 54/14B, 2nd Lane, Santhanampitiya Road,
Embuldeniya.

Hettigoda Gamage Kanthilatha,

No. 1051/1, Ragamwatte, Ragama.

Gameela Samarasinghe,
No. 22, Albert Mawatha, Nugegoda.

Prabasiri Ginige,
No. 108, George E De Silva Mawatha, Kandy.

Ananda Galappatti,
No. 25/4, Barnes Place, Colombo 7.

Counsel: Ermiza Tegal

Intervenant Petitioner: A.P. Bhoomi Harendran,
No. 1D/2F/U23, Mihindusenpura, Colombo 8.

Counsel: Pulasthi Hewamanna

Intervenant Petitioner: Ambika Satkunanathan,
No. 27, Rudra Mawatha, Colombo 6.

Counsel: Pulasthi Hewamanna

Intervenant Petitioner: Tamara Andrea Flamer Caldera,
No. 119/16, Model Farm Road, Colombo 8.

Counsel: Thishya Weragoda with Stefania Perera and
Dilan Nalaka

Intervenant Petitioner: Koswattage Don Aritha Gishan Wickremasinghe,
No. 92, Templers Road, Mount Lavinia.

Counsel: Thishya Weragoda with Stefania Perera and
Dilan Nalaka

Intervenant Petitioners: Pasan Hasitha Jayasinghe,

No. 62/3, Mayura Place, Colombo 5.

Warahena Liyanage Damith Chandimal De Alwis
Gunetilleke,
No. 7, Wekanda Road, Jambugasmulla Mawatha,
Nugegoda.

Counsel: Lakshan Dias

Intervenient Petitioner: Dr. Beddage Tushara Wickremanayake,
36/2, Kuruppu Road,
Colombo 8.

Counsel: Pulasthi Rupasinghe with Nilma Abeysuriya

Intervenient Petitioners: Dr. Paikiasothy Saravanamuttu,
No. 3, Ascot Mawatha, Colombo 5.

Bhavani Fonseka,
No. 294/1, Nawala Road, Rajagiriya.

Mirak W. Raheem,
No. 24/7, Dudley Senanayake Mawatha,
Colombo 8.

Counsel: Luwie Ganesathasan with Khyati
Wikramanayake and Bhagya Samarakoon

Intervenient Petitioners: Sonali Therese Gunasekara,
No. 410/24, Bauddhaloka Mawatha,
Colombo 7.

Jake Randle Oorloff,
No. 12/A, 137, Rukmalgama,
Pannipitiya.

Counsel: N. K. Ashokbharan

Before: Jayantha Jayasuriya, PC, CJ
Vijith K. Malalgoda, PC, J
Arjuna Obeyesekere, J

The Court assembled at 10.00 a.m. on 20th April 2023 and at 11.30 a.m. on 21st April 2023 for the hearing of the petition.

A private member's Bill in its long title referred to as 'A Bill to amend the Penal Code,' and in its short title referred to as the 'Penal Code (Amendment) Bill' [*the Bill*] was published as a Supplement in Part II of the Government Gazette of 17th March 2023. It was presented in Parliament by Hon. Premanath C. Dolewatte, Member of Parliament, and was placed on the Order Paper of Parliament of 4th April 2023.

Three Petitioners have invoked the jurisdiction of this Court in terms of Article 121(1) of the Constitution by filing the above-numbered petition in the Registry of the Supreme Court on 17th April 2023. While the Hon. Attorney General has been named as the 1st Respondent, the proponent of the Bill has been named as the 2nd Respondent. The Petitioners have prayed *inter alia* that this Court declare that the Bill in its entirety is inconsistent with one or more Articles of the Constitution and a determination that, in addition to being passed with not less than two-thirds of the whole number of Members of Parliament (including those not present) voting in its favour [*the special majority*], the Bill must be approved by the People at a Referendum.

Upon receipt of the said petition, the Registrar of this Court issued notice on the Hon. Attorney General as mandated by Article 134(1) of the Constitution. Fourteen petitions have been filed seeking to intervene in this application and to be heard in terms of Article 134(3) of the Constitution. All such applications were allowed. This Court heard extensive submissions from the learned Counsel for the Petitioners, the learned Additional Solicitor General, the learned President's Counsel for the 2nd Respondent and all learned Counsel for the Intervient Petitioners, and afforded all parties the opportunity of filing written submissions.

“We have determined that it is not the business of the law to regulate private consensual sexual encounters between adults. The same applies to issues of private decency, and/or indecency between consenting adults. Any regulation of conduct deemed indecent done in private between consenting adults is a violation of the constitutional right to privacy and liberty. By invoking textual surgery, any reference to private indecency ought to be severed and excised from Section 167, so that its umbrage and coverage is only public indecency. Even after such severance, Section 167 thereof remains intelligible, coherent and valid.” [paragraph 223]

It must perhaps be reiterated that the intent of the legislature in enacting the Bill is to repeal the laws that make sexual orientation a punishable offence. That does not mean that men or women or for that matter transgender persons can frequent public places in a manner that creates a nuisance to others using such public places, or that they can engage in any other illegal acts or behave in a manner that affects the rights, health or property of others. However, we must reiterate that this is a matter that comes within the legislative policy of the State which shall be guided by the provisions of Articles 27 and 75. It is a matter that is within the legislative power of the People which shall be exercised by Parliament in trust for the People.

Conclusion

We have already referred to in detail the submissions of the learned President’s Counsel for the proponent of the Bill and the learned Counsel for the Intervient Petitioners in support of the Bill that the provisions of the Bill would in fact ensure that all persons shall be equal before the law and be entitled to the equal protection of the law, irrespective of their sexual orientation, and that the Bill would, in fact, enhance their fundamental rights guaranteed to them under the Constitution and enable them to live in society with dignity. We are of the view that the submissions of the Petitioners are in fact fanciful hypotheses, and have no merit.

In the above circumstances, we are of the view that the Petitioners have failed to establish that:

- (a) the repeal [in the manner proposed in the Bill] of Sections 365 and 365A of the Penal Code which criminalise intimate acts between consenting adults is unconstitutional;
- (b) the Bill as a whole or any clause therein is inconsistent with any provision of the Constitution.

Determination

We are of the opinion that the Bill as a whole or any provision thereof is not inconsistent with the Constitution.

We place on record our appreciation of the assistance given by the learned Additional Solicitor General who represented the Hon. Attorney General, the learned Counsel for the Petitioners, the learned President's Counsel for the proponent of the Bill and the learned President's Counsel and all other learned Counsel for the Intervenant Petitioners.

JAYANTHA JAYASURIYA, PC
CHIEF JUSTICE

VIJITH K. MALALGODA, PC
JUDGE OF THE SUPREME COURT

ARJUNA OBEYESEKERE
JUDGE OF THE SUPREME COURT

2023 Supreme Court Determination on the Penal Code (Amendment) Bill – Summary



Contents

This summary focuses on:

- The arguments presented by the Petitioners (those against the Bill) and the Court’s responses to the same.
- The rationale of the Bill and three principal arguments by (some of) those in favour of the Bill and the Court’s responses to the same.
- The Legislative Policy surrounding the Bill.
- The Court’s conclusion and determination.
- Annexures with selected additional information for further reference:
 - Annexure 1 outlines key points on ‘Buddhism & Culture’ that were presented in selected Written Submissions for the 2023 SC Determination on the Penal Code (Amendment) Bill.
 - Annexure 2 outlines key points on the ‘Public Health Rationale’ that were presented in selected Written Submissions for the 2023 SC Determination on the Penal Code (Amendment) Bill.
 - Annexure 3 outlines key arguments relating to decriminalisation and same-sex relationships in the 2024 Supreme Court Determination on the Gender Equality Bill.

Arguments of the Petitioners

“... The purported grounds urged by the Petitioners are not only speculative, fanciful and palpably false, but have not been established in any manner by the Petitioners, and that by arguing so, the Petitioners are advocating that a segment of the society continue to be denied the equal protection of the law.” (Page 17)

Argument 1 – Reduced Safeguards for Children

- **Petitioners' Argument:** The Petitioners argued that amending Sections 365 and 365A would strip away legal protections for children under sixteen, potentially leading to their exploitation. They argued that exposure to LGBT programs in schools might influence children towards transgender identities, and amending these sections could legally permit sexual activity between minors and adults.
- **Court's Response:** The Court found these concerns to be legally unfounded. Existing laws, specifically Section 365B of the Penal Code, already criminalise 'grave sexual abuse' with severe penalties for those under sixteen, regardless of consent. Additionally, Section 345 addresses sexual harassment, providing a comprehensive legal framework to protect children from exploitation. Therefore, there was no evidence to state that any legal protections for children would be lost due to the passing of this Bill.

Argument 2 – Dilution of the Rule of Law

- **Petitioners' Argument:** They claimed that decriminalising homosexual conduct would weaken legal protections and undermine the Rule of Law, thereby putting citizens' life and liberty at risk.
- **Court's Response:** The Court held that the Petitioners failed to establish any connections between the proposed amendments and any tangible threat to the Rule of Law. Therefore, the Court concluded that the argument was unsupported by credible evidence and dismissed this argument.

Argument 3 – Increased Spread of HIV/AIDS Weakening Public Health and National Security

“It is the view of this Court that the argument that Sections 365 and 365A stand in the way of an HIV or AIDS pandemic and that the Sri Lankan Armed Forces and Police would be destroyed by HIV or AIDS if those Sections are repealed, descends to the realm of the absurd, and it is unsurprising that the Petitioners did not adduce any scientifically acceptable evidence to support this line of argument.” (Page 15)

- **Petitioners' Argument:** The Petitioners argued that a majority of those with HIV and AIDS have a history of male or bisexual exposure and therefore, decriminalising same-sex relationships would lead to an increase in HIV and AIDS cases, negatively impacting public health and national security. They suggested this would harm individuals, families, communities, and key institutions like the military and police.
- **Court's Response:** The Court rejected this argument, (1) citing evidence by opposing Counsel from the 'National HIV/STI Strategic Plan for Sri Lanka' prepared by the Ministry of Health, and reports by the UNDP and the Commonwealth Eminent Persons Group showing that this narrative has no credible basis as it is not only homosexual males who contract HIV but female sex workers, returnee migrant workers and those who use or inject drugs. (2) They also highlighted that criminalising homosexual conduct marginalises those at risk, further hindering their access to healthcare and exacerbating the spread of HIV, thereby reinforcing such false narratives. (3) Decriminalisation homosexuality, on the other hand, would improve healthcare outreach and reduce infection rates among high-risk groups.

Argument 4 – Homosexuality is Contrary to Buddhist Principles

“Their argument lacks merit... The Petitioners did not explain the manner in which decriminalisation of one’s sexual orientation derogates from the State’s duty to protect and foster the Buddha Sasana, nor the point of how the proposed amendments are prohibited by, or are contrary to the Buddha Sasana, except to state that it is an offence [Paraapika] for a Buddhist priest to have sexual relations with another, irrespective of whether the other person is of the same sex or of the opposite sex.” (Page 16)

- **Petitioners' Argument:** The Petitioners claimed that homosexual activity is contrary to Buddhist principles, thus violating Article 9 of the Sri Lankan Constitution, which mandates the State to protect and foster Buddhism.
- **Court's Response:** The Court found this argument lacking merit. They noted opposing Counsel’s point that Buddhist monks (Bhikkus) and nuns (Bhikkunis) have a separate code of conduct (vinaya rules) that does not apply to laypersons. Moreover, that Buddhist scriptures do not condemn homosexuality among laypersons, and that the fundamental teachings of Buddhism advocate for fair and equal treatment of all individuals. Therefore, the Court held that decriminalising homosexuality does not undermine the protection of Buddhism.
- **Further Details in Annexures:** Some further details of Sri Lankan culture and Buddhist principles in relation to homosexuality can be found in *Annexure 1*.

Rationale of the Bill

“... The rationale for the proposed amendments is to afford all citizens the full realisation of their fundamental rights guaranteed by our Constitution, irrespective of their sexual orientation.” (Page 24)

Key Points Presented by Mr. Jayawardena, PC

- **Objective:** The Bill aims to decriminalise homosexuality in Sri Lanka, aligning the country's laws with contemporary social values and 21st-century standards.
- **Key Provision:** Clause 2(iii) specifies that sexual orientation and consensual same-sex conduct between adults, whether in public or private, should no longer be criminal offenses.
- **Purpose:** The Bill seeks to modernise Sri Lanka's legal framework by moving away from outdated Victorian-era statutes and ensuring equality, liberty, and dignity for all citizens, regardless of their sexual orientation.
- **International Influence:** Following the UK's decriminalisation of homosexuality through the Sexual Offences Act, it called upon other members of the Commonwealth to follow suit.

Supporting Arguments by Mr. Luwie Ganeshathasan and Mr. Hewamanna

- **Current Legal Status:** Sri Lanka is one of the few countries that still criminalises consensual same-sex relationships between adults, and the only non-Muslim majority country in Asia doing so.
- **Population Impact:** Approximately 12% of Sri Lanka's population belongs to the homosexual community, living in fear of prosecution under Section 365A. This fear adversely affects their wellbeing and discourages

them from seeking legal redress for discrimination because any disclosure of such discrimination based on sexual orientation can result in prosecution.

- **Bill's Aim:** The Bill intends to eliminate the fear and stigma associated with sexual orientation, thereby protecting and enhancing the fundamental rights guaranteed by the Constitution.
- **Judicial Reference:** The determination cites the case of *Sanath Wimalasiri v The Attorney General*, highlighting the outdated nature of Section 365A and underscoring the need for reform to ensure all citizens can fully realise their constitutional rights without discrimination based on sexual orientation.

Arguments by (some of) those in favour of the Bill
(2nd Respondent and Intervient Petitioners who supported the 2nd Respondent)

Argument 1 – Human Dignity

“We are of the view that the decriminalisation of sexual activity amongst consenting adults irrespective of their sexual orientation only furthers human dignity and as such this cannot be considered as being an offence that must be maintained in the statute book.” (Page 31)

The determination highlights the positions of different international human rights frameworks as well as the Sri Lankan Constitution and judicial opinions regarding this point:

International Human Rights Frameworks

- **Universal Declaration of Human Rights (UDHR):** Adopted in 1948, it underscores human dignity as the foundation of freedom, justice, and peace. Sri Lanka, as a signatory, is bound by these principles. The UDHR's preamble asserts the inherent dignity and equal rights of all humans, and Article 1 states that "All human beings are born free and equal in dignity and rights."
- **European Union:** The Charter of Fundamental Rights of the European Union, Article 1, declares human dignity as inviolable, which must be respected and protected.

These international frameworks highlight the universal and fundamental nature of human dignity.

Sri Lankan Constitutional Guarantees and Supporting Judicial Opinions:

“....human dignity underpins the application of all fundamental rights. The Svasti demonstrates that our Constitution recognises and upholds human dignity. The importance of the above analysis is that a law will face a stiff burden if it were to impinge upon human dignity of a person in criminalising offences to safeguard morality. It would be even more difficult to argue that such a law must be maintained and cannot be repealed. We are of the view that the decriminalisation of sexual activity amongst consenting adults irrespective of their sexual orientation only furthers human dignity and as such this cannot be considered as being an offence that must be maintained in the statute book.” (Page 31)

- **Sri Lankan Constitution:** As per the ‘Svasti’ (similar to the preamble) to the Sri Lankan Constitution, the Constitution guarantees freedom, equality, justice, and fundamental human rights, all of which are integral to human dignity.
- **Sri Lankan Judicial Opinions:** Moreover, the determination cites several judicial opinions that reinforce the principle that equality and non-discrimination are essential to preserving human dignity:

- Kirahandi Yeshin Nanduja De Silva and Another v Sumith Parakramawansha and Others: Justice Priyantha Jayawardena, PC, emphasised that the right to equality is inherent to human dignity.
- Kanapathipilli v Sri Lanka Broadcasting Corporation and Others: Justice Shirani Bandaranayake noted that protecting the status and dignity of all persons is vital to preventing unfairness and arbitrariness.
- Ajith C. S. Perera v. Daya Gamage and Others: Justice Prasanna Jayawardena, PC, described human dignity as the core from which fundamental rights spring forth.
- Kandawalage Don Samantha Perera v Officer in Charge, Hettipola Police Station and Others: Justice Thurairaja, PC, underscored that human dignity is a normative value that guides fundamental rights decisions.

International Judicial Perspectives:

“This is the essence of dignity and we say, without any inhibition, that it is our constitutional duty to allow the individual to behave and conduct himself/herself as he/she desires and allow him/her to express himself/herself, of course, with the consent of the other.” –
Chief Justice Dipak Misra in Navtej Singh Johar (Page 28)

- Navtej Singh Johar: Chief Justice Dipak Misra emphasised that human dignity is essential for a complete life and without dignity, a person's existence lacks substance. Dignity encompasses identity and choice, and any legal impediment to personal expression, whether biological or by choice, infringes on natural and constitutional rights. Therefore, the Court's constitutional duty is to remove such impediments, ensuring individuals can freely express themselves and engage in consensual relationships without fear.
- National Coalition for Gay and Lesbian Equality: The Court noted that the criminalisation of sodomy stigmatises gay men as criminals regardless of circumstances. This criminalisation imposes real harm beyond symbolic stigma, exposing gay men to arrest and prosecution simply for engaging in consensual sexual conduct, thereby perpetuating insecurity and vulnerability. Such laws degrade and devalue gay men, constituting a clear invasion of their dignity and a breach of constitutional protections.

Court's Conclusion:

- **Constitutional Challenges**: Laws that impinge on human dignity, such as those criminalising consensual sexual activity between adults, face significant constitutional challenges. The Sri Lankan Constitution, alongside international legal principles, supports decriminalising such activities to uphold human dignity.
- **Court's Stance**: The Court concluded that maintaining Sections 365 and 365A, which criminalise consensual homosexual acts between adults, contradicts the fundamental virtue of human dignity. This stance is reinforced by broader human rights frameworks and the recognition that laws infringing on dignity cannot be sustained under constitutional scrutiny.

Argument 2 – Equality under Article 12(1) of the Constitution

“... The removal of criminalisation of intimate acts between consenting adults, which crime was based on moral imperatives of a bygone Victorian era, would be in conformity with Article 12(1) and would uphold the dignity of human beings.” (Page 36)

Constitutional Provision:

- **Article 12(1):** Ensures that "All persons are equal before the law and are entitled to the equal protection of the law." This aims to promote human dignity by eliminating arbitrary obstacles and ensuring no individual faces discrimination or unfair treatment based on arbitrary distinctions.

Equality and Sexual Orientation:

The Court considered a number of foreign judgments in relation to equality and sexual orientation:

- *Lawrence v Texas* (U.S. Supreme Court): This case linked equality of treatment to the respect for conduct protected by the guarantee of liberty, addressing the issue of equality and sexual orientation. It held that when homosexual conduct is made criminal by the law of the State, it is an invitation to subject homosexual persons to discrimination both in the public and in the private spheres.
- *Navtej Singh Johar* (Indian Supreme Court): Held that Section 377 of the Indian Penal Code, which criminalised homosexual conduct between adults, was unconstitutional as it discriminated against the LGBT community, violating their rights under Article 14 of the Indian Constitution, which guarantees equal protection under law.
- *Bostock v Clayton County* (U.S. Supreme Court): Ruled that Title VII of the Civil Rights Act, which prohibits job discrimination based on sex, applies to sexual orientation.

Sri Lankan Context:

- **Advocacy for Decriminalisation:** The late Dr. Neelan Tiruchelvam advocated for the decriminalisation of consensual homosexual acts between adults during a 1995 Parliamentary debate on amending Section 365A. This highlights that such advocacy has existed in Sri Lanka for decades.
- **Judicial Rulings:** The Court stated that it has repeatedly ruled that any classification of people or things must be based on clear and logical differences that separate those in the group from those outside of it. These differences must also have a reasonable connection to the goals intended to be achieved by the classification. The Court held that therefore, discrimination based on moral judgments of private actions between consenting adults violates Article 12(1) of the Constitution, as it lacks clear and logical differences and undermines human dignity, which is central to all fundamental rights.

Court's Conclusion:

"Having carefully considered the submissions of the learned Counsel, we are of the view that the removal of criminalisation of intimate acts between consenting adults, which crime was based on moral imperatives of a bygone Victorian era, would be in conformity with Article 12(1), and would uphold the dignity of human beings."
(Page 36)

- **Alignment with Article 12(1):** The Court concluded that removing outdated Victorian-era laws that criminalise consensual homosexual acts between adults is consistent with Article 12(1) and upholds human dignity. The Court held that decriminalising these acts aligns with the principles of equality and human dignity enshrined in the Constitution.

Argument 3 – Privacy of the Individual

“Sexual orientation is an innate part of the identity of LGBT persons. Sexual orientation of a person is an essential attribute of privacy.” (Page 38)

Fundamental Right to Privacy:

The determination emphasises both local and international judicial perspectives on the right to individual privacy:

Sri Lankan Judicial Perspectives:

- *Ratnatunga v. The State*: The Court of Appeal recognised privacy as intrinsic to human dignity and individual integrity, implying its inclusion in the Constitution's guarantees of basic human rights. Invading privacy is seen as an assault on integrity and dignity, denying individuals their right to remain in society with dignity.

International Judicial Perspectives:

• **South African Constitutional Court:**

- *National Coalition for Gay and Lesbian Equality*: Recognised privacy as encompassing private intimacy and autonomy, allowing individuals to nurture relationships without external interference. Laws regulating consensual sexual conduct between adults improperly invade this intimate sphere, breaching privacy and dignity. Justice Ackermann emphasised the egregious nature of privacy invasions due to discriminatory laws. Justice Sachs stated that equality and privacy are intertwined, and anti-sodomy laws violate both.

• **Indian Supreme Court:**

- *Navtej Singh Johar*: Justice Indu Malhotra held that privacy is an intrinsic part of life and personal liberty under Article 21 of the Indian Constitution. Sexual orientation is an essential attribute of privacy, protected by fundamental rights. Privacy includes decisional autonomy and the right to make fundamental personal choices without state interference.
- *Justice K.S. Puttaswamy (Retd.) v. Union of India*: Justice Chandrachud, emphasised that privacy is integral to human dignity and essential for protecting life and liberty.

• **European Court of Human Rights:**

- *A.D.T. v. The United Kingdom*: Found that laws criminalising consensual homosexual acts between adults in private continuously affect a person's private life without sufficient justification. Criminalising consensual acts between adults does not warrant penal sanctions when conducted privately.

• **United States Supreme Court:**

- *Lawrence v. Texas*: Held that adults have the right to engage in consensual sexual activities in private without state interference. Such relationships, conducted privately and consensually, deserve respect and protection from criminalisation, underscoring the right to dignity and privacy.

Court's Conclusion:

“Given that the right to privacy is a facet of the right to live with dignity, there is simply no basis for this Court to come to the conclusion, that there is a constitutional obligation to criminalise homosexual activities engaged in private, by consenting adults, as that is a matter that is inherently private and intimate. If Parliament wishes to decriminalise such activities, this Court cannot stand in its way.” (Page 40)

- **Right to Privacy and Dignity:** The Court reiterated that the right to privacy is a part of the right to live with dignity. Therefore, there is no constitutional basis for criminalising homosexual activities engaged in private by consenting adults in Sri Lanka.
- **Authority of the Legislature:** The Court stated that if Parliament chooses to decriminalise such activities, Courts cannot obstruct this decision. These matters are inherently private and intimate, and respecting individuals' privacy ensures their dignity and fundamental human rights.

Legislative Policy

The Court asked Mr. Jayawardena, PC, on whether completely removing Section 365A or merely deleting the word 'private' would suffice, considering the intent to amend laws criminalising sexual orientation. The responses from Counsel were as follows:

- Mr. Jayawardena, PC, responded that this decision is for Parliament, arguing that without a clear definition of 'any act of gross indecency,' Section 365A is vague, overbroad, and subjective, which may lead to arbitrary enforcement and violating Article 12(1).
- Mr. Hewamanna supported this by presenting affidavits from three individuals showing harassment and degrading treatment at the hands of their own families as well as by law enforcement authorities due to their sexual orientation, demonstrating the arbitrary nature of the provision.
- The Additional Solicitor General noted that even without Section 365A, public indecency could still be addressed under other laws, such as Section 7(1)(b) of the Vagrants Ordinance (acts of indecency in public spaces) and Section 261 of the Penal Code (public nuisance), avoiding the criminalisation of sexual orientation.

Further discussion by the Court:

- The Court, referring to the Botswana High Court's ruling in *Letsweletse Motshidiemang v Attorney General*, which allowed only the deletion of 'private' from a similar law, emphasised that private consensual acts between adults should not be legally regulated as they do not harm public decency or morality. This supports the legislative intent to repeal laws criminalising sexual orientation, affirming that regulating private consensual behaviour between adults infringes on constitutional rights to privacy and liberty.
 - The Court reiterated that the legislative aim is not to approve public nuisance or illegal acts but to ensure laws reflect principles of privacy and personal freedom, which is within Parliament's policy and power, guided by Articles 27 and 75 of the Constitution.
-

Conclusion and Determination by the Court

To sum up, the Supreme Court in their 2023 determination on the Penal Code Amendment Bill concluded that the Bill ensures equality before the law and equal protection for all, regardless of sexual orientation, enhancing fundamental rights and allowing individuals to live with dignity. The Court dismissed the Petitioners' arguments as baseless and held that they failed to prove that repealing Sections 365 and 365A, which criminalise intimate acts between consenting adults, is unconstitutional or that any part of the Bill contradicts the Constitution:

“The provisions of the Bill would in fact ensure that all persons shall be equal before the law, and be entitled to the equal protection of the law, irrespective of their sexual orientation, and that the Bill would, in fact, enhance their fundamental rights guaranteed to them under the Constitution, and enable them to live in society with dignity. We are of the view that the submissions of the Petitioners, are in fact fanciful hypotheses, and have no merit.” (Page 42)

And finally determined that:

*“We are of the opinion that the Bill as a whole or any provision thereof is not inconsistent with the Constitution.”
(Page 43)*



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ANNEXURE 1

Points on ‘Buddhism & Culture’ that were Presented in Selected Written Submissions for the 2023 Supreme Court Determination on the Penal Code (Amendment) Bill.

Written Submissions of the Intervenient-Petitioners Ambika Satkunanathan and Bhoomi Harendra

Sri Lanka as a Secular State: It is argued that Sri Lanka’s legal system is fundamentally secular. This is confirmed by the Supreme Court in the landmark case *Ashik v Bandula & Others* (2007). As such, in a secular state, laws should be based on principles that apply to all citizens equally, without being influenced by any specific religious doctrines. (Page 38)

Invalidity of Cultural Arguments and Prioritisation of Constitutional Morality: They argue that cultural or traditional values cannot justify restrictions on fundamental rights under Article 15 of the Constitution, which only permits limitations for reasons like national security, public health, and public morality. As society continuously evolves, cultural values should not justify discriminatory laws; instead, constitutional morality, rooted in equality and dignity, should guide the law to ensure equal protection for all citizens, regardless of sexual orientation or gender identity. This is supported by General Comment 22 from the Office of the High Commissioner for Human Rights.

“The Committee observes that the concept of morals derives from many social, philosophical and religious traditions; consequently, limitations on the freedom to manifest a religion or belief for the purpose of protecting morals must be based on principles not deriving exclusively from a single tradition” General Comment 22 (30.07.1993)–Office of the High Commissioner for Human Rights (Page 39)

Learning from Indian Legal Precedents: The Intervenient-Petitioners cite key Indian court rulings, such as *NAZ Foundation v NCT Delhi and Navtej Singh Johar*, where the Indian Supreme Court emphasised the importance of constitutional morality that protects individual rights and dignity over prevailing public morality.

“We are aware of the perils of allowing morality to dictate the terms of criminal law. ... The LGBTQ community has been a victim of the predominant (Victorian) morality which prevailed at the time when the Indian Penal Code was drafted and enacted. Therefore, we are inclined to observe that it is constitutional morality, and not mainstream views about sexual morality, which should be the driving factor in determining the validity of Section 277.” – Chandrachud J. (Page 39-40)

Written Submissions of Intervenient-Petitioners H. K. M. Thushara Manoj Kumara, N. B Adhil Suraj Vimukthi Bandara and Équité Sri Lanka Trust

Impact on Sri Lankan Culture and the Buddha Sasana: The Intervenient-Petitioners argue that culture is dynamic and evolves over time, acknowledging Buddhism's significant influence in Sri Lanka due to its Buddhist majority. However, they hold that Buddhism should be interpreted based on the Buddha's teachings rather than individual interpretations, noting that the Buddha emphasised the Dhamma should guide the Buddha Sasana after his death. (*Maha Parinibbana Sutta – Buddha’s last sermon, Diga Nikaya, 16 PTS D ii 72*).

Based on this premise, they presented the following facts for the Court’s consideration:

Composition of the Buddha Sasana (Page 5):

- The Buddha Sasana is composed of four groups: monks (Bhikkus and Bhikkunis) and laypeople (Upasaka and Upasika). Monks are bound by the Vinaya rules, while laypeople follow a set of discretionary precepts (‘Sil’) guided by the ‘Sutras’ (discretionary formulas stated by the Buddha for ethical guidance in decision-

making). Generally, the 5 precepts ('Pansil' / පන්සිල්) are taken by laypersons, the Eight Precepts ('Atasil' / අටසිල්) are taken on Poya days, the Ten Precepts ('Dasa Sil' / දස සිල්) are taken when on a higher plane, and the 'Arya Silaya' / ආර්ය සිලය is taken when one is on the Meditative Path.

- The third precept (of the 'Atasil') involves abstaining from all sexual conduct and/or refraining from sexual misconduct (කාමයෙහි වරදවා හැසිරීම). This abstinence is not mandatory and sexual misconduct does not explicitly prohibit same-sex relations, including those involving gay, lesbian, or transgender individuals. This precept focuses on avoiding sexual misconduct, which traditionally covers acts like adultery, but does not extend to a blanket prohibition on same-sex relationships.

Guidance from Sutras (Page 5-6): Several Sutras are relevant to the discussion on LGBTQ+ individuals:

- **Mangala Sutta** (මංගල සූත්‍රය): This Sutta outlines a path to prosperity that does not exclude LGBTQ+ individuals (Khundaka Nipatha – Khp 5).
- **Parabhava Sutta** (පරාභව සූත්‍රය): This Sutta discusses factors that lead to decline, such as habitually gambling or drinking alcohol, but does not list homosexuality or gender diversity as factors leading to moral or spiritual decline (Sn 1.6 PTS S.n 91-115).
- **Wasala Sutta** (වසල සූත්‍රය): This Sutta defines the concept of the "outcast" or "wasala." The Buddha stated that it is the conduct of a person, not their birth that determines whether they are a Brahman or an outcast (S.n 1.7 – PTS S.n 116-142).
- **Sigalovada Sutta** (සීගලොවාද සූත්‍රය): This Sutta, which outlines the mutual duties within society, makes no discriminatory remarks about homosexual individuals or transgender persons. (Deega Nikaya (DN 31) PTS D iii 180).

Furthermore, the core Buddhist virtues are viewed as universal. They are:

- Metta (loving-kindness) is extended to all living beings, including those who are not visible or evident (දිට්‍ඨිමාන යේව අද්දිට්ඨිමා - Karaniya Metta Suthra).
- Karuna (compassion) is meant to alleviate the suffering of all beings, without any distinction.
- Mudita (altruistic joy) encourages rejoicing in the success of others.
- Upekkha (equanimity) promotes patience and non-discrimination.

These virtues collectively call for a compassionate and inclusive attitude toward the LGBTQ+ community, who often face significant challenges and suffer in silence due to societal stigma.

Buddhist Path to Enlightenment (Page 6):

- The Eightfold Path (ආර්ය අෂ්ටාංගික මාර්ගය) and the Middle Way (මධ්‍යම ප්‍රතිපදාව), essential to alleviating suffering in Buddhism, are accessible to all, including LGBTQ+ individuals, as affirmed by renowned Buddhist monks such as the late Venerable Dr. Kirinde Dhammananda Thero and Ajahn Brahmavamso Thero, who state that homosexuality is not contrary to Buddhist teachings and that LGBTQ+ individuals can achieve Nirvana by following the Dhamma (Annexures 'A' and 'B').

- The following are excerpts from the document titled “A Buddhist view of homosexuality” by the late Ven. Dr. K. Sri Dhammananda, published on the Buddhist Channel on June 30th, 2015:

“In Asia, especially India and China, sex was never seen as something dirty only to be indulged in surreptitiously and only for the purposes of breeding. Stone sculptures on the Hindu temples of India amply testify to the fact that all kinds of sexual behavior (including masturbation) was an expression of KAMA, of sensual pleasure which could be indulged in within the limits of Dharma, which in this case meant virtue.”
(Page 1)

“There is nothing intrinsically wrong with sex. What is wrong is attachment and slavery to it, on believing that indulgence in sex can bring ultimate happiness.” (Page 1)

“The third of the Five Precepts we recite in daily Buddhist practice is: undertake the training rule to refrain from sexual misconduct. First we note that there is no compulsion, no fear of punishment for infringement of any divine law, but when we recognize the danger of attachment to sex, we freely take the steps (training rule) to grow out of it, i.e. “I undertake”. ” (Page 1)

“One may see from this that Buddhism does not see HOMOSEXUALITY as WRONG and HETROSEXUALITY as RIGHT. Both are sexual activity using the body, both are strong expressions of lust which increase desire for life and therefore trap us longer in Samsara. Whether two men or a couple fall in love, it arises out of the same human limitation that is, of not seeing the body as empty of any ultimate reality.” (Page 2)

“Our duty is to help others see that they are acting out of ignorance, to show how real happiness can be gained. We have no right to condemn those who think or act differently from us especially when we ourselves are slaves of sensual pleasure in other forms. We know that when we point one finger at others, three fingers are pointing at us.” (Page 2)

LGBTQ+ Presence in Sri Lankan History and Culture:

- The argument that homosexuality and LGBTQ+ identities are foreign imports to Sri Lankan culture is refuted by historical evidence and scholarly research (Annexure ‘D’). The Nachchi community, a grassroots transgender group in Sri Lanka, has long been a part of the country’s Buddhist and Hindu culture and has naturally engaged in same-sex activities.
- The following excerpts from various Journals, Reviews, books, and academic documents have been taken from the aforementioned Annexure ‘D.’

“Nachchi community in Sri Lanka – a particular transgender community in Sri Lanka has their own histories of dancing, everyday practices, language and cultural rituals historically... Since 1950’s and 60’s Nachchi persons involved in Buddhist and Hindu temple processions as well as in public performances during the Christmas. (Ariyaratne, Kaushalya (2020) “Gaze of the Kajal Painted Eyes: Sri Lankan Jogi dance as a Subaltern Political Expression, Patitha: Socio-Political Review, Vol. 11, 13-37)” (Page 1)

“There are Nachchi priests (gurunnanse) who are involved in Gammaduwa and Pattini rituals, which is a part of Buddhist culture in Sri Lanka... These festivals are an integral part of Sri Lankan Buddhist and Hindu cultures and contributed much to Sri Lankan Sociology, Anthropology and Cultural literature in Sri Lanka. (Ariyaratne, Kaushalya (2022), Priest, Woman and Mother: Broadening the Horizons through Transgender/Nachchi identities in Sri Lanka, Sri Lanka Journal of Humanities, Vol. 43(2), 19-39)” (Page 1)

“During the 60’s and 70’s, the Nachchi community in Sri Lanka (both in the South and the North) had lived together as ‘families’... They also had certain rituals and practices such as “Dehi Mangalyaya” that have been gradually disappearing due to the oppression and discrimination from the majority communities. (Dr. Kaushalya Ariyaratne, University of Colombo, 2021, (Un)Framing the Self: Negotiating Transgender Identities in Contemporary Sri Lanka, Unpublished PhD thesis)” (Page 1)

“Gender non-conforming identities are depicted in several religious and artistic expressions in Asia and Sri Lanka. For example, historical deities such as ‘Ardhanāri Natēshwara’ (‘the dancing Lord who is a half man – half woman’)—a statue from the period of the Anuradhapura kingdom (377 BC-1017 AD) found in the Abhayagiri Stupa, which could have been influenced by the Hindu God ‘Ardhanārishwara’ in India.”

“Reflections on gender non-conforming characters are visible in Sri Lankan literature. Many authors have contributed a great deal to expanding the dimensions of literature on sexuality in Sri Lanka. Shyam Selvadurai’s writings—Funny Boy (1994), Cinnamon Gardens (1998) Swimming in the Monsoon Sea (2008) and The Hungry Ghosts (2013) introduced non-normative sexual orientations and identities into Sri Lankan English fiction.

Meanwhile, stories specifically built around transgender or gender non-conforming characters are also becoming visible in the sphere of recent Sinhala fiction. Anganā (2016) by Shanthi Dissanayake, Ardhanāri (2017) by K. K. Saman Kumara, Monara Biththara (2017) by Nadeeka Bandara and Pandaka Puthra Vasthuva (2016) by Anurasiri Hettige are all recent books in which one of the principal protagonists is a transgender character. (Page 2)

ANNEXURE 2

Points on ‘Public Health Rationale’ that were Presented in Selected Written Submissions for the 2023 Supreme Court Determination on the Penal Code (Amendment) Bill.

Written Submissions of the Intervenient-Petitioners Ambika Satkunanathan and Bhoomi Harendra

Challenging Harmful Stereotypes on HIV/AIDS:

- The Intervenient-Petitioners rejected the harmful misconception that same-sex couples are primarily responsible for the spread of HIV/AIDS, stating that it is rooted in homophobia and lacking factual support. They cited data from the 2020 Annual Report of Sri Lanka’s National STD/AIDS Control Programme (Page 12), which showed that 41% of newly diagnosed HIV cases were among heterosexual individuals (Annexures ‘X9’ and ‘X9(a)’). Additionally, global guidelines, such as those from UNAIDS, caution against the broad application of criminal law to HIV transmission, stating that it could undermine public health efforts and human rights rather than prevent the spread of the virus (Annexure ‘A1’).

“In some countries, criminal law is being applied to those who transmit or expose others to HIV infection. There are no data indicating that the broad application of criminal law to HIV transmission will achieve either criminal justice or prevent HIV transmission. Rather, such application risks undermining public health and human rights.”–UNAIDS Policy Document titled “Criminalization of HIV Transmission.”(Page 37)

Expanding the Scope of Equal Protection:

- The Intervenient-Petitioners emphasised that protection under the Constitution’s Article 12(2) is not limited to the listed categories such as race, religion, or sex. The phrase “or any one of such grounds” in Article 12(2) allows for the inclusion of additional categories, including sexual orientation and gender identity (SOGI). This interpretation aligns with the Supreme Court’s previous judgments in *Manuwel Dura Chandani v. Akila Viraj Kariyawasam* and *Dr. Ajith C.S Perera vs. Minister of Social Services and Social Welfare*, which have extended protection to other groups, such as people living with HIV/AIDS and those with disabilities.

*“placed on record that the state should ensure that the human rights of people living with HIV/AIDs are promoted and respected and measures taken to eliminate discrimination against them –
Manuwel Dura Chandani v. Akila Viraj Kariyawasam (Page 33)*

Written Submissions of the Intervenient-Petitioners Sonali Gunasekera & Jake Oorloff

Decriminalisation of Homosexuality and HIV/AIDS Prevention:

The Intervenient-Petitioners refuted claims that decriminalising homosexuality would worsen the spread of HIV/AIDS, arguing that this misconception is both false and harmful. They emphasised that global and local health experts, as well as studies, consistently agree that decriminalisation is crucial for effective HIV control, as criminalising same-sex relations hinders access to HIV prevention, testing, and treatment services, thereby increasing the risk of transmission.

Scientific Evidence from International Organisations:

- Research from the UNAIDS–Lancet Commission on Defeating AIDS—Advancing Global Health (2015) reveals that in countries where same-sex activity is criminalised, there is increased fear and hiding among MSM (men who have sex with men), leading to decreased uptake of HIV prevention and treatment services.
- In the Asia-Pacific region, more than 90% of MSM do not have access to HIV prevention and treatment services. Similarly, in the Caribbean, 25% of MSM are reported to be infected with HIV, compared with much lower rates in countries that do not criminalise same-sex relations (Annexure ‘X1’).

“...same-sex activity is a criminal offence in 78 countries, with penalties ranging from whipping to execution. In these countries, there is increased fear and hiding, decreased provision and uptake of HIV prevention services, and decreased uptake of HIV care and treatment services. According to estimations, more than 90% of MSM [Men who have Sex with Men] in the Asia-Pacific region do not have access to HIV prevention and treatment services. Figure 6 highlights how criminalisation can negatively affect HIV transmission. In Caribbean countries where homosexuality is criminalised, 25% of MSM are reported to be infected with HIV, whereas the rates are much lower in countries that do not criminalise homosexuality. In many countries, even ones that do not criminalise homosexuality, stigma and discrimination restrict MSM’s access to services.” [vide. Page 178] UNAIDS–Lancet Commission on Defeating AIDS—Advancing Global Health, in their Report (2015) (Page 5-6).

The Impact of Criminalisation on Public Health:

- Criminalisation of homosexuality creates significant barriers to HIV prevention. The stigma and fear associated with criminalisation discourage individuals from seeking necessary health services, reducing awareness and uptake of HIV prevention measures. This leads to higher HIV transmission rates among MSM (Annexure ‘X2’).
- For instance, marginalisation, together with aspects of physiology, circumstance and sexual behaviour, make MSM 19 times more likely to be infected with HIV compared to other adult men. Criminalisation not only endangers MSM but also poses a serious public health risk by contributing to the spread of HIV among the broader population.

“Criminalisation both causes and boosts those numbers. For example, UNAIDS reports that in the Caribbean countries where homosexuality is criminalised, almost 1 in 4 MSM is infected with HIV. In the absence of such criminal law the prevalence is only 1 in 15 among MSM... criminalisation of same-sex relations endangers not just MSM, but women too. By contrast, evidence shows that in a range of epidemic settings, universal access to HIV services for MSM together with anti-discrimination efforts can significantly reduce infections both among those men and the wider community.” [vide. Page 45].–UNDP’s Global Commission on HIV and the Law, in their Final Report of the Global Commission on HIV and the Law (2012) (Page 6-7)

The Commonwealth’s Call for Decriminalisation:

- The Commonwealth Eminent Persons Group (EPG), in their 2011 report, recommended the repeal of laws criminalising homosexuality as a critical step in the fight against HIV. This recommendation was based on the alarming statistic that Commonwealth countries, which make up over 30% of the world’s population, account for more than 60% of people living with HIV globally (Annexure ‘X3’).

““Commonwealth countries comprise over 30% of the world’s population and over 60% of people living with HIV reside in Commonwealth states...” We have also received submissions concerning criminal laws in many

Commonwealth countries that penalise adult consensual private sexual conduct including between people of the same sex. These laws are a particular historical feature of British colonial rule. They have remained unchanged in many developing countries of the Commonwealth despite evidence that other Commonwealth countries have been successful in reducing cases of HIV infection by including repeal of such laws in their measures to combat the disease. Repeal of such laws facilitates the outreach to individuals and groups at heightened risk of infection.”–Commonwealth Eminent Persons Group (EPG) Report (2011). (Page 8)

Sri Lanka’s National Strategy on HIV/STI Prevention:

- Sri Lanka’s National HIV/STI Strategic Plan (2018-2022) (Annexure ‘X4’) acknowledges that laws criminalising same-sex relations, like sections 365 and 365A of the Penal Code, hinder access to HIV services for key populations, including MSM and transgender individuals. The plan emphasises the need to revisit these laws to improve the uptake of HIV prevention services, reflecting the Government’s alignment with the global consensus that decriminalisation is essential for effective HIV control.

“Although the numbers of laws that may make it difficult for KPs [Key Populations, i.e. persons who are most in need of HIV/STI services] to access services are limited to a few, they are severe and include the Vagrancy Ordinance, the Brothels Ordinance and the Penal Code Sections 365 and 365a. The Vagrancy and Brothels Ordinances are used against FSWs [Female Sex Workers] while the two Penal Code Sections criminalize same sex relations and create a barrier to MSM [Men who have Sex with Men] and TG [Transgender People] accessing HIV/STI services. In order to prevent HIV among these groups it will be important to advocate for revisiting laws that impede service uptake by KPs.” [vide. Pages 22-23]–National HIV/STI Strategic Plan 2018-2022, titled “Towards Ending AIDS”, published by the National HIV/STI Strategic Plan of the Ministry of Health (Page 9)

ANNEXURE 3

Arguments Relating to Decriminalisation and Same-Sex Relationships in the 2024 Supreme Court Determination on the Gender Equality Bill.

Potential Impact of the Gender Equality Bill

The Supreme Court of Sri Lanka examined the Gender Equality Bill's (GE Bill) potential implications, particularly regarding the legal recognition of same-sex relationships and marriages, in the context of the nation's existing marriage laws, cultural norms, and constitutional framework. This summary first discusses the opinion of Justice Surasena, followed by the opinion of Justice Kodagoda, PC.

Opinion of Justice Padman Surasena

Justice Surasena argues that several provisions within the Bill are contrary to Sri Lanka's Constitution and could significantly alter the country's legal landscape:

Gender Identity and Equality: The GE Bill introduces the concept of "gender identity." Justice Surasena notes that "sex" and "gender" are separate, and argues that the concepts of "gender", "gender identity" and "gender equality" have not been recognised by the Constitution under Article 12(2).

"Indeed, the 1st paragraph of the Preamble of the Bill also seems to have accepted the fact that the constitution has not recognized a concept or category called gender or gender identity as it has deliberately excluded such category from the list of categories which it states the Constitution has recognized. Therefore, I hold that the gender identity is not something which the constitution of this country has recognised." (Page 17)

"The framers of the Constitution in their wisdom, has deliberately left out recognizing gender equality. I am mindful of our task here which is to examine the Bill to ascertain whether any of the clauses of the Bill or the Bill in its totality is inconsistent with any provision of the Constitution. In those circumstances, I cannot conclude that Clause 2 of the Bill is consistent with Article 12 of the Constitution." (Page 21-22)

Cultural and Religious Practices: Clause 28 of the Bill states that its provisions will supersede any contradictory law. Justice Surasena argues that this provision alongside the recognition of "gender identity" may contravene Article 9 of the Constitution (the obligation to protect and foster Buddhism) and the fundamental rights of private and/or religious institutions.

"Therefore, the institutions such as Buddhist Universities, Pirivenas which are recognized under legislation will also fall within the ambit of private institutions defined in the Bill and consequently be subject to the provisions of the Bill requiring gender equality to be promoted in respect of the functions of the said institutions" (Page 22)

"Thus, the provisions of this Bill will have the force of amending the contrary provisions in other laws and therefore the provisions of this Bill will supersede the laws, rules practices pertaining to Buddha Sasana which would thereby contravene Article 9 of the Constitution which gives foremost place to Buddhism." (Page 22)

Legal Definition of Marriage in Sri Lanka: Justice Surasena notes that Sri Lankan law currently recognises marriage only between a man and a woman. His Lordship argues that the Marriage Registration Ordinance No. 19 of 1907 (Section 16), Kandyan Marriage and Divorce Act No. 44 of 1952 (Section 5(1)), Muslim Marriages and Divorce Act No. 13 of 1951 (Section 80), and Matrimonial Rights and Inheritance (Jaffna) Ordinance 01 of 1911 (marriage under Tesawalamai law) (Section 3), all "presuppose that parties to any marriage must be male and female". (Page 24-26)

“In this country, any marriage must take place only between opposite sexes i.e., a male and a female. This is manifest from the following provisions of law. That is not only our law but also our culture for there cannot exist a practice of any culture which is contrary to law.” (Page 24)

Criminalisation of Same-Sex Activities: His Lordship also holds that same-sex activities are criminalised under Sections 365 and 365A of the Penal Code, citing the case of Galabada Payalage Sanath Wimalasiri v. Officer-in-Charge, Police Station, Maradana, in which the Court upheld the offense under Section 365A while recognising contemporary views that consensual sex between adults should not be policed by the state.

Private and Family Life: In this connection, Justice Surasena argues that the GE Bill could enable legal recognition of same-sex relationships and marriages by extending the right to "private and family life" to individuals of varying genders and including "marital status" as a protected category, which would be reinforced by the superseding powers of Clause 28, despite these rights not being recognised and such relationships currently being classified as criminal offenses.

“The above definitions pertaining to 'Private and Family life' show the potential for an interpretation of the Bill to allow for same-sex marriages through the recognition of the concept of gender equality for persons of different sex and gender minorities. However, I note that there is no such right as right to respect for one's private and family life or one's home and correspondence found in our law. Moreover, I note that the right to private and family life is found only in this Bill and not in our Constitution.” (Page 28)

Interpretation of Article 12(1) and Public Morality under Article 15(7): Justice Surasena emphasised that Article 12(1) of the Constitution guarantees equal protection under the law, with deviations allowed only to safeguard public morality, health, national security, or public order under Article 15(7). His Lordship opined that the GE Bill, by potentially decriminalising homosexual acts and recognising same-sex marriages, would conflict with current moral and cultural standards in Sri Lanka.

“The de-criminalisation of homosexual relationships and recognition of same-sex marriages would have significant cultural and moral implications to the present moral fabric of Sri Lankan society. It would be contrary to the accepted moral and cultural standards in our Nation at present.” (Page 31)

Analysis of the GE Bill in Light of Article 27(1)(g): Justice Surasena examined the GE Bill in light of Article 27(1)(g) of the Constitution, which directs the state to elevate moral and cultural standards. He argued that the potential decriminalising of homosexual acts and recognition of same-sex marriages could undermine these standards. Additionally, he argued that enforcing gender equality in religious practices might conflict with religious freedoms, possibly compelling institutions to adopt practices that contradict their beliefs, such as ordaining individuals with non-traditional gender identities or sexual orientations.

“Since the provisions of this Bill will have the force of amending the contrary provisions in the Penal Code resulting in de-criminalisation of homosexual relationships and recognition of same-sex marriages which would be contrary to the religions practiced in this country... (Page 32)

It is important to understand that the establishment of a just and free society must be achieved within the framework of these Directive Principles of which one is raising the moral and cultural standards of the people.”(Page 33)

His Lordship argues that for and including the reasons above, this Bill as a whole is inconsistent with the Constitution and seeks to indirectly amend Article 12(2) of the same which cannot be done without the approval of 2/3 of the Members of Parliament and of the People at a Referendum.

“Thus, the objects of the Bill are inconsistent with Articles 3, 4(d), 9 and 10 of the Constitution and they are inseparable from the other provisions of the Bill, This compels us to hold that the Bill as a whole is inconsistent with Articles 3,4(d),9 and 10 of the Constitution. Thus, I determine that the Bill as a whole cannot be enacted into law, unless the appropriate procedure laid down in Articles 83 and/or Article 84 read with Article 80 of the Constitution which requires that the number of votes cast in favour thereof must amount to not less than two-thirds of the whole number of Members of Parliament (including those not present), and is approved by the people at a Referendum.” (Page 41)

Opinion of Justice Yasantha Kodagoda, PC

While Justice Kodagoda, PC, agreed with Justice Surasena’s finding that this Bill as a whole is inconsistent with the Constitution, specifically Articles 12, 3 and 4, and cannot be enacted without approval by two-thirds of Parliament and a subsequent referendum, his Lordship emphasised the need to provide his own reasoning for this conclusion, noting that his agreement with Justice Surasena’s findings is limited to certain aspects.

Primary Objective of the GE Bill: His Lordship notes that the primary objective of the Bill is to ensure and provide for gender equality and women’s empowerment across various spheres of public and private life, acknowledging evolving societal norms and the recognition by policymakers of the necessity to treat all citizens equally under the law, irrespective of their sex or gender.

“It is necessary to observe that policy makers appear to have taken cognisance of the need to ensure that all persons of this country independent of or notwithstanding their ‘sex’ and their ‘gender’ are treated equally before the law, and are accorded equal protection of the law.” (Page 43).

Recognition of Gender: His Lordship goes on to acknowledge the spectrum of identities under the term “gender” recognised and accepted in contemporary use:

“In contemporary usage, it is well accepted that ‘gender’ means the male sex or the female sex, especially when considered with reference to social and cultural differences rather than biological ones, or one of a range of other identities that do not correspond to established ideas of being a male or female. These identities have acquired the nomenclature of lesbian, gay, bisexual, transgender, intersex, queer, questioning, a-sexual and many other terms such as non-binary and pansexual. During the hearing, learned counsel submitted that these identities are continuing to evolve and newer identities are emerging.” (Page 43).

Equal Protection for All: Further, Justice Kodagoda, PC, holds that Article 12(1) of the Constitution, which ensures equal protection under the law for all persons, inherently applies to individuals of all gender identities. He affirms that the term “persons” in this Article should be interpreted to include everyone, stating that the Bill’s goal to protect all genders is consistent with the core values of the Constitution.

“Ensuring equal protection of the law to persons of all genders and gender identities is in consonance with Article 12 (1) of the Constitution, which reflects a core value contained in the Constitution. All persons are equal before the law and are entitled to equal protection of the law. By no stretch of argument can one advance the proposition that ‘persons’ as contained in Article 12 (1) of the Constitution would mean only the male and female sexes. Indeed, irrespective of a person’s gender identity, every human being must be recognised as a ‘person’. Therefore, there is nothing inconsistent in the afore-stated underlying policy vis-à-vis Article 12 (1) of the Constitution. In fact, given matters on public record, it is necessary for me to observe that indeed, developing a legislative framework to give effect to gender equality and women’s empowerment in public affairs is salutary, and is in furtherance of the core values contained in the Constitution.” (Page 43-44).

Agreement with Justice Surasena: Having recognised the above, Justice Kodagoda, PC, agrees with the unconstitutionality of this Bill due to the fact that:

1. The Bill indirectly aims to amend Article 12(2) of the Constitution by broadening the term "sex" to include "sex and gender," which cannot be done through an ordinary Bill but requires a Constitutional amendment. This can only be done via approval from 2/3 majority of Parliament and a referendum.
2. The powers granted to a Gender Equality Council by this Bill may infringe on the fundamental rights of private and religious institutions, specifically the freedom of religion and the right to manage private businesses according to their beliefs.

“However, in my view, what the Bill seeks to do is indirectly amend Article 12(2) of the Constitution by ensuring that no citizen shall be discriminated against on the ground of ‘gender’ or ‘gender identity’... The proposed Bill is an attempt to amend Article 12(2) of the Constitution by substituting the term ‘sex’ with the term ‘sex and gender.’” (Page 44)



**PARLIAMENT OF THE DEMOCRATIC
SOCIALIST REPUBLIC OF
SRI LANKA**

**WOMEN EMPOWERMENT
ACT, No. 37 OF 2024**

[Certified on 02nd of July, 2024]

Printed on the Order of Government

Published as a Supplement to Part II of the **Gazette of the Democratic
Socialist Republic of Sri Lanka** of July 05, 2024

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*Women Empowerment
Act, No. 37 of 2024*

[Certified on 02nd of July, 2024]

L.D. – O. 49/2023

AN ACT TO MAKE PROVISIONS FOR THE EMPOWERMENT OF WOMEN; TO PROVIDE FOR THE FORMULATION AND IMPLEMENTATION OF THE NATIONAL POLICY ON ADVANCEMENT AND EMPOWERMENT OF WOMEN; TO ESTABLISHED A NATIONAL COMMISSION ON WOMEN; TO MAKE PROVISIONS TO APPOINT OMBUDS FOR THE WOMEN'S RIGHTS; TO ESTABLISH MECHANISMS FOR THE PROTECTION OF WOMEN'S RIGHTS AND TO PROVIDE FOR MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO.

WHEREAS the Universal Declaration of Human Rights affirms the principle of non-discrimination and proclaims that all human beings are born free and equal in dignity and rights and entitled to all rights and freedoms without distinction, including distinctions based on gender:

Preamble

WHEREAS the Constitution of the Democratic Socialist Republic of Sri Lanka recognizes special provisions being made by Law, subordinate legislation or executive action for the advancement of women:

AND WHEREAS the establishment of the National Women's Commission operating at national level, will serve as the effective mechanism for ensuring the empowerment of women:

NOW THEREFORE be it enacted by the Parliament of the Democratic Socialist Republic of Sri Lanka as follows: -

1. This Act may be cited as the Women Empowerment Act, No. 37 of 2024.

Short title

2. The objects of this Act shall be -

Objects of the
Act

- (a) to make provisions for the advancement and empowerment of women by introducing mechanisms to secure women's rights subject to the provisions of the Constitution;
- (b) to introduce mechanisms to give effect to the obligations undertaken by the Government of Sri Lanka in relation to women in terms of the Convention on the Elimination of All forms of Discrimination Against Women, and in terms of applicable laws;
- (c) to formulate and implement the national policy for the advancement and empowerment of women by timely interventions at all levels across all sectors and developing a framework to facilitate and ensure empowerment of women;
- (d) to protect women from all forms of discrimination based on gender and sexual orientation;
- (e) to take steps to prevent discrimination, marginalization, sexual harassment and violence against women and to strengthen the measures for the prosecution and punishment of acts or omissions relating thereto;
- (f) to make recommendations for law reforms as a matter of priority, in order to provide for the prevention of discrimination against women, and empowerment of women;
- (g) to promote the realization of, and ensure equality and justice for women and take measures to ensure as far as possible, women's participation in all measures and mechanisms connected with administration of justice and the equal

representation of women in decision making structures and positions at every level within the Government;

- (h) to ensure economic empowerment having special regards to women with disabilities;
- (i) to conduct public education programmes relating to all aspects of empowerment of women; and
- (j) to promote and revision of laws and procedures for the purpose of ensuring equal salaries between men and women engaged in employment with equal value,

3. Every woman shall be entitled to women's rights and no woman shall be denied of such rights.

Protection and advancement of women's rights

PART I

ESTABLISHMENT OF THE NATIONAL COMMISSION ON WOMEN

4. (1) There shall be established a Commission which shall be called and known as the National Commission on Women (hereinafter referred to as the "Commission").

Establishment of the National Commission on Women

(2) The Commission shall, by the name assigned to it by subsection (1), be a body corporate and shall have perpetual succession and a common seal and may sue and be sued in such name.

5. (1) The President shall appoint, subject to the provisions of subsection (2), seven members to the Commission of whom minimum five members shall be women.

Constitution of the Commission

(2) The President shall obtain recommendations –

- (a) from the Constitutional Council for appointing five members of the Commission; and
- (b) from the Women Caucus of Parliament appointed by the Speaker, for appointing two members of the Commission.



**PARLIAMENT OF THE DEMOCRATIC
SOCIALIST REPUBLIC OF
SRI LANKA**

**ASSISTANCE TO AND PROTECTION OF VICTIMS OF
CRIME AND WITNESSES ACT, No. 10 OF 2023**

[Certified on 08th of August, 2023]

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(2) The provisions of sections 29, 30 and 31 shall *mutatis mutandis* apply to and in respect of providing protection in relation to any matter referred to in subsection (1).

34. (1) Notwithstanding anything to the contrary in any other written law, a court or Commission may, on application made by or on behalf of any vulnerable victim of crime or witness, order the Authority or the Protection Division the grant of any special measures for the protection of such victim of crime or witness, as may be prescribed.

Special measures
for vulnerable
victims of crime
or witnesses

(2) The Minister shall, when prescribing special measures for the purposes of subsection (1), seek recommendations of the Authority.

(3) The court or Commission, in ordering the grant of any special measures under subsection (1), shall ensure that the principles of fair trial are upheld in its proceedings.

(4) In determining the vulnerability of a victim of crime or witness, the following factors may also be considered: -

- (a) the nature of the offence alleged to have been committed and the attendant circumstances;
- (b) the nature of the evidence or statement the witness is expected to give or make;
- (c) any relationship between the victim of crime or witness and the accused;
- (d) the age and level of understanding of the victim of crime or witness;
- (e) the accused's behavior or attitudes towards the victim of crime or witness including the accused's behavior or attitudes towards the family members or associates of, or any other person having a close kinship to, the victim of crime or witness; and

28 *Assistance to and Protection of Victims of
Crime and Witnesses Act, No. 10 of 2023*

- (f) any other relevant matter including the racial, social and cultural background of the victim of crime or witness, the gender including transgender, sexual orientation, possibility of being subject to social marginalization, domestic or employment circumstances, religious or political beliefs, and any physical disability or impairment the victim of crime or witness suffers from.

(5) Notwithstanding anything to the contrary in any other law, a court or Commission may-

- (a) in proceedings relation to sexual offences or violence, permit a child victim of crime or child witness to give evidence or make a statement through contemporaneous audio-visual linkage from a remote location, without requiring his personal attendance before such court or Commission; or
- (b) on being satisfied that any vulnerable victim of crime or witness is unable to understand the nature of an oath or an affirmation, permit such victim of crime or witness to give evidence or make a statement without an oath or an affirmation being administered, and such victim of crime or witness shall be informed that he is bound to state the truth on all matters to which his evidence or statement relates.

(6) In this section, a “vulnerable victim of crime or witness” includes –

- (a) a victim of crime or witness under eighteen years of age;
- (b) a person suffering from significant impairment of intelligence and social functioning;

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இலங்கை மனித உரிமைகள் ஆணைக்குழு
Human Rights Commission of Sri Lanka

Hon. Harshana Nanayakkara
Minister of Justice and National Integration
19 Sri Sangaraja Mawatha,
Colombo 01

Hon. Minister,

Follow up on Recommendation on Sections 365 and 365A of the Penal Code

Further to our letters to your Ministry dated 22 November 2023 and 13 August 2024, we once again write to you with reference to sections 365 and 365A of the Penal Code (Chapter 19). The said sections of the Penal Code relate to 'unnatural offences' and 'acts of gross indecency between persons' and has been used for criminalising sexual activity between persons of the same sex.

We reiterate our endorsement of the Women Empowerment Act, No. 37 of 2024 and welcome measures to fully implement the Act. According to section 2(d) of the Act, one of the objects of the Act is 'to protect women from all forms of discrimination based on gender and *sexual orientation*' (emphasis added). Therefore, a person's right to non-discrimination on the grounds of sexual orientation has been formally recognised in Sri Lanka's legal framework. Additionally, the Assistance to and Protection of Victims of Crime and Witnesses Act, No. 10 of 2023 recognises 'sexual orientation' as a factor that may determine the vulnerability of a victim of crime or witness.

The mention of 'sexual orientation' as a ground for non-discrimination in the Women Empowerment Act comes in the wake of a recent Supreme Court determination on the constitutionality of a Private Member's Bill to amend section 365 and repeal section 365A of the Penal Code. The Court opined that 'decriminalisation of sexual activity amongst consenting adults irrespective of their sexual orientation only furthers human dignity...' (SC SD 13/2023 *et al*, p. 31). The Court also determined that 'the removal of criminalisation of intimate acts between consenting adults, which was a crime based on moral imperatives of a bygone Victorian era, would be in conformity with Article 12(1) [of the Sri Lankan Constitution] and would uphold the dignity of human beings' (SC SD 13/2023 *et al*, p. 36).

We recall that the said Private Member's Bill clarifies that the legislative intent behind it is the amendment of provisions in the Penal Code that make sexual orientation a punishable offence.

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Head Office
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தொலைபேசி
Telephone

14, ආර්. ඒ. ද. මෙල් මාවත, කොළඹ - 04.
14, ஆர்.ஏ.த.மெல் மாவத்தை, கொழும்பு-04.
14, R.A.De Mel Mawatha, Colombo - 04.

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தவிசாளர்
Chairperson
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Observations on Sri Lanka (26 April 2023), observed that the continued criminalisation of same-sex activity under sections 365 and 365A of the Penal Code violated articles 2 and 26 of the ICCPR. It also observed that such continued criminalisation, the arrest and detention of persons under these sections, and the ill-treatment of suspects, violated the right to freedom from torture or cruel, inhuman or degrading treatment (article 7), the right to liberty and security of persons (article 9), and the right to privacy (article 17) guaranteed under the ICCPR. It accordingly recommended the repeal of sections 365 and 365A of the Penal Code.

We also wish to recall that, at its Third Universal Periodic Review in 2017, Sri Lanka voluntarily pledged 'to ensure and strengthen respect for fundamental rights of all persons, including those from the LGBTIQ community, and address concerns raised in that regard'. Sri Lanka then recalled this pledge in its National Report submitted during its Fourth Universal Periodic Review in 2023. In these circumstances, we encourage the Government of Sri Lanka to fulfil this pledge and introduce necessary amendments to the Penal Code to bring it in accordance with international human rights standards and norms, including those contained in the ICCPR.

The recent passage of the Women Empowerment Act is a step in the right direction in terms of statutorily recognising a limited right to non-discrimination on the grounds of sexual orientation. Parliament, by enacting such a provision, has clearly indicated that such a right is consistent with Sri Lanka's Constitution and the past determinations of the Supreme Court. This legislative development also makes the continued retention of sections 365 and 365A in the Penal Code incongruous.

We are deeply concerned by the continued prevalence of hostile and discriminatory discourse against the LGBTIQ community. A recent campaign featuring physical demonstrations, targeted hate campaigns, and digital propaganda, driven by organised groups, has created an atmosphere of fear, intimidation, and discrimination that is fundamentally at odds with the principles of dignity, equality, and non-discrimination enshrined in both our Constitution and international human rights law. As noted in our previous letter to your ministry in August 2024, hostile discourses popularised by organised groups often features disinformation that the abovementioned Private Member's Bill legalises same sex marriage, when in fact the Bill does not amend the law in any manner apart from decriminalising certain sexual acts between consenting adults.

We note that while the right of all citizens to the freedom of expression includes the right to make expressions that shock, offend, or disturb portions of the population, the freedom of expression is not an absolute right. This right may be restricted on the grounds of protecting the rights and freedoms of others, including the right to non-discrimination, provided such restriction is reasonable, necessary, and proportionate.

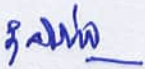
Article 20(2) of the ICCPR does not explicitly refer to 'sexual orientation' when prohibiting the advocacy of hatred that constitutes incitement to discrimination, hostility, or violence. However, permitting incitement against persons on the basis of their sexual orientation remains incompatible with international law given the broad acceptance of sexual orientation as a prohibited ground of discrimination.

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In this context, we wish to reiterate our previous recommendation that your Ministry considers adopting the said Private Member's Bill as a government legislative proposal to ensure its expeditious passage.

We thank you in advance for your Ministry's cooperation and look forward to constructively engaging your Ministry on important legislative reform that impacts human rights in Sri Lanka.

Sincerely,


Ranjith Uyangoda,
Secretary, **Ranjith Uyangoda**
Human Rights Commission of Sri Lanka.
Secretary
Human Rights Commission of Sri Lanka

Sgd/- Justice L.T.B. Dehideniya,
Chairman,
Human Rights Commission of Sri Lanka.

Cc: Hon. Attorney-General
Attorney General's Department,
Colombo 01200

Inspector General of Police,
Sri Lanka Police Headquarters,
Colombo 00100

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கிலங்கை மனித உரிமைகள் ஆணைக்குழு
Human Rights Commission of Sri Lanka

Hon. Mr. Ali Sabry, PC,
Minister of Justice, Prison Affairs and Constitutional Reforms,
19, Sri Sangaraja Mawatha,
Colombo 10.

Hon. Minister,

Follow up on Recommendation on Sections 365 and 365A of the Penal Code

Further to our letter to your Ministry dated 22 November 2023, we once again write to you with reference to sections 365 and 365A of the Penal Code (Chapter 19). The said sections of the Penal Code relate to ‘unnatural offences’ and ‘acts of gross indecency between persons’ and have been used for criminalising sexual activity between persons of the same sex.

We are pleased to note the recent enactment of the Women Empowerment Act, No. 37 of 2024, which was certified by the Hon. Speaker on 2 July 2024. We observe that according to section 2(d) of the Act, one of the objects of the Act is ‘to protect women from all forms of discrimination based on gender and *sexual orientation*’ (emphasis added). Therefore, for the first time in Sri Lanka’s legislative history, a person’s right to non-discrimination on the grounds of sexual orientation has been formally recognised. Previously, the Assistance to and Protection of Victims of Crime and Witnesses Act, No. 10 of 2023 recognised ‘sexual orientation’ as a factor that may determine the vulnerability of a victim of crime or witness.

The mention of ‘sexual orientation’ as a ground for non-discrimination in the Women Empowerment Act comes in the wake of a recent Supreme Court determination that ‘decriminalisation of sexual activity amongst consenting adults irrespective of their sexual orientation only furthers human dignity...’ (SC SD 13/2023 *et al*, p. 31). We recall that the Court also determined that ‘the removal of criminalisation of intimate acts between consenting adults, which was a crime based on moral imperatives of a bygone Victorian era, would be in conformity with Article 12(1) [of the Sri Lankan Constitution] and would uphold the dignity of human beings’ (SC SD 13/2023 *et al*, p. 36). The said observations were made in the Court’s determination on the constitutionality of a Private Member’s Bill to amend section 365 and repeal section 365A of the Penal Code.

We recall that the said Bill clarifies that the legislative intent behind it is the amendment of provisions in the Penal Code that make sexual orientation a punishable offence. We are of the view that the passage of the Bill would ensure full compliance with Sri Lanka’s obligations

under international law, including under the International Covenant on Civil and Political Rights (ICCPR), which under Articles 2 and 26 guarantees the right to non-discrimination. The Human Rights Committee, the treaty body tasked with supervising the implementation of the ICCPR, has observed that the right to non-discrimination includes non-discrimination on the grounds of sexual orientation. The Committee, in its Concluding Observations on Sri Lanka, (26 April 2023), observed that the continued criminalisation of same-sex activity under sections 365 and 365A of the Penal Code violated Articles 2 and 26 of the ICCPR. It also observed that such continued criminalisation, the arrest and detention of persons under these sections, and the ill treatment of suspects, violated the right to freedom from torture or cruel, inhuman or degrading treatment (Article 7), the right to liberty and security of persons (Article 9), and the right to privacy (Article 17) guaranteed under the ICCPR. It accordingly recommended the repeal of sections 365 and 365A of the Penal Code.

We also recall that, at its Third Universal Periodic Review in 2017, Sri Lanka voluntarily pledged ‘to ensure and strengthen respect for fundamental rights of all persons, including those from the LGBTIQ community, and address concerns raised in that regard’. Sri Lanka then recalled this pledge in its National Report submitted during its Fourth Universal Periodic Review in 2023. We accordingly encourage the Government of Sri Lanka to fulfil this pledge and introduce necessary amendments to the Penal Code to bring it in accordance with international human rights standards and norms, including those contained in the ICCPR.

The recent passage of the Women Empowerment Act is a step in the right direction in terms of statutorily recognising the right to non-discrimination on the grounds of sexual orientation. Parliament, by enacting such a provision, has clearly indicated that such a right is consistent with Sri Lanka’s Constitution and the past determinations of the Supreme Court. This legislative development also makes the continued retention of sections 365 and 365A in the Penal Code wholly incongruous.

We are deeply concerned by the recent upsurge in hostile and discriminatory discourse against the LGBTIQ community. Such discourse has also featured disinformation that the abovementioned Private Member’s Bill legalises same sex marriage, when in fact the Bill does not amend the law in any manner apart from decriminalising certain sexual acts between consenting adults. While the right of all citizens to the freedom of expression includes the right to make expressions that shock, offend, or disturb portions of the population, the freedom of expression is not an absolute right. This right may be restricted on the grounds of protecting the rights and freedoms of others, including the right to non-discrimination, provided such restriction is reasonable, necessary, and proportionate.

We note that Article 20(2) of the ICCPR does not explicitly refer to ‘sexual orientation’ when prohibiting the advocacy of hatred that constitutes incitement to discrimination, hostility, or violence. However, permitting incitement against persons on the basis of their sexual orientation is arguably incompatible with international law given the broad acceptance of sexual orientation as a prohibited ground of discrimination. The Commission does not at this juncture recommend the expansion of criminal law to further prohibit expressions – primarily due to the potential for abuse of such law. We urge your Ministry, however, to disregard any

hostile, discriminatory and misleading discourse when considering necessary and salutary legislative reform.

We accordingly reiterate our recommendation that your Ministry support the enactment of the said Private Member's Bill and consider adopting the Bill as a government proposal to ensure its expeditious passage. We thank you for your Ministry's continued cooperation and engagement.

Sincerely,



Justice L.T.B. Dehideniya,
Chairman,
Human Rights Commission of Sri Lanka

Justice L.T.B. Dehideniya
Judge of the Supreme Court (Retired)
Chairman
Human Rights Commission of Sri Lanka

Cc: H.E. Ranil Wickremesinghe,
President to the Republic of Sri Lanka,
Presidential Secretariat,
Colombo 001.

Hon. Attorney-General
Attorney General's Department,
Colombo 012

Inspector General of Police,
Sri Lanka Police Headquarters,
Colombo 001.

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இலங்கை மனித உரிமைகள் ஆணைக்குழு
Human Rights Commission of Sri Lanka

Hon. Dr. Wijedasa Rajapakshe
Minister of Justice, Prison Affairs and Constitutional Reforms
19, Sri Sangaraja Mawatha,
Colombo 10

Hon. Minister,

Recommendation to Repeal / Amend Sections 365 and 365A of the Penal Code

We write to you in terms of section 10(d) of the Human Rights Commission of Sri Lanka Act, No. 21 of 1996 with reference to sections 365 and 365A of the Penal Code (Chapter 19). Section 10(d) of the Act mandates the Commission 'to make recommendations to the Government regarding measures which should be taken to ensure that national laws...are in accordance with international human rights norms and standards'. The said sections of the Penal Code relate to 'unnatural offences' and 'acts of gross indecency between persons' and has been used for criminalising sexual activity between persons of the same sex.

We are pleased to note that the Supreme Court of Sri Lanka recently determined that 'decriminalisation of sexual activity amongst consenting adults irrespective of their sexual orientation only furthers human dignity and as such this cannot be considered as being an offence that must be maintained on the statute book' (SC SD 13/2023 *et al*, p. 31). It also determined that 'the removal of criminalisation of intimate acts between consenting adults, which was a crime based on moral imperatives of a bygone Victorian era, would be in conformity with Article 12(1) [of the Sri Lankan Constitution] and would uphold the dignity of human beings' (SC SD 13/2023 *et al*, p. 36). The said observations were made in the Court's determination on the constitutionality of a Private Member's Bill to amend section 365 and repeal section 365A. Prior to this determination, the Supreme Court in *Sanath Wimalasiri v. The Attorney General* (SC Appeal No. 32/2011) held that consensual same-sex activity should not attract a custodial sentence.

Sri Lanka is party to the International Covenant on Civil and Political Rights (ICCPR), which under Articles 2 and 26 guarantees the right to non-discrimination. The Human Rights Committee, the treaty body tasked with supervising the implementation of the ICCPR, has observed that the right to non-discrimination includes non-discrimination on the grounds of sexual orientation. Sri Lanka in its state party report submitted to the Human Rights Committee on 25 April 2021 stated that 'discrimination on the grounds of sexual orientation is implicitly prohibited' by Article 12(2) of the Sri Lankan Constitution. The Human Rights Committee, in its Concluding Observations on Sri Lanka, (26 April 2023), observed that the continued criminalisation of same-sex activity under sections 365 and 365A of the Penal Code violated Articles 2 and 26 of the ICCPR. It also observed that such continued criminalisation, the arrest and detention of persons under these sections, and the ill treatment of suspects, violated the

right to freedom from torture or cruel, inhuman or degrading treatment (Article 7), the right to liberty and security of persons (Article 9), and the right to privacy (Article 17) guaranteed under the ICCPR. It accordingly recommended the repeal of sections 365 and 365A of the Penal Code.

We observe that sections 365 and 365A of the Penal Code, and measures taken thereunder, are not in accordance with international human rights standards and norms as contained in Articles 2, 7, 9, 17, and 26 of the ICCPR. At observations made at the Third Universal Periodic Review of Sri Lanka in 2017 too, the Commission noted that ‘consensual sex between adults should not be criminalised...[and] sections 365 and 365A of the Penal Code, which criminalise same sex relations should be repealed.’

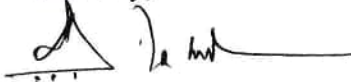
Moreover, at its Third Universal Periodic Review in 2017, Sri Lanka voluntarily pledged ‘to ensure and strengthen respect for fundamental rights of all persons, including those from the LGBTIQ community, and address concerns raised in that regard’, and recalled this pledge in its National Report submitted during its Fourth Universal Periodic Review in 2023. We accordingly encourage the Government of Sri Lanka to fulfil this pledge and introduce necessary amendments to the Penal Code to bring it in accordance with international human rights standards and norms, including those contained in the ICCPR.

We note that the abovementioned Private Member’s Bill to Amend the Penal Code (Chapter 19) was tabled in Parliament on 4 April 2023. The Bill clarifies that the legislative intent behind it is the amendment of provisions in the Penal Code that make sexual orientation a punishable offence. The Bill accordingly proposes to suitably amend section 365 and to repeal section 365A of the Penal Code.

The Commission recommends that your Ministry consider supporting the enactment of the said Bill and adopting the said Bill as a government proposal to ensure its expeditious passage.

We thank you for your Ministry’s continued cooperation and engagement.

Sincerely,



Justice L T B Dehideniya
Chairman

Justice L.T.B. Dehideniya
Judge of the Supreme Court (Retired)
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Human Rights Commission of Sri Lanka

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ශ්‍රී ලංකා මානව හිමිකම් කොමිෂන් සභාව
இலங்கை மனித உரிமைகள் ஆணைக்குழு
Human Rights Commission of Sri Lanka

The Guideline for police officers to protect transgender persons

Introduction

All Human beings are born free and equal in dignity and rights. Human beings of all sexual orientations and gender identities are entitled to the full enjoyment of all human beings.¹

The 1978 Constitution of Sri Lanka also recognizes that all are equal before the law and have equal protection of the law. There is a particular group of people who are marginalized, and among them, transgender is one group. Transgender is an umbrella term used to include a diverse group of persons who are not comfortable with their gender identity culturally assigned to them at birth. Therefore, a male person is willing to change his biological sex to a female (male to female – MTF), and in the same way, a female person is willing to change her biological sex to a male (Female to Male – FTM) with a long and a stringent process, could be defined as transition process.

International medical organizations and professionals proved that this is not a medical disorder. These marginalized groups have been living among us since the beginning of human origin. Due to various social factors, they hide their identity and continue to live with numerous sacrifices.

Some transgender persons complain due to their questionable identity and mental unrest. Further, they face social stigma, sexual harassment, discriminatory treatment in recruitment and being thrown out of the family etc.

This has caused the transgender comments to undergo psychological stress and suicidal thoughts, which result in suicidal attempts. Therefore, all should recognize their gender identity; ensure non-discrimination, personal security and the right to privacy of transgender persons.

The transgender community expressly state that law enforcement officials are one group to make aware of their issues. As police officers and as Law enforcement officers, they have a responsibility to ensure transgender persons' identity, non-discrimination, personal security

¹ Principle 1 of the Yogyakarta Principles

and right to privacy when they perform their duties. Also, the police should proactively intervene and protect transgender persons if criminal acts are caused against them.

All citizens should treat transgender persons equally, without discrimination, and support them to secure their rights and freedoms as equals in society.

Guidelines.

Guideline 01: Right to Recognition before the Law

Police officers should recognize transgender persons, their identity and the process, consider the constitutional guarantee that “All are equal before the law and equal protection of the law” as stated under Article 12.1 of the 1978 Constitution.

All police officers in different sectors should be aware of transgender persons and the transgender process and respect their universally recognized rights and freedoms as enshrined in the Yogyakarta Principles.²

Guideline 02: The Right to Equality and Non Discrimination

(a) The police officers should not discriminate the transgender persons based on their gender identity. The constitution has a provision under Article 12.2 that “Nobody should be discriminated based on race, ethnicity, caste, sex, or any such ground” If this is not adhered to by the police officers, it will violate Article 12.2. (b) In addition, disrupting access to law enforcement authorities by means of unequal treatment, inaction, negligence, unnecessary delaying, insensitivity towards the needs of transgender persons, and any such form of actions would amount to a violation of Article 12.1 of the Constitution.

Guideline 03: The Right to Freedom from Torture and Cruel, Inhuman or Degrading Treatment or Punishment

(a) Transgender persons face physical attacks, verbal abuse, blackmail and attempts to be sexually harassed or any other form of violence, even at the Police stations, due to their gender identity. If officers use degrading terminology towards transgender persons, it should be regarded as physical and mental torture, inhuman or degrading

² Principle 01, Principle 03

treatment or punishment to transgender persons. This, therefore, amounts to a violation of Article 11 of the Constitution and other prevailing laws.

(b) Police officers, when checking the physical body of transgender persons, they have to understand their gender identity and act accordingly. If there are reasonable grounds to suspect, they must first check the identity card or any other valid document before checking the person's body. Maintaining and respecting that person's privacy is essential as treating him with due dignity. The police are required to formulate guidelines informing the manner of body searches of these individuals. A transgender person is just another person, and he is entitled to all rights every person is entitled to under the Constitution.

Guideline 04: Right to Security of the Person

(a) Transgender persons face stigma, discrimination and violence in public places, such as non-verbal gestures, verbal abuses, threats and physical attacks. In these circumstances, the police should proactively intervene, avoid the situation, and take appropriate legal action against individuals who violate those rights.

(b) Inaction, avoidance or delaying legal actions by police officers for such grievances would violate Article 12.1 of the Constitutions. When transgender persons cross-dress, police tend to criminalise such actions under section 399 of the Penal Code – “Cheating by Impersonation”. Also, the police usually erroneously judge these cross-dressed individuals as Sex-workers. Cross-dressing cannot be considered impersonation concerning transgender persons, and they should not be prejudiced as sex workers. The misapplication of criminal law has severe consequences, the police must be advised of these consequences, and severe action must be taken against such police officers for not adhering to the prescribed regulations.

Guideline 05: The Right to Freedom from Arbitrary Arrest and Detention

Transgender persons are often arrested under the Vagrants' Ordinance merely because they stand on the road. The definition of vagrant must be clearly defined to avoid such arrests wrongfully.

If the police do not follow this legal provision, it would be considered an illegal arrest and will, therefore, violate Article 13 of the 1978 Constitution.

Guideline 06: The Right to Privacy

(a) Personal information of transgender persons must be treated with confidentiality. Disclosure of transgender status and sensitive information should be on a need-to-

know basis and not disclosed to other arrestees, the general public, lawyers, and court staff when they present before courts.

(b) Police officers must recognise the right to privacy when conducting a body check-up of a transgender person. When checking a male-to-female transgender person, an appropriate police officer should be assigned according to the request of a transgender person

Guideline 07: The Right to Treatment with Humanity while in Detention

(a) Police officers, when detaining transgender persons who have committed an offence or are suspected of committing an offence, must consider their gender identity and treat them with humanity.

A male-to-female transgender detainee has to be treated as a female detainee, and a female-to-male transgender detainee has to be treated as a male detainee. Both transgender persons should be detained separately from other detainees to avoid harassment.

(b) If a transgender person is detained without any reason, such detention would be considered illegal and would, therefore, violate Article 13 of the 1978 Constitution. Any sexual harassment, threat, blackmail, beating or attack in a detention place would be considered torture, inhuman, degrading treatment. Therefore, it violates Article 11 of the 1978 Constitution.

Guideline 08: The Right to Enjoy the Family Life

In situations of domestic violence or discrimination by family members, the police should realize the transgender persons' physical and mental situation and act accordingly by minimizing the issues faced by transgender persons because of their respective family members. The police should try and take measures to mediate and make the family members understand the critical situations faced by transgender persons.

Guideline 09: Ensure the Best Interest of Transgender Child

When child transgender persons complaint about the harassment they faced by teachers and fellow students in the schools or the police received complaints from schools against the child transgender persons, the Women and Children Desk in the police stations should pay more attention and act with the best interest of the child. If

necessary, the police should take measures to get the National Child Protection Authority (NCPA) assistance.

Guideline 10: The Right to Access to Law Enforcement Authorities

Police should attempt to build up the inner confidence of transgender people to lodge complaints without fear or harassment and should not refuse or verbally abuse or threaten when they complain. In addition, the personal information of transgender persons should not be misused.

Guideline 11: The Right to Freedom of Expression, Association and Peaceful Assembly

Police should ensure the right to expression, association and peaceful assembly of transgender persons. If this is not adhered to by the police officers, it will violate Article 14.

Guideline 12: The Right to Promote LGBTI Rights

Human Rights Defenders who work to promote and protect the human rights of LGBTI persons are an extremely vulnerable group and frequently become targets for persecutions and human rights violations. Police should recognize the legitimate activities of LGBTI defenders and ensure a peaceful environment for promoting and protecting LGBTI rights.



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2025.03.14

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සංක්‍රාන්තික සමාජභාවී පුද්ගලයින් ආරක්ෂා කිරීමට ශ්‍රී ලංකා මානව හිමිකම් කොමිෂන් සභාව විසින් නිකුත් කර ඇති පොලිස් නිලධාරීන් සඳහා වන මාර්ගෝපදේශ සංග්‍රහය සම්බන්ධ ව.

පොලිස් නිලධාරීන් විසින් තම රාජකාරිය ඉටු කිරීමේ දී ඇතැම් අවස්ථාවල සංක්‍රාන්තික සමාජභාවී පුද්ගල ප්‍රජාවගේ මානව හිමිකම් උල්ලංඝනය වන ආකාරයට කටයුතු කරන බවට ශ්‍රී ලංකා මානව හිමිකම් කොමිෂන් සභාව වෙත දෛනික ව පැමිණිලි වාර්තා වන බව එම කොමිෂන් සභාව විසින් දැනුම් දී ඇත. ඒ අනුව පොලිස් නිලධාරීන්ගේ දෛනික රාජකාරි කටයුතුවල දී සංක්‍රාන්තික සමාජභාවී පුද්ගලයින්ගේ මානව හිමිකම් ආරක්ෂා වන ආකාරයට සිය රාජකාරිය ඉටුකිරීම සඳහා වන මාර්ගෝපදේශ මාලාවක් නිකුත් කිරීමට එම කොමිෂන් සභාව මගින් කටයුතු කර ඇත.

එසේම සංක්‍රාන්තික ලිංගිකයින් සහ ලිංගික විපර්යාසයන්ට ලක්වූ තැනැත්තන් සම්බන්ධයෙන් කටයුතු කිරීම පිළිබඳ ව 2022.12.27 දින නිකුත් කර ඇති පොලිස්පති චක්‍රලේඛ අංක 2740/22 සහ අපරාධ චක්‍රලේඛ අංක 03/2022 මගින් ද උපදෙස් ලබා දී ඇත.

එම චක්‍රලේඛයට වැඩිමනත් ලෙස මානව හිමිකම් කොමිෂන් සභාව විසින් යොමු කර ඇති මාර්ගෝපදේශ අනුව පහත උපදෙස් නිකුත් කරන අතර සියලුම නිලධාරීන් මෙම රාජකාරි කටයුතුවල දී එම උපදෙස්වලට අනුගත ව කටයුතු කළ යුතු ය.

01. නීතිය ඉදිරියේ පිළිගැනීමට ඇති අයිතිය

1978 ආණ්ඩුක්‍රම ව්‍යවස්ථාවේ 12.(1) ව්‍යවස්ථාව යටතේ ප්‍රකාශ කර ඇති පරිදි “නීතිය ඉදිරියේ සියල්ලෝම සමාන වන අතර නීතියේ රැකවරණය සඳහා සාධාරණ විය යුතු ය” යන ව්‍යවස්ථාමය සහතිකය සලකා බැලීම සඳහා පොලිස් නිලධාරීන් සංක්‍රාන්තික සමාජභාවී පුද්ගලයින්, ඔවුන්ගේ අනන්‍යතාවය සහ සංක්‍රාන්තික සමාජභාවී ක්‍රියාවලිය හඳුනාගත යුතු ය.

ඒ අනුව සංක්‍රාන්තික සමාජභාවී පුද්ගලයන් සම්බන්ධයෙන් පොලිස් නිලධාරීන් විසින් රාජකාරි කිරීමේ දී ඔවුන්ගේ සංක්‍රාන්ති ක්‍රියාවලිය පිළිබඳ ව දැනුවත් විය යුතු ය.

02. සමාන්තරත්වයට සහ වෙනස්කොට නොසැලකීමට ඇති අයිතිය

සංක්‍රාන්තික සමාජභාවී පුද්ගලයන් ඔවුන්ගේ ලිංගික අන්‍යෝන්‍යතාවය මත වෙනස් කොට සැලකීමක් නොකළ යුතුය. ආණ්ඩුක්‍රම ව්‍යවස්ථාවේ 12.(2) ව්‍යවස්ථාව යටතේ “කිසිවෙකු ජාතිය, වාර්ගිකත්වය, කුලය, ස්ත්‍රී පුරුෂ භාවය හෝ එවැනි පදනමක් මත වෙනස් කොට සැලකීම නොකළ යුතු ය.” පොලිස් නිලධාරීන් මෙය පිළිනොපදින්නේ නම්, එය ආණ්ඩුක්‍රම ව්‍යවස්ථාවේ 12.(2) ව්‍යවස්ථාව උල්ලංඝනය කිරීමකි.

03. වධ හිංසා සහ කුරිරු, අමානුෂික හෝ අවමන් සහගත සැලකීම හෝ දඩුවම් වලින් නිදහස් වීමේ අයිතිය.

මෙම පුද්ගලයන් ඔවුන්ගේ ස්ත්‍රී පුරුෂ භාවය හේතුවෙන් වධ හිංසා සහ කුරිරු හෝ අමානුෂික සැලකිල්ලකට භාජනය නොකළ යුතු ය.

පොලිස් නිලධාරීන් විසින් ලිංගික සංක්‍රාන්තික පුද්ගලයන් අත්අඩංගුවට ගෙන පරීක්ෂා කිරීමේ දී ස්ත්‍රී පුරුෂ භාවය තහවුරු කිරීමකින් පසුව අවස්ථාවෝචිත පරිදි (අපරාධ නඩු විධාන සංග්‍රහයේ 30 වගන්තියට යටත් ව) නිලධාරියෙකු හෝ නිලධාරිනියක විසින් විනිතභාවය පිළිබඳ ව නිසි සැලකිල්ලකින් සිදු කළ යුතු ය.

04. පුද්ගලික ආරක්ෂාවට ඇති අයිතිය.

සංක්‍රාන්තික සමාජභාවී පුද්ගලයන් පොදු ස්ථානවල අපකීර්තියට, වෙනස් කොට සැලකීමකට සහ ප්‍රචණ්ඩත්වයට, වාර්ගික නොවන අභියාචා, වාර්ගික අපයෝජනයක්, තර්ජන සහ ශාරීරික ප්‍රහාර වලට මුහුණ දෙන අවස්ථාවල දී පොලිසිය මැදිහත් වී ඔවුන්ගේ ආරක්ෂාව තහවුරු කිරීමට ක්‍රියාකළ යුතු ය.

05. අත්තනෝමතික අත්අඩංගුවට ගැනීම සහ රඳවා තබා ගැනීම වලින් නිදහස් වීමේ අයිතිය.

සංක්‍රාන්තික සමාජභාවී පුද්ගලයන් අත්අඩංගුවට ගැනීමේ දී හුදෙක් ඔවුන් මහා මාර්ගයේ ගැටිලි මතම අත්අඩංගුවට ගැනීම නොකළ යුතු ය. එසේ ගැටිලිමත් අනිකික ක්‍රියාවක් කරනවා නම් පමණක් ඔවුන්ට විරුද්ධ ව නෛතික ක්‍රියාමාර්ග ගැනීම සිදු කළ යුතු ය.

06. පෞද්ගලිකත්වයට ඇති අයිතිය.

සංක්‍රාන්තික සමාජභාවී පුද්ගලයන්ගේ පෞද්ගලික තොරතුරු රහසිගත තොරතුරු ලෙස සැලකිය යුතු ය. සංක්‍රාන්තික සමාජභාවී තත්ත්වයන් සහ සංවේදී තොරතුරු හෙළිදරව් කිරීම දැන ගැනීමට අවශ්‍ය සාධාරණ

07. දෙවුම් භාරයේ සිටියදී මනුෂ්‍යත්වයෙන් සැලකීමට ඇති අයිතිය.

වරදක් කළ හෝ වරදක් කළ බවට සැකකෙරෙන සංක්‍රාන්ති සමාජභාවීය පුද්ගලයන් රඳවා තබා ගැනීමේ දී ඔවුන්ගේ ස්ත්‍රී පුරුෂ සමාජභාවීය අනන්‍යතාව සලකා බලා ඔවුන්ට මානුෂිකව සැලකීම පොලිස් නිලධාරීන් විසින් සිදුකළ යුතු ය.

පිරිමි සිට ගැහැණු බවට පත් සංක්‍රාන්ති සමාජභාවීය රැඳවියන් කාන්තා රැඳවියන් ලෙසත් ගැහැණු සිට පිරිමි බවට පත් සංක්‍රාන්ති සමාජභාවීය රැඳවියන් පිරිමි රැඳවියන් ලෙසත් සැලකිය යුතු ය. හිරිහැර වළක්වා ගැනීම සඳහා සංක්‍රාන්ති සමාජභාවීය පුද්ගලයන් අනෙකුත් රැඳවියන්ගෙන් වෙන් වෙන්ව රඳවා තැබිය යුතු ය.

සංක්‍රාන්තික සමාජභාවීය පුද්ගලයෙකු කිසිදු හේතුවක් නොමැතිව රඳවා තබා ගත්තේ නම් එවැනි රඳවා තබා ගැනීම නීතිවිරෝධී ලෙස සලකනු ලබන අතර එය 1978 ආණ්ඩුක්‍රම ව්‍යවස්ථාවේ 13 ව්‍යවස්ථාව උල්ලංඝනය කිරීමකි. දෙවුම් ස්ථානයක සිදුවන ඕනෑම ලිංගික හිරිහැරයක්, තර්ජනයක්, පහරදීමක් හෝ වධහිංසා කිරීමක්, අමානුෂික අවමන් සහගත සැලකිල්ලක් ලෙස සලකනු ලැබේ. එබැවින් එය 1978 ආණ්ඩුක්‍රම ව්‍යවස්ථාවේ 11 ව්‍යවස්ථාව උල්ලංඝනය කිරීමකි.

08. පවුල් ජීවිතය භක්ති විදීමට ඇති අයිතිය

ගෘහස්ථ ප්‍රවණත්වයකදී හෝ පවුලේ සාමාජිකයන් වෙනස් කොට සලකන විට පොලිසිය සංක්‍රාන්ති සමාජභාවීය පුද්ගලයන්ගේ කායික හා මානසික තත්ත්වය අවබෝධ කරගෙන ඒ අනුව ක්‍රියා කළ යුත්තේ එමගින් සංක්‍රාන්ති සමාජභාවීය පුද්ගලයින්ට තම පවුලේ සාමාජිකයින් නිසා මුහුණ දීමට සිදුවන ගැටලු අවම කළ හැකි බැවිනි. සංක්‍රාන්ති සමාජභාවීය පුද්ගලයින් මුහුණ දෙන කීරණාත්මක තත්ත්වයන් පවුලේ සාමාජිකයන්ට අවබෝධ කර දීමට අවස්ථානුකූල ව පොලිසිය මැදිහත් වී පියවර ගත යුතු ය.

09. සංක්‍රාන්ති සමාජභාවීය දරුවෙකුගේ උපරිම යහපත සහතික කිරීම

සාසල්වල ගුරුවරුන්ගෙන් සහ සෙසු සිසුන්ගෙන් සංක්‍රාන්ති සමාජභාවීය ළමයින් හට සිදුවන හිරිහැර ගැන පැමිණිලි කරන විට හෝ ළමා සංක්‍රාන්ති සමාජභාවීය පුද්ගලයින්ට එරෙහිව සාසල් වලින් පොලිසියට පැමිණිලි ලැබුණු විට පොලිස් ස්ථානවල ළමා හා කාන්තා කාර්යාංශය වැඩි අවධානයක් යොමු කර උපරිම උනන්දුවෙන් දරුවාගේ සුභසාධනය උදෙසා ක්‍රියා කළ යුතු ය. අවශ්‍ය නම් ජාතික ළමා ආරක්ෂක අධිකාරියේ සහය ලබා ගැනීමට කටයුතු කළ යුතු ය.

10. නීතිය බලාත්මක කිරීමේ අධිකාරීන් වෙත ප්‍රවේශ වීමේ අයිතිය

සංක්‍රාන්තික සමාජභාවය පුද්ගලයින් හට බියෙන් හෝ හිරිහැරයකින් තොරව ආත්ම විශ්වාසයෙන් පොලිස් ස්ථානවලට පැමිණිලි කිරීමට පොලිසිය ඉඩ ලබාදිය යුතු අතර, ඔවුන් පැමිණිලි කරන විට ප්‍රතික්ෂේප කිරීම හෝ වාචිකව අපයෝජනය කිරීම හෝ තර්ජනය කිරීම නොකළ යුතුය. ඊට අමතරව සංක්‍රාන්ති සමාජභාවී පුද්ගලයන්ගේ පුද්ගලික තොරතුරු අවහඬිත නොකළ යුතු ය.

11. අදහස් ප්‍රකාශ කිරීමේ නිදහස සමාගමේ අයිතිය සහ සාමකාමීව රැස්වීම සඳහා ඇති අයිතිය

සංක්‍රාන්තික සමාජභාවය පුද්ගලයන්ගේ අදහස් ප්‍රකාශ කිරීමට සමාගමේ අයිතිය සහ සාමකාමීව රැස්වීමට ඇති අයිතිය පොලිසිය විසින් සහතික කළ යුතු ය. මෙය පොලිස් නිලධාරීන් විසින් පිළිනොපදි නම් එය ආණ්ඩුක්‍රම ව්‍යවස්ථාවේ 14 ව්‍යවස්ථාව උල්ලංඝනය කිරීමකි.

12. LGBTIQ අයිතිවාසිකම් ප්‍රවර්ධනය කිරීමේ අයිතිය

LGBTIQ පුද්ගලයින්ගේ මානව හිමිකම් ප්‍රවර්ධනය කිරීම සහ ආරක්ෂා කිරීම සඳහා ක්‍රියා කරන මානව හිමිකම් ආරක්ෂකයින් අතීතයින් අවධානයට ලක්විය හැකි කණ්ඩායමක් වන අතර නිතර හිංසා සහ මානව හිමිකම් උල්ලංඝනය කිරීම් සඳහා ඉලක්ක වේ. පොලිසිය LGBTIQ ආරක්ෂකයින්ගේ නිත්‍යානුකූල ක්‍රියාකාරකම් හඳුනාගත යුතු අතර LGBTIQ ප්‍රජාවගේ අයිතිවාසිකම් ප්‍රවර්ධනය කිරීම සහ ආරක්ෂා කිරීම සඳහා සාමකාමී පරිසරයක් සහතික කළ යුතු ය.

මානව හිමිකම් කොමිෂන් සභාව විසින් නිකුත් කර ඇති උක්ත මාර්ගෝපදේශයේ ඉංග්‍රීසි හා දෙමළ පරිවර්තන ද මෙයට යා කර ඇත.

ඒ අනුව මෙම මාර්ගෝපදේශ සම්බන්ධයෙන් ඔබ යටතේ පිටින් සියලුම නිලධාරීන් දැනුවත් කිරීමට කටයුතු කළ යුතු ය.


ප්‍රධාන විරසුරිය

වැඩ බලන පොලිස්පති

හිතියු ප්‍රධාන විරසුරිය
රාධම්ලන පොලිස්පති
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කොළඹ - 02

පිටපත : ගොනුවට

00118

IG's Circular : 2740/2022
 Crime Circular : 03 /2022

My Number:
 Police Headquarters
 Colombo-01
 27.12.2022

All : Senior Deputy Inspectors General of Police,
 : Deputy Inspectors General of Police,
 : Commandants / Directors,
 : Officers in charge of Territorial Divisions,
 : Senior Gazetted Officers in charge of Districts
 : Headquarters Inspectors of Police /Officers in Charge

Matters to be considered when dealing with transgender persons and persons who have undergone gender transition

"No citizen shall be discriminated against on the grounds of race, religion, language, cast, sex, political opinion, place of birth or any such grounds" is a fundamental right set out in the Article 12(2) of the Constitution.

However, opinions have been expressed that the Police, have, on several occasions, acted in violation of the above provisions of the constitution when dealing with transgender and persons who have undergone gender transitions.

A writ case No.425/2021 has been filed before the Court of Appeal in respect of an incident of criticism aimed at the above-mentioned persons by a lecturer during a training attended by officers and thereby, Sri Lanka Police has been requested to take formal measures against suppression of fundamental rights of the said community.

The Hon. Attorney General presenting facts before the courts in this case has stated that Sri Lanka Police Will adhere to the existing criminal law of the country and take measures to issue a formal circular containing instructions in this regard.

Accordingly, following measures should be taken when performing duties in respect of transgender persons and persons who have undergone gender transition.

01. Complaints received from a transgender person or persons who have undergone gender transition regarding physical or psychological harassment through inuendo or verbal comments and complaints against such a person shall be investigated by the Unit for the Prevention of Abuse of Children and Women under the direct supervision of the relevant H.Q.I./Officer in Charge.

2. Should there be any issue regarding such a complaint, the relevant H.Q.I / Officer-in-Charge should seek instructions from the Deputy Inspector General of Police in charge of the Range for Investigation of Abuse of Children & Women or the Director of the said Division.
3. Upon the completion of such investigation, the files shall be forwarded to the Director/ Police Legal Division and based on further instructions received, prosecution should be initiated, or file shall be closed upon completion of the investigation.
4. When a transgender person or a person who has undergone gender transition is arrested in connection with an offence, such person shall be searched and inspected with due regard to decency, by a male or female officer as deemed appropriate.
5. When a transgender person or a person who has undergone gender transition is detained, such a person shall be kept in the custody of a female warden or a female officer as deemed appropriate. Under no circumstances that such persons shall be subjected to verbal/physical or psychological harassment or humiliation by police officers.
6. Speeches or statements which could lead to discrimination or marginalisation of transgender persons and persons who have undergone gender transition shall not be made in any lectures conducted in training centres of Sri Lanka Police or in training or workshops conducted by guest lecturers. It shall be the responsibility of the heads of every training centre /unit to inform the lecturers that such matters should not be included in their lectures and ensure that they act accordingly
7. None of the above provisions shall preclude from taking actions under Sections 365, 365A, 365B and 365C of the Penal Code. However, arresting such persons or conducting anal or vaginal examinations with the intention of taking legal actions against them shall never be done without a formal complaint or reasonable grounds.
8. Legal action should not be taken against a transgender person or a person who has undergone gender transition solely based on the grounds of concealing their sexual transition from the society, unless it is done so with criminal intent.

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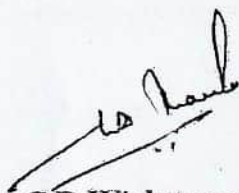
9. Since the possession of contraceptive pills, capsules or condoms is not an offence, no person shall be questioned or arrested solely on the ground of such possession and no action shall be taken against such persons under the "Vagrants Ordinance" or any other law for that reason alone.

Since transgender persons or persons who have undergone gender transition also enjoy equal rights and the right to equal treatment as citizens of Sri Lanka, actions should be taken in a manner that they are not discriminated against in the process of implementation of the law, ensuring the protection of the law and the administration of the law.

Therefore, this IG'S Circular setting out these instructions is issued to ensure that appropriate measures are taken by the Sri Lanka Police to protect the fundamental rights of the transgender persons or persons who have undergone gender transition and to uphold the Constitution and to motivate every officer to act accordingly.

Hence, you shall keep all your subordinate officers informed and take action to protect the rights of transgender persons or persons who have undergone gender transition.

However, I emphasise that none of the provisions of this circular should be considered as an interference to the legal obligations of the Sri Lanka Police and / or police officers to act in terms of the law as per the provisions laid out in the Penal Code and / or other written laws regarding criminal offences.



C.D Wickramaratne
Inspector General of Police

C. D. Wickramaratne
Inspector General of Police
Police Headquarters
Colombo 01

Copy : File

සහන විමසන



සේවාකාරී
පොලීස් ඩිටි කොමිෂනර්
පොලීස් ඉලෙක්ට්‍රොනික්
කොට්ඨාස 01

General Circular No: 01 - 34 /2016

My Number: DMH/A/18/2016
Ministry of Health, Nutrition and
Indigenous Medicine
385, Ven. Baddegama
Wimalawansa Thero Mawatha
Colombo 10.
16.06.2016.

All:
Provincial Health Secretaries,
Provincial Directors of Health Services,
Regional Directors of Health Services,
Directors of Teaching Hospitals,
Medical Superintendents of Hospitals,
Heads of Specialized Campaigns,
Heads of Health Institutions,
Deans of Medical Faculties,

Issuing of Gender Recognition Certificate for Transgender Community

Transgender is an umbrella term for all people whose internal sense of their gender (their gender identity) is different from the sex they were assigned at birth. For example, a transgender woman is someone assigned male at birth who identifies as female (WHO 2015).

Transgender people are often socially, economically, politically and legally marginalized. Discrimination and vulnerable to harassment, violence and sexual assault and discrimination in access to public spaces like restaurants, cinemas, public toilets are common. Therefore amending the sex designation on a birth certificate is an extremely important step for a transgender person, to accurately reflect on this legal document the sex with which the individual identifies, and as required proof of sex to obtain other identity and legal documents.

Considering above facts, Ministry of Health, Nutrition and Indigenous Medicine has decided to establish services for transgender communities in every institution, with capacity of specialist psychiatric care (Consultant Psychiatrist).

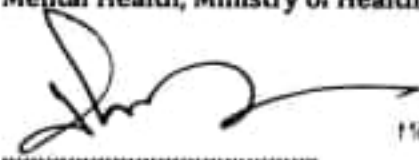
When a person requests service, the responsible consultant psychiatrist will provide the care which includes assessment, counseling and issuing a **Gender Recognition Certificate (GRC)** to assist with the process of changing the sex on a birth certificate. The certificate could be issued only to those above 16 years of age and it will indicate the desired gender as to be shown in birth certificate. This document has to be certified by a Consultant Psychiatrist and then the Head of the Institution working under the Ministry of Health.

When a person in the private sector requests it, he should be referred to the closet government hospital with a Consultant Psychiatrist to obtain the certificate.

A system is established on Transgender information management; maintain a register at the institution for effective monitoring of the services. The Directorate of Mental Health is currently taking steps to set up process for transgender information management. Two main documents need to be maintained.

- Transgender Notification Register (TNR); When a person is issued GRC, information such as name, date of birth, birth sex, desired gender, National Identity Card number, bed-head ticket/clinic number should be entered in the TNR. Register will be maintained in the Psychiatric unit of the institution.
- Gender Recognition Certificate will be prepared in triplicate with one to be issued to the person concerned, the second to be retained at the hospital and third to the Directorate of Mental Health, Ministry of Health.

Kindly make arrangements to make aware all the Consultant Psychiatrists and other relevant officers in your institution on the above to stream line services for transgender persons and issuing the **Gender Recognition Certificate**. A copy of the certificate and sample of the register is attached herewith for your information. More details can be obtained from the Directorate of Mental Health, Ministry of Health, Nutrition and Indigenous Medicine.



Dr. P. G. Mahipala
Director General of Health Services
Ministry of Health, Nutrition & Indigenous Medicine
"Sri Lanka" Building,
305, Raj. Mahipala Mawatha, Thero Mawatha,
Colombo 10.

Dr. P.G. Mahipala
Director General of Health Services

Cc:
Secretary/Ministry of Health, Nutrition and indigenous Medicine
Deputy Director General (MS) I
Deputy Director General (MS) II
Deputy Director General (NCD)
Director/Mental Health
President/Sri Lanka College of Psychiatrists

H 1257 Gender Recognition Certificate

Ministry of Health- Sri Lanka

This certificate is issued for the purpose of change the gender and name on Birth Certificate by the Section 27 and 52(1) of Birth and Death Registration Ordinance

A) General Information

1. Name in Full:
.....
2. Name of the Father:
3. Name of the Mother:
4. Home Address:
.....
5. National Identity Card number:
6. Birth sex : MALE/FEMALE (Underline the appropriate)
7. Date of Birth: Birth Place:
8. Registered No: Date:

B) Declaration of Gender

I..... (Full name) of
..... (Profession) declare
that the above mentioned person was assessed by me for his/her psychological status for
gender reassignment. Based on the assessment I am able to make a diagnosis of male/female
to female/male transsexualism according to the criteria of the World Health Organization-
International Classification of Diseases 10th version.

The afore mentioned person was educated on identified concerns in the overall treatment plan
in order to facilitate the process to provide the best available care in accordance with their clinical
needs and goals for gender expression.

Following the required procedure the afore mentioned person was referred for hormone
therapy and the necessary surgical treatment.

I hereby certify that the afore mentioned person underwent the gender transformation process
according to the internationally recognized and accepted standards of care published by the
World Professionals Association for Transgender Health (WPATH) and completed the social
gender role transition as required.

I further declare that the afore mentioned person changed the gender from..... to..... on
...../...../..... and is eligible to apply for the change of gender and name in the birth
certificate as mentioned below.

New name:

New gender:

Name:

Signature:

(Consultant psychiatrist) (Head of the Institution)

..... (Official seal) (Official seal)

..... (Date) (Date)

Transgender Notification Register

Name of the Institution:

Unit:

[illegible]

National HIV/STI Strategic Plan Sri Lanka, 2023-2027



**NATIONAL
STD/AIDS
CONTROL
PROGRAMME**

4.6.4.	Recruit a senior independent financial sustainability advisor on contract basis till the transition plan is approved by GoSL and GFATM
4.6.5	Establish a NGO/CBO accreditation system for KP interventions
4.6.6	Ensure availability of monetary resources for Salaries and other recurrent expenses

3.8 Strategy 05: Supportive Environment

Strategic Objective: Creating a supportive environment to reduce stigma and discrimination

The strategic objective 05 designates under four main strategic directions;

SD 5.1	Create an enabling legal environment by removing punitive and discriminatory laws and policies which are barriers for HIV/STI prevention and control.
SD 5.2	Strengthen policies to address stigma and discrimination among selected government ministries and institutions
SD 5.3	Promote responsible media reporting on HIV/AIDS to advance health promotion, human rights and right to health.

Rationale

The success of the national strategy is dependent on the presence of a social, cultural, legal and policy environment that encourages people living with HIV and KPs to support the interventions undertaken by the government and benefit by the services offered to them. The GoSL is fully committed to eliminate all forms of stigma and discrimination against HIV/AIDS and to ensure the full enjoyment of all human rights and fundamental freedoms by PLHIV and members of KP groups. The NSACP has provided them with opportunities to be involved effectively in policy, planning and implementation of interventions which have had positive outcomes such as participating in policy and programme development dialogues, increasing the coverage of reach and HIV testing services, development of the national strategic plan

and programme reviews and developing partnerships in providing care and support. Stigma and discrimination towards HIV/AIDS is a worldwide phenomenon. The Constitution of the Democratic Socialist Republic of Sri Lanka clearly outlines that every person irrespective of race, religion, place of birth, sex is to be equally treated. There are laws, policies and regulations and programmes that are put in place to provide a supportive environment. The National AIDS Policy, The National HIV/AIDS Policy in the World of Work, National Condom Strategy, National Communication Strategy on Control and Prevention of STI/HIV/AIDS are some policies and strategies which were developed to combat stigma and discrimination. A Legal and Ethical subcommittee was established under the National AIDS Committee and is chaired by a legal professional.

On the other hand, there are also aged old laws which have become barriers which have led to social exclusion, difficulty in accessing health and social services for PLHIV and KPS. The Sri Lanka constitution along with a number of supportive laws, policies, regulations, strategies, and programmes provide a supportive and conducive environment for PLHIV, KPs to enjoy their rights.

Since the beginning of the epidemic, the GOSL has taken steps to combat stigma especially in healthcare settings and in media reporting. The current NSP, identifies the need to remove the punitive laws which are barriers for HIV prevention and control and will continue to support creating an enabling environment by advocating to revise some of the laws and regulations such as the Penal Code, Vagrancy Ordinance, to ensure that all areas support positive health outcomes and they do not compound stigma and discrimination and social exclusion.

However, there is another aspect to stigma which is internal stigma and the recent stigma report shows a high degree of internal stigma among PLHIV and the current NSP is taking note of it to strengthen comprehensive counselling among PLHIV and KP groups of the nature of the health system in Sri Lanka with associated long waiting times to consult a doctor, collect medicines, non-availability of tests and drugs etc which are common features to all patronizing services in a non-fee levying system. The current NSP is including stigma and discrimination, human rights, ethical professional practices, gender equality in pre-service and in-service training of

healthcare providers, training of government teachers and other training courses conducted by non-health ministries such as Ministry of Labour, Ministry of Youth and Sports, Ministry of Women's Affairs, Ministry of Plantations, Sri Lanka Police, Faculty of Law and Law Colleges. The NSP is addressing the issues within the STD clinics by introducing a structured training programme and a Grievance Redress mechanism.

Priority actions that need to be undertaken include:

Strategic Direction 5.1	Create an enabling legal environment by removing punitive and discriminatory laws and policies which are barriers for HIV/STI prevention and control
Major Activities	
5.1.1	Advocacy to amendment laws that criminalize KPs such as vagrancy ordinance, brothel ordinance, penal code 365, 365a.
Strategic Direction 5.2	Combating stigma and discrimination among selected government ministries and institutions
Major Activities	
5.2.1.	Advocacy to reduce stigma and discrimination in all relevant government institutions such as education, labor and institutions such as National Child Protection Authority and the Sri Lanka Police.
5.2.2.	Include human rights, right to health, HIV/AIDS and the negative effects of stigma and discrimination to the national response in pre-service and in service training programmes of Ministry of Health
5.2.3.	Include HIV/AIDS and the effects of punitive laws on the national response in relevant curricula
Strategic Direction 5.3	Responsible media reporting on HIV/AIDS to advance health promotion, human rights and right to health
Major Activities	
5.3.1	Create a group of media personnel as change agents.



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2023.05.08

STATEMENT BY THE COLLEGE OF COMMUNITY PHYSICIANS OF SRI LANKA ON REPEALING ARTICLE 365, 365 A OF THE PENAL CODE

The College of Community Physicians of Sri Lanka(CCPSL) as the apex professional body for public health in Sri Lanka stands in solidarity with the LGBTQI community of Sri Lanka in the context of the ongoing efforts to repealing Sections 365 and 365 A of the penal code.

Successful repealing is expected to lead to decriminalization of non-heteronormative gender identities. The CCPSL notes that decriminalization of non-heteronormative gender identities is a part of the National STI & HIV Strategic Plan of the Ministry of Health (2018-2022), Sri Lanka and the current finalized National STI & HIV Strategic Plan of the Ministry of Health (2023- 2027).

Decriminalization will increase the access to health care, screening and treatment services and support the principles of equity and equality in the Sri Lankan health system.

College of Community Physicians of Sri Lanka



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Amarasinghe

18th August 2021

Press statement regarding human sexuality and mental illness

It has come to our notice that certain individuals conducting training programmes on mental health are spreading erroneous messages on sexual behaviour.

The Sri Lanka College of Psychiatrists would like to categorically state that we do not endorse the view that homosexuality is due to a disease of the mind or body.

Modern day psychiatrists do not identify or diagnose homosexuality as a mental illness or treat it as such. This myth that homosexuality is a mental illness is not in keeping with the evidence based science practiced by our membership.

According to modern day medical knowledge and social values the lifestyle choices of the lesbian, gay, bisexual, transgender, intersex and queer (LGBTIQ) community are to be respected and not discriminated against.

We would like to strongly urge the authorities to change article 365 of the penal code which states that homosexuality is a criminal act. This archaic law should be abolished and homosexuality decriminalized in Sri Lanka.

- Sri Lanka College of Psychiatrists



Convention on the Elimination of All Forms of Discrimination against Women

Distr.: General
28 February 2025

Original: English

Committee on the Elimination of Discrimination against Women

Concluding observations on the ninth periodic report of Sri Lanka*

1. The Committee considered the ninth periodic report of Sri Lanka (CEDAW/C/LKA/9) at its 2134th and 2135th meetings (see CEDAW/C/SR.2134 and CEDAW/C/SR.2135), held on 13 February 2025. The list of issues and questions raised by the pre-sessional working group is contained in CEDAW/C/LKA/Q/9, and the responses of Sri Lanka are contained in CEDAW/C/LKA/RQ/9.

A. Introduction

2. The Committee appreciates the submission by the State Party of its ninth periodic report. It also appreciates the State Party's follow-up report to the previous concluding observations of the Committee (CEDAW/C/LKA/CO/8/Add.1) and its written replies to the list of issues and questions raised by the pre-sessional working group. It welcomes the oral presentation by the delegation and the further clarifications provided in response to the questions posed orally by the Committee during the dialogue.

3. The Committee commends the State Party on its high-level delegation, which was headed by the Minister of Women and Child Affairs of Sri Lanka, Saroja Savitri Paulraj, and included representatives of the Ministry of Women and Child Affairs, the Attorney General's Department, the Sri Lanka Police and the Ministry of Foreign Affairs, Foreign Employment and Tourism, as well as the Permanent Representative of Sri Lanka to the United Nations, Himalee Subhashini Arunatilaka, and other representatives of the Permanent Mission of Sri Lanka to the United Nations Office and other international organizations in Geneva.

B. Positive aspects

4. The Committee welcomes the progress achieved since the consideration in 2017 of the State Party's eighth periodic report (CEDAW/C/LKA/8) in undertaking legislative reforms, in particular the adoption of the following:

(a) Women Empowerment Act, No. 37 of 2024, introducing mechanisms to give effect to the Convention;

* Adopted by the Committee at its ninetieth session (3–21 February 2025).



Women migrant workers

51. The Committee notes with concern that the surge in labour migration to Gulf countries and the Middle East under the *kafalah* system exposes Sri Lankan women migrant domestic workers to heightened risks of forced labour and abuse, as evidenced by the crisis in Lebanon in October 2024, when 7,600 predominantly female garment workers were left without consular assistance following bombing incidents.

52. **The Committee recommends that the State Party:**

(a) **Strengthen and expand its consular assistance services in Gulf countries and the Middle East by establishing 24-hour emergency hotlines, increasing the number of labour attachés at diplomatic missions and ensuring adequate staffing and resources to respond to crisis situations;**

(b) **Develop and implement emergency evacuation protocols and crisis response mechanisms specifically designed for migrant domestic workers, including dedicated emergency funds for repatriation;**

(c) **Establish a comprehensive tracking system to maintain updated contact information and employment details for all Sri Lankan women migrant domestic workers, with a view to enabling a swift response during emergencies;**

(d) **Create bilateral agreements with receiving countries to ensure that Sri Lankan domestic workers can be reached immediately during crises, overcoming the restriction of the *kafalah* system;**

(e) **Provide regular training to consular staff on gender-sensitive approaches to assisting domestic workers, including on handling cases of abuse, wage theft and forced labour;**

(f) **Establish a dedicated unit within diplomatic missions to monitor employers and recruitment agencies and maintain a database of complaints and blacklisted employers.**

Lesbian, bisexual, transgender and intersex women and girls

53. The Committee notes with concern that:

(a) Despite the views adopted by the Committee in 2022 in *Rosanna Flamer-Caldera v. Sri Lanka* ([CEDAW/C/81/D/134/2018](#)), the State Party continues to maintain laws criminalizing consensual same-sex relations by virtue of sections 365 and 365A of the Penal Code of 1883;

(b) There are no legal or policy measures to protect lesbian, bisexual, transgender and intersex women from gender-based violence and discrimination or to address deep-rooted prejudices against them.

54. **The Committee recommends that the State Party:**

(a) **Repeal sections 365 and 365A of the Penal Code, decriminalize consensual same-sex sexual conduct between women who have attained the age of consent, and take all measures necessary to fully implement the views adopted by the Committee in *Rosanna Flamer-Caldera v. Sri Lanka*;**

(b) **Develop and implement a comprehensive national strategy to combat prejudice and discrimination against lesbian, bisexual, transgender and intersex women that includes (i) regular collection of data, disaggregated by relevant factors, on gender-based violence and discrimination against lesbian, bisexual, transgender and intersex women; (ii) mandatory capacity-building programmes**

for judicial officers, law enforcement officials and healthcare providers on protecting the human rights of lesbian, bisexual, transgender and intersex women; (iii) public awareness campaigns to combat stereotypes of and prejudices against lesbian, bisexual, transgender and intersex women, developed in consultation with organizations that advocate for the rights of lesbian, bisexual, transgender and intersex women; and (iv) support services, including shelters and counselling services, specifically designed to meet the needs of lesbian, bisexual, transgender and intersex women.

Women and girls with disabilities

55. The Committee notes with concern that women and girls with disabilities face intersecting forms of discrimination in the State Party, particularly with respect to limited access to public transport, justice, education, employment and healthcare.

56. **The Committee recommends that the State Party ensure that women and girls with disabilities have adequate access to justice, inclusive education, employment and health services, including sexual and reproductive health services, and that they are provided with reasonable accommodations, state-of-the-art assistive technologies and accessible services and facilities in all regions of the State Party.**

Women in detention

57. The Committee notes with concern the poor conditions of detention for women deprived of liberty in the State Party.

58. **The Committee recommends that the State Party adopt and implement measures to improve the conditions in detention facilities and to ensure that women in detention have adequate access to healthcare and personal hygiene items, in accordance with the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), ensure immediate access to adequate health services for all pregnant women in detention, including during childbirth, and consider non-custodial measures for pregnant women and mothers with young children, prioritizing the best interests of the child.**

Climate change and disaster risk reduction

59. The Committee notes that the State Party, which is consistently ranked as one of the 10 countries most vulnerable to climate change, lacks gender-responsive approaches to climate-related disasters and environmental degradation. It also notes with concern that:

(a) There is a lack of meaningful participation of women in climate change-related policymaking, as well as a lack of recognition of the contributions of women to environmental sustainability;

(b) Women are disproportionately affected by climate-induced disasters, such as floods, cyclones, droughts and landslides.

60. **In accordance with its general recommendation No. 37 (2018) on the gender-related dimensions of disaster risk reduction in the context of climate change, the Committee recommends that the State Party review its climate change adaptation and disaster risk reduction strategies, taking into account the negative effects of climate change on the livelihoods of women, and ensure that women and men are equally represented in the development, adoption and implementation of legislation, policies and programmes on climate change, disaster response and disaster risk reduction, in particular by:**

United Nations

CEDAW/C/81/D/134/2018



Convention on the Elimination of All Forms of Discrimination against Women

Distr.: General
24 March 2022

Original: English

Committee on the Elimination of Discrimination against Women

Views adopted by the Committee under article 7 (3) of the Optional Protocol, concerning communication No. 134/2018^{*,**}

Communication submitted by:

Rosanna Flamer-Caldera (represented
by counsel, the Human Dignity Trust;
Christine Chinkin, of the London
School of Economics; Karon Monaghan
QC, of Matrix Chambers; Keina
Yoshida, of Doughty Street Chambers;
and Olivia Clark, of DLA Piper)

Alleged victim:

The author

State party:

Sri Lanka

Date of communication:

23 August 2018 (initial submission)

References:

Decision taken pursuant to rule 69 of
the Committee's rules of procedure,
transmitted to the State party on
12 October 2018 (not issued in
document form)

Date of adoption of views:

21 February 2022

1. The author of the communication is Rosanna Flamer-Caldera, a national of Sri Lanka born in 1956. She claims that the State party has violated her rights under articles 2 (a) and (c)–(g), 5 (a) and 16 of the Convention. In addition, the Committee notes that the third-party intervener raises claims under articles 7 (c) and 15 of the Convention. The Optional Protocol entered into force for Sri Lanka on 15 January 2003. The author is represented by counsel.

* Adopted by the Committee at its eighty-first session (7–25 February 2022).

** The following members of the Committee participated in the examination of the present communication: Gladys Acosta Vargas, Hiroko Akizuki, Leticia Bonifaz Alfonso, Corinne Dettmeijer-Vermeulen, Naéla Gabr, Hilary Gbedemah, Nahla Haidar, Dalia Leinarte, Lia Nadaraia, Aruna Devi Narain, Ana Peláez Narváez, Bandana Rana, Rhoda Reddock, Elgun Safarov, Natasha Stott Despoja, Genoveva Tisheva and Franceline Toé-Bouda.



Facts as submitted by the author

2.1 The author is a lesbian. She dresses in what is considered “masculine” attire and wears her hair short. She is open about her sexuality and is a prominent activist for lesbian, gay, bisexual, transgender and intersex rights in Sri Lanka. She founded and is the Executive Director of Equal Ground, the only organization in Sri Lanka that represents the entire lesbian, gay, bisexual, transgender and intersex community on issues of non-discrimination.

2.2 The author has suffered discrimination and abuse due to being a lesbian. As a teenager, she suffered from stigma associated with her sexual orientation and attempted to commit suicide when she was 17 years old. Not long after, she left Sri Lanka for the United States of America, where she could be open about her sexuality. She returned to Sri Lanka permanently in 1990. However, she found it difficult to find a job and to run her business being and dressing as who she is.

2.3 In 1997, the author discovered that same-sex sexual activity between consenting adults was a criminal offence under section 365A of the Penal Code of 1883. Previously encompassing only men, it was amended by the Penal Code (Amendment) Act No. 22 of 1995 to include sexual conduct between women, replacing the previous wording “male person” with “person”.¹

2.4 In 1999, the author co-founded a support group for lesbian and bisexual women, the Women’s Support Group. She has since been threatened frequently and has faced abuse from the media and the public. When the members of the Women’s Support Group spoke about organizing a lesbian conference in 1999, a letter was published in the press calling on the police to release convicted rapists so that lesbians “might get a taste of the real thing”. A complaint about this to the Press Council by a non-governmental organization proved fruitless. During this time, the Press Council published a ruling denouncing lesbianism.²

2.5 In 2004, the author founded a new organization called Equal Ground. She has faced continual challenges running the organization. In December 2012 and February 2013, the Women and Children’s Bureau of the police made presentations asserting that child abuse was increasing mostly due to the “growing homosexual culture”. The author’s picture was shown together with her name and position with Equal Ground, claiming that she and her organization were responsible for spreading homosexuality, implying that they were also responsible for spreading paedophilia. She did not submit a complaint to the police out of fear of being arrested. The Criminal Investigation Department has placed her and Equal Ground under surveillance, which

¹ Section 18 of the Penal Code (Amendment) Act No. 22 reads as follows: “Section 365A of the principal enactment is hereby repealed and the following section substituted therefor: ‘Acts of gross indecency between persons. 365A. Any person who, in public or private, commits, or is a party to the commission of, or procures or attempts procure the commission by any person of, any act of gross indecency with another person, shall be 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.’”

² The Press Council’s ruling stated as follows: “Lesbianism is at least an act of gross indecency and unnatural. Lesbianism is itself an act of sadism and salacious. Publication of any opinion against such activities does not amount to a promotion of sadism or salacity, but any publication, which supports such conduct is an obvious promotion of all such violence, sadism and salacity.” The author notes that the head of the Press Council at the time, Wijeyadasa Rajapakshe, is currently the Minister of Higher Education and Cultural Affairs.

forced her to move the organization's materials to a secure location, as the Department had deemed any homosexual material to be pornography, which could provoke arrest.

2.6 In July 2013, a partner organization of Equal Ground was raided by the Criminal Investigation Department on the basis of the allegation that it was "spreading homosexuality". The author has been subjected to discrimination, harassment, stigmatization, threats, high-profile attacks on her character and threats of violence by State officials and members of the public, including on social media. She has been targeted due to her openness about her sexual orientation, her "masculine" attire, her failure to conform to gender stereotypes and her advocacy for lesbian, gay, bisexual, transgender and intersex persons in Sri Lanka. In April and May 2018, she was verbally abused and was threatened with violence in a driving altercation and by a bread delivery man.³

2.7 According to the author, the criminalization of same-sex sexual activity has meant that the discrimination, violence and harassment faced by the lesbian, gay, bisexual, transgender and intersex community in Sri Lanka continue with impunity. Members of the community are not protected against police harassment. The law has altered how she lives and conducts herself in public and private. She has a constant fear of arrest and keeps her door locked and curtains drawn when she is at home with her girlfriend.

2.8 The author submits that she has no means to challenge section 365A of the Penal Code of 1883, as the Sri Lankan Constitution explicitly prohibits any constitutional challenge to the validity of enacted legislation,⁴ as confirmed by the State party.⁵ In 2016, the Supreme Court of Sri Lanka confirmed the validity of sections 365 and 365A of the Penal Code in SC Appeal No. 32/11 and upheld the conviction of two men.⁶

Complaint

3.1 The author argues that the criminalization of female same-sex sexual activity and the concomitant potential for arrest and prosecution amount to discrimination on the grounds of gender and sexual orientation, in violation of her right to non-discrimination under article 2 (a) and (d)–(g) of the Convention.⁷ While section 365A of the Penal Code of 1883 applies equally to men and women, it is by virtue of the intersecting forms of discrimination they face as women and as sexual minorities that lesbian and bisexual women suffer a compounded impact from the provision.⁸

3.2 According to the author, the criminalization of same-sex sexual activity violates the *jus cogens* principle of equality and non-discrimination under article 2 (d) of the

³ The harassers said, for example, that she was "a disgrace to decent Sri Lankan women", asked "why are you trying to look like a man?", and said "you should be thrashed".

⁴ Article 16 (1) of the Constitution states that "all existing written law and unwritten law shall be valid and operative notwithstanding any inconsistency with the preceding provisions of this Chapter". Article 80 (3) of the Constitution states as follows: "Where a Bill becomes law upon the certificate of the President or the Speaker, as the case may be endorsed thereon, no court or tribunal shall inquire into it, pronounce upon or in any manner call into question, the validity of such Act on any ground whatsoever."

⁵ [A/HRC/WG.6/28/LKA/1](#).

⁶ The author refers to the Supreme Court's judgment in *Galabada Wimalasiri v. Officer-in-Charge, Police Station, Maradana and the Attorney General*, SC Appeal No. 32/11 of 30 November 2016.

⁷ *Toonen v. Australia* (CCPR/C/50/D/488/1992).

⁸ General recommendation No. 28 (2010) on the core obligations of States parties under article 2 of the Convention, para. 18.

Convention.⁹ Lesbian and bisexual women suffer significant societal discrimination and stigmatization. The criminalization has created significant barriers to accessing justice as well as a culture where discrimination, harassment and violence against lesbians has been allowed to flourish.¹⁰ As such, the author has been subjected to threats and harassment based on her sexuality and her non-conformity with stereotypical roles and appearances for women, causing her to fear for her own safety and that of her family. As a human rights defender, she has been particularly vulnerable to discrimination, as demonstrated by the vilification, monitoring, surveillance and harassment to which she has been exposed. The failure to address this discrimination amounts to a violation of article 2 (f) and (g) of the Convention.

3.3 Under article 2 (c)–(g) of the Convention and general recommendation No. 35 (2017) on gender-based violence against women, updating general recommendation No. 19, the author affirms that the criminalization of same-sex sexual activity between women exacerbates gender-based violence against women, including at the hands of their community and family.¹¹ It creates a context in which lesbians and bisexual women are forced into heterosexual marriages, in the absence of a criminal prohibition of marital rape, and suffer violations of their right to sexual and bodily autonomy. Violations of the rights of lesbian, gay, bisexual, transgender and intersex persons are underreported and are not properly investigated or prosecuted.¹² The criminalization has left the author vulnerable to vilification by the authorities and threats of violence by private actors, in breach of the State party's obligation to respect and protect her right to be free from violence.¹³ She has been targeted as the most prominent defender of the human rights of lesbian, gay, bisexual, transgender and intersex persons in Sri Lanka, in addition to the precautions she has to take as a woman. Thus, she has put in place security protocols for her protection and that of her family, organizes events in safe spaces and ensures that the location of her work is not made public. Given her activism and known sexual orientation, she fears falling victim to the continuing practice of “white van disappearances”.

3.4 Invoking article 5 (a) of the Convention, paragraph 10 of general recommendation No. 25 (2004) on temporary special measures, paragraph 18 of general recommendation No. 28 (2010) on the core obligations of States parties under article 2 of the Convention, and paragraph 8 of general recommendation No. 33 (2015) on women's access to justice, the author argues that the criminalization of same-sex sexual activity between women and discrimination against lesbians and bisexual women form part of entrenched patriarchal attitudes that fix gender roles and reduce women to a particular reproductive function. The law violates article 5 (a) of the Convention by criminalizing a sexual activity that does not conform to gender stereotypes and by legitimizing societal prejudice and gender stereotypes and roles. In addition to having faced stereotypes as a woman, including against her having a livelihood, the author has been subjected to harmful stereotyping on account of her

⁹ Inter-American Court of Human Rights, *Atala Riffo and daughters v. Chile*, Judgment (Merits, Reparations and Costs), 24 February 2012, Series C No. 239, paras. 79, 91 and 133.

¹⁰ [CEDAW/C/GUA/CO/7](#), paras. 19–20.

¹¹ African Commission on Human and Peoples' Rights, resolution 275 of 2014 on protection against violence and other human rights violations against persons on the basis of their real or imputed sexual orientation and gender identity; and *Ending Violence and Other Human Rights Violations Based on Sexual Orientation and Gender Identity: A Joint Dialogue of the African Commission on Human and Peoples' Rights, the Inter-American Commission on Human Rights and the United Nations* (2016).

¹² The Yogyakarta Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity.

¹³ The author notes that she has been subject to accusations that she “behaves like a man”, that she is a “barren bitch” and that she is a “disgrace to Sri Lankan women”.

sexual orientation, including the accusation that she is spreading paedophilia, as well as vilification, harassment and threats based on such stereotypes.

3.5 The author argues that the criminalization of same-sex sexual conduct between women violates the rights to autonomy and choice underpinning article 16 of the Convention. She affirms that sexual orientation is linked to the right to individual self-determination and sexual autonomy, in accordance with her own choice and convictions.¹⁴ The criminalization brings consensual private activity into the public domain and thus violates the rights to privacy, dignity and personal integrity, as it allows police officers to enter a household on the mere suspicion that two consenting women are in an intimate relationship, and to investigate such aspects of private life and to detain the author. This has made it difficult for her to find a Sri Lankan partner due to fears of persecution, and when she is with someone, she has to make sure the door is locked and windows and curtains are closed.

State party's observations on admissibility

4.1 By note verbale of 13 August 2019, the State party submits that the communication is inadmissible. The State party argues that the author has failed to exhaust domestic remedies, as she has not engaged any domestic procedure. It observes that article 126 of the Constitution of Sri Lanka provides a right of direct access to the Supreme Court to seek redress for violations of fundamental rights by the executive or administrative authorities. Thus, the Supreme Court has rendered many judgments in which it has ascertained violations of fundamental rights by public officials and provided for compensation. Moreover, claims of violations of such rights by private actors can be brought before ordinary courts. On the basis of article 4 (d) of the Constitution, the Supreme Court has also enabled public interest litigation. In SC Appeal No. 32/11, the Supreme Court acknowledged "contemporary thinking, that consensual sex between adults should not be policed by the State nor should it be grounds for criminalization". While acknowledging the domestic law in force, the Court held that imposing custodial sentences would be inappropriate in cases where the impugned acts were between consenting adults. Further, article 140 of the Constitution provides for the availability of writs before the Court of Appeal.

4.2 The State party observes that the Human Rights Commission, the Public Petitions Committee of Parliament, the Parliamentary Commissioner for Administration and the National Police Commission receive and inquire into complaints about human rights violations and official decisions. The criminal justice system provides for numerous legal processes for the protection of persons, including payment of compensation to victims of unlawful arrest or detention. In addition, legislative action can be challenged by way of pre-enactment review.

4.3 The State party submits that the communication is insufficiently substantiated for the purpose of admissibility, as the author invokes the Convention in very general terms, without specifically explaining the alleged violations.

4.4 According to the State party, the communication is inadmissible *ratione temporis*, as the author refers to several alleged events that occurred prior to the entry into force of the Convention for the State party.¹⁵

4.5 The State party observes that it is committed to reforming the Penal Code of 1883 to ensure that all offences contained therein comply with its human rights

¹⁴ Inter-American Court of Human Rights, *Atala Riffo and daughters v. Chile*, para. 136.

¹⁵ Under article 4 (2) (e) of the Optional Protocol, the Committee shall declare a communication inadmissible where the facts that are the subject of the communication occurred prior to the entry into force of the Optional Protocol for the State Party concerned unless those facts continued after that date.

obligations. The State party has recognized before the human rights treaty bodies that the right to equality and non-discrimination implicitly includes non-discrimination on the ground of sexual orientation. An ongoing constitutional reform process includes the consideration of a recommendation by the Parliamentary Subcommittee on Fundamental Rights to explicitly guarantee non-discrimination on the ground of sexual orientation.

Author's comments on the State party's observations on admissibility

5.1 In her comments dated 10 December 2019, the author disputes the claim that she has failed to exhaust domestic remedies. She argues that none of the measures indicated by the State party would allow her to challenge the validity of section 365A of the Penal Code. While article 126 of the Constitution allows the Supreme Court to grant relief, it must be read together with provisions precluding a review of enacted legislation. The State party does not comment on the impossibility of conducting such a review, nor does it provide any examples of successful constitutional challenges to the validity of a criminal law. The author points to the Committee's concern that there is no opportunity for judicial review of legislation predating the Constitution.¹⁶ In addition, there is no requirement to address the non-judicial remedies invoked by the State party.¹⁷

5.2 The author disputes that the communication is inadmissible *ratione temporis*, as the violation of her rights, including through the existence of section 365A of the Penal Code of 1883, is ongoing.

5.3 The author reiterates that, in 2016, the Supreme Court upheld convictions under section 365A of the Penal Code. The State party's reference to the possibility of a change to the law is irrelevant to the admissibility of the communication. Moreover, this observation amounts to an acceptance of the law's discriminatory nature. She submits that she has clearly argued how each of the articles of the Convention has been violated.

State party's observations on the merits

6.1 By note verbale of 3 January 2020, the State party submits its observations on the merits. The State party argues that article 12 of the Constitution is in accordance with article 2 (a) of the Convention as it provides for equality before the law, equal protection of the law and non-discrimination. The State party understands these rights as including non-discrimination on the ground of sexual orientation. There are no laws in Sri Lanka permitting discrimination on the ground of sexual orientation or precluding persons from engaging in their day-to-day activities solely on this basis. Any such laws would be unconstitutional, giving the victim a right to pursue remedies. In addition, numerous policies have been implemented to contribute to the realization of the rights set out in the Convention. Moreover, the Supreme Court's reasoning in SC Appeal No. 32/11 shows that the attitudes of the courts in this context are evolving.

6.2 The State party notes that article 120 of the Constitution enables the Supreme Court to review the consistency of a bill with the Constitution, which is a procedure that may be invoked by citizens. Whereas the Constitution provides only for pre-enactment judicial review of legislation, the author had the possibility of challenging the Penal Code (Amendment) Act No. 22 of 1995. However, she failed to do so and thus acquiesced in the constitutionality of the law. The State party further notes the existence at every police station in the country of a designated division for

¹⁶ CEDAW/C/LKA/CO/8, para. 10.

¹⁷ *Purna Maya v. Nepal* (CCPR/C/119/D/2245/2013).

the specific needs of women. However, the author has not filed any complaint in Sri Lanka.

6.3 The State party argues that the author wrongly claims to live under a constant threat of arrest. First, certain conditions must be met before an arrest can be made, including the arrestee's involvement in the commission of a crime, the receipt of a reasonable complaint or credible information, or the existence of a reasonable suspicion of the commission of a crime. Second, the organization of Sri Lankan society militates against the operational relevance of section 365A of the Penal Code, as the aforementioned criteria require a reasonable suspicion of the commission of a grossly indecent act. According to the State party, the author's other claims lack substantiation and are based on hypothetical scenarios or conjecture.

Author's comments on the State party's observations on the merits

7.1 In her comments of 23 March 2020, the author notes that the State party accepts that legislation in force cannot be challenged. Thus, she has no effective legal remedy to challenge section 365A of the Penal Code. Pre-enactment review by the Supreme Court can be triggered only if a request thereto is filed within one week of the bill being placed on the Order Paper of Parliament (art. 121 (1) of the Constitution). However, the author only became aware of the law two years after it was adopted. As a consistent advocate for the rights of lesbian, gay, bisexual, transgender and intersex persons, she is deeply hurt by the State party's argument that she acquiesced in the constitutionality of the law.

7.2 The author argues that the State party's observations on the threshold of arrest and the Supreme Court's decision in SC Appeal No. 32/11 only confirm that consensual sex between adults remains policed and criminalized. She argues that complaints about matters other than the criminalization of same-sex sexual activity between women are not relevant to the communication.

7.3 On 13 October 2020, the author requested permission to submit a third-party intervention. On 9 November 2020, following the Committee's approval of the request, the author submitted a third-party intervention.¹⁸ The intervener affirms, *inter alia*, that the State party violated the author's rights under article 7 (b) and (c) of the Convention given the inflammatory rhetoric of government leaders, the intimidating surveillance of Equal Ground, the barriers to registering it as a non-governmental organization and the need to find safe spaces to hold events. The State party also breached article 15 (1) of the Convention, as the criminalization of same-sex sexual activity by women denies lesbians, including the author, equal recognition before the law and obstructs them from reporting crimes committed against them.

7.4 Invoking article 16 of the Convention, the intervener notes that the author constantly needs to hide her relationships. In 2005, she and her partner experienced discrimination because of their family status, as a health-care professional refused to provide treatment to her partner with her present. The State party has violated her right to privacy, as the police force is allowed to investigate intimate aspects of her private life. There have also been forced marriages of lesbians, in breach of the right to choose not to marry. Moreover, negative stereotypes of unmarried women have not been countered.

¹⁸ The third-party intervention was authored by Dianne Otto, Professorial Fellow at Melbourne Law School.

Issues and proceedings before the Committee*Consideration of admissibility*

8.1 In accordance with rule 64 of its rules of procedure, the Committee is to decide whether the communication is admissible under the Optional Protocol. In accordance with rule 72 (4), it must do so before considering the merits of the communication.

8.2 In accordance with article 4 (2) (a) of the Optional Protocol, the Committee has verified that the same matter has not already been examined by the Committee and has not been and is not being examined under another procedure of international investigation or settlement.

8.3 The Committee notes the State party's argument that the communication is inadmissible, as the author has not engaged any domestic remedies. In particular, the State party argues that she could have brought a petition for a pre-enactment review of the amendment to the Penal Code of 1883 under article 121 (1) of the Constitution. The Committee notes the author's argument that, according to article 121 (1) of the Constitution, a request for pre-enactment review must be filed within one week of the bill being placed on the Order Paper of Parliament, and that she was not aware of this possibility at the relevant time. Considering the limited time frame and the lack of information to show how the author could, in practice, have used this remedy in a timely manner, the Committee cannot ascertain that the procedure under article 121 (1) of the Constitution was in fact available to her under article 4 (1) of the Optional Protocol. The Committee therefore concludes that the author's non-use of this procedure does not preclude it from examining the communication under article 4 (1) of the Optional Protocol.

8.4 The Committee notes the author's argument that the other procedures invoked by the State party, namely those before the Supreme Court, the Court of Appeal, the Human Rights Commission, the Public Petitions Committee of Parliament, the Parliamentary Commissioner for Administration and the National Police Commission, are incapable of addressing her complaint, which concerns section 365A of the Penal Code of 1883 as amended. Noting that the State party does not refute the stated impossibility for its courts to review adopted legislation,¹⁹ and recalling that there is no requirement to address non-judicial remedies for the purpose of admissibility,²⁰ the Committee cannot conclude that said procedures could effectively provide relief in the light of the author's claims. The Committee therefore finds that it is not precluded by article 4 (1) of the Optional Protocol from examining the communication.

8.5 The Committee notes the State party's argument according to which the communication is inadmissible *ratione temporis*. The Committee recalls that it has competence to consider alleged violations that occurred after the entry into force of the Optional Protocol for the State party, which took place on 15 January 2003. The Committee finds that the author's claim regarding the effects on her of section 365A of the Penal Code of 1883 as amended must be considered as having continued after the entry into force of the Optional Protocol for the State party, including the discrimination, harassment, stigmatization, threats and attacks to which she was subject after that date. The Committee therefore finds that it is not precluded from examining the communication under article 4 (2) (e) of the Optional Protocol insofar as it concerns section 365A of the Penal Code of 1883 as amended and any events that occurred after the entry into force of the Optional Protocol for the State party.

¹⁹ CEDAW/C/LKA/CO/8, para. 10 (b).

²⁰ *Purna Maya v. Nepal*.

8.6 The Committee notes the submission by the State party that the communication is inadmissible on the ground that it is insufficiently substantiated. The Committee considers, however, that the communication raises issues of substance under the Convention, particularly as regards the claims concerning the effects on the author of the criminalization of same-sex sexual activity by women. The Committee therefore finds that the communication is sufficiently substantiated for the purpose of admissibility, in accordance with article 4 (2) (c) of the Optional Protocol.

8.7 In the absence of any other objections by the State party to the admissibility of the communication, the Committee declares the communication admissible, insofar as it concerns the effects on the author of the criminalization, by the State party, of same-sex sexual activity by women following the entry into force of the Optional Protocol for the State party, as raising issues under articles 1, 2, 5, 7, 15 and 16 of the Convention.

Consideration of the merits

9.1 The Committee has considered the present communication in the light of all the information made available to it by the author and by the State party, as provided for in article 7 (1) of the Optional Protocol.

9.2 The Committee notes the author's claim that section 365A of the Penal Code of 1883 as amended violates her right to non-discrimination under article 2 (a) and (d)–(g) of the Convention, as the criminalization of same-sex sexual activity by women compounds discrimination against women in Sri Lanka. The Committee recalls that certain groups of women, including lesbian women, are particularly vulnerable to discrimination through civil and penal laws, regulations, and customary law and practices.²¹ The Committee notes the author's claims that, as a well-known activist for the rights of lesbian, gay, bisexual, transgender and intersex persons and being known for being lesbian, she is under constant risk of arrest, detention and investigation of her private life and has had to modify her behaviour accordingly, as the law continues to be enforced. It further notes the author's argument that this norm has the effect of sanctioning the threats and abuse to which she and her organization have been subjected by State and non-State actors and of obstructing access to procedures for the author to complain hereof. Under the circumstances, the Committee finds that the State party has subjected the author to direct and indirect discrimination emanating from the Penal Code of 1883 as amended. The Committee is concerned that the Code has not been repealed despite previous expressions of concern about its discriminatory effect on women.²² In the light of the foregoing, the Committee considers that the State party has breached the author's rights under article 2 (a) and (d)–(g) of the Convention.

9.3 The Committee notes the author's claim that the criminalization of same-sex sexual activity between women exacerbates gender-based violence against women, including vilification and harassment of and threats against the author. The Committee recalls that gender-based violence against women takes multiple forms, including acts or omissions intended or likely to cause or result in death or physical, sexual, psychological or economic harm or suffering to women, threats of such acts, harassment, coercion and arbitrary deprivation of liberty.²³ The Committee further recalls its recommendation to States parties to repeal provisions that allow, tolerate or condone forms of gender-based violence against women.²⁴ In the present case, the Committee notes that the author claims to have been targeted by State and non-State

²¹ General recommendation No. 28, para. 31 and general recommendation No. 35, para. 12.

²² CEDAW/C/LKA/CO/7, para. 24; CCPR/C/LKA/CO/5, para. 8; and E/C.12/LKA/CO/5, para. 17.

²³ General recommendation No. 35, para. 14.

²⁴ Ibid., para. 29 (c) (i).

actors due to her activism and because of being known as being lesbian, including through frequent threats, abuse, attacks and harassment. She also claims that she has had to put in place security protocols for her protection and that of her family, that she organizes events in safe spaces and that she has to ensure that the location of her work is not made public. The Committee further notes that the State party has neither effectively refuted these allegations nor indicated any legal or other measures taken to respect and protect the author's right to a life free from gender-based violence. Accordingly, the Committee finds that the State party has breached the author's rights under article 2 (c)–(f) of the Convention, read in conjunction with general recommendation No. 19 (1992) on violence against women and general recommendation No. 35.

9.4 The Committee notes the author's claim according to which the State party has failed to eliminate the prejudice and stereotypes to which she has been exposed. The author claims that, in addition to the stereotypes she has had to face as a woman, the authorities have subjected her to harmful stereotyping and accusations on account of her being lesbian, including the accusation that she spreads paedophilia. She also claims that the criminalization of same-sex sexual activity by women legitimizes societal prejudice and gender stereotypes, including through the threats and harassment she receives. The Committee notes that decriminalization of consensual same-sex relations is essential to prevent and protect against violence, discrimination and harmful gender stereotypes.²⁵ However, the State party has neither effectively refuted the author's allegations nor indicated any measures taken to eliminate the prejudices to which she has been exposed as a woman, lesbian and activist. Therefore, the Committee finds that the State party has breached its obligations under article 5 (a), read in conjunction with article 1, of the Convention.

9.5 The Committee notes the author's claim that she has frequently been threatened and faced abuse from the police, the media and the public in connection with her leadership of the Women's Support Group and Equal Ground, and that she has been unable to report this abuse out of fear of being arrested. The Committee also notes the author's claim that the Criminal Investigation Department has placed her and Equal Ground under surveillance and has deemed any homosexual material to constitute pornography. This has forced her to move the organization's materials to a secure location and subjected her to the constant threat of being arrested due to her leadership of Equal Ground. The Committee recalls that States parties should encourage the work of human rights and women's non-governmental organizations.²⁶ The Committee also recalls that women's ability to participate as active members of civil society is among the prerequisites for creating a society with lasting democracy, peace and gender equality.²⁷ In the present case, the Committee considers that the State party's authorities have failed to protect the author against, and have partaken in, harassment, abuse and threats against the author's work promoting the rights of the lesbian, gay, bisexual, transgender and intersex community in Sri Lanka. The Committee finds that these facts amount to a violation of the author's rights under article 7 (c) of the Convention.

9.6 The Committee notes the author's claim that she has been unable to approach the police and file complaints concerning the threats and harassment to which she has been subjected, given that the criminalization of same-sex sexual activity renders her vulnerable to arrest and prosecution. The Committee recalls that States parties are obliged, under articles 2 and 15 of the Convention, to ensure that women have access to the protection and remedies offered through criminal law, and that they are not

²⁵ [A/HRC/35/36](#), para. 37 and [A/HRC/31/57](#), para. 10.

²⁶ *Abaida v. Libya* ([CEDAW/C/78/D/130/2018](#)), para. 6.5.

²⁷ General recommendation No. 30 (2013) on women in conflict prevention, conflict and post-conflict situations, para. 42.

exposed to discrimination within the context of those mechanisms, either as victims or as perpetrators of criminal acts.²⁸ The Committee also recalls in that regard that women are disproportionately criminalized owing to their situation or status, including as lesbian women.²⁹ The Committee considers that the criminalization under article 365A of the Penal Code of 1883, as amended, of same-sex sexual activity has resulted in much more significant difficulties for the author for being a lesbian woman. In particular, the Committee considers that the criminalization is incompatible with the author's right to file complaints concerning the abuse and threats to which she has been subjected. The Committee therefore finds that the author's rights under article 15 (1) of the Convention have been breached.

9.7 The Committee notes the author's argument that the State party, by criminalizing same-sex sexual conduct between women, has breached her rights to autonomy and choice underpinning article 16 of the Convention, given that her fear of persecution has rendered it difficult for her to find a Sri Lankan partner, that she is subjected to the risk of her home being entered by the police and of being prosecuted on the suspicion of engaging in same-sex sexual activity, and that she has had to keep her door locked and her windows and curtains closed when she is with her partner. The Committee recalls that, whatever the form of a family, the treatment of women in the family both at law and in private must accord with the principles of equality and justice for all people.³⁰ The Committee considers that the rights enshrined in the Convention belong to all women, including lesbian, bisexual, transgender and intersex women, and that article 16 of the Convention applies also to non-heterosexual relations. The Committee notes that the criminalization of same-sex sexual activity between women in Sri Lanka has meant that the author has had difficulties finding a partner, has to hide her relations and runs the risk of being investigated and prosecuted in that context. The Committee therefore finds that the State party has breached the author's rights under article 16 of the Convention.

10. In accordance with article 7 (3) of the Optional Protocol, the Committee is of the view that the facts before it reveal a violation of the author's rights under articles 2 (a) and (c)–(g) and 5 (a), 7 (c), 15 and 16, read in conjunction with article 1, of the Convention, in the light of general recommendations Nos. 19, 33 and 35.

11. The Committee makes the following recommendations to the State party:

- (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 organization 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;
- (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;

²⁸ General recommendation No. 33 (2015) on women's access to justice, para. 47.

²⁹ Ibid., para. 49.

³⁰ General recommendation No. 21 (1994) on equality in marriage and family relations, para. 13.

- (ii) Provide effective protection against gender-based violence against women, including by adopting comprehensive legislation prohibiting discrimination against lesbian, bisexual, transgender and intersex women;
- (iii) Provide adequate protection, support systems and remedies, including reparation, to lesbian, bisexual, transgender and intersex women who are victims of discrimination;
- (iv) Ensure that victims of gender-based violence against women, including lesbian, bisexual, transgender and intersex 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 lesbian, bisexual, transgender and intersex women;
- (vi) Effectively address discrimination against lesbian, bisexual, transgender and intersex 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 lesbian, bisexual, transgender and intersex women and so that crimes with homophobic undertones committed against lesbian, bisexual, transgender or intersex women will be understood as gender-based violence or hate crimes requiring active State intervention.

12. In accordance with article 7 (4) of the Optional Protocol, the State party shall give due consideration to the views of the Committee, together with its recommendations, and submit to the Committee, within six months, a written response, including information on any action taken in the light of those views and recommendations. The State party is requested to have the Committee's views and recommendations translated into the official languages of the State party, to publish them and to have them widely disseminated, in order to reach all sectors of society.



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National report submitted pursuant to Human Rights Council resolutions 5/1 and 16/21*

Sri Lanka

* The present document is being issued without formal editing.



I. Background

1. Sri Lanka is pleased to present its fourth national report under the Universal Periodic Review (UPR), as part of its steadfast commitment to constructive engagement with the United Nations (UN) system. This report presents the status of implementation of the 177 recommendations accepted by Sri Lanka from a total of 230 recommendations received, and the 12 voluntary pledges undertaken during the third cycle of the UPR in November 2017. It enabled identifying challenges and the way forward in furthering human rights in the country.
2. The period under review posed unprecedented challenges for Sri Lanka including the 2019 Easter Sunday terrorist attacks, the COVID-19 pandemic followed by, *inter alia*, economic hardships. In July 2022, the parliament elected a new President in accordance with the Constitution of Sri Lanka.

II. Methodology

3. Following the conclusion of Sri Lanka's 3rd UPR cycle, the Ministry of Foreign Affairs published the recommendations on its website in the Sinhala and Tamil languages, and to lead the drafting process of the national report, a dedicated Technical Support Unit was established in the Ministry.
4. An inclusive, broad-based process was pursued as per the general guidelines stipulated in the HRC Decision 17/119. The methodology followed in compiling the report was two-pronged: relevant Government stakeholders engaged in collating the required preliminary information; thereafter, open consultations were held with Government stakeholders and civil society from across the country. The first civil society consultation was held in Colombo with the participation of 30 civil society representatives and the second consultation was held in the Northern Province with the participation of 35 civil society representatives. Both consultations were held in hybrid format and the input received from civil society was a constructive contribution. The Human Rights Commission of Sri Lanka (HRCSL) was consulted and contributed its input as an independent entity.

III. Implementation of recommendations and voluntary pledges

A. Legal and institutional framework

Working Group (WG) report A/HRC/37/17 recommendations 116.13, 14, 15 & 59 & Voluntary Pledge 119

5. The 21st Amendment to the Constitution, passed by the Parliament in October 2022, reintroduced salient changes to the present Constitution, including several key elements similar to the 19th Amendment. It would strengthen, *inter alia*, democratic governance and independent oversight of key institutions, the composition of the Constitutional Council and the independent Commissions, public scrutiny of and participation in governance, allocation of Cabinet portfolios, and the continuation of governmental functions.

Legislation on counterterrorism Recommendations 116.51, 52 & Voluntary Pledge 122

6. Recognizing the importance of protecting human rights while combating acts related to terrorism, and to further improve the cause of human rights and, ensuring national security and fundamental freedoms in Sri Lanka, the Parliament in March 2022, enacted Amendment Act, No. 12 of 2022 substantially amending¹ the Prevention of Terrorism Act (PTA)² after 43 years, making it in line with international standards. It has exposed the investigation process under the PTA to the scrutiny of Magistrates and the HRCSL.

- Magistrates are duty-bound to visit a place of detention within forty-eight hours from the time of issuing the Detention Order, and at least once a month (during the period

laws and national reports in response to the UN Treaty bodies. Observations and comments expressed by CSOs during the open consultations held in preparing this national report are given at Annex B.

28. The GoSL remains committed to protecting and promoting freedom of expression and civil society space and ensuring that complaints received on alleged attacks against journalists, human rights defenders and civil society are investigated and prosecuted. The GoSL has taken measures to prevent surveillance that intimidate persons. In 2018, the then Ministry of Public Security, issued a media statement in all three languages notifying the public of the mechanisms available to make a complaint on such incidents, namely: the Special Investigation Unit (SIU) and the “Tell IGP” Operation Room of Sri Lanka Police, the complaints mechanisms of the HRCSL and the National Police Commission (NPC).

29. It is noted that NGOs and international NGOs have been formed under different laws in Sri Lanka, in addition to the Voluntary Social Services Organization (VSSO) Act.¹⁶ In August 2021, the Cabinet approved the drafting of a new Bill to replace the existing VSSO Act. The ‘National Collective of CSOs and NGOs’ have been requested to submit their proposals to the new Bill and also to nominate two representatives to the Committee appointed to draft the said Bill.

30. Article 14 of the Constitution of Sri Lanka ensures freedom of speech and assembly, and the Courts have consistently upheld these rights. However, as per Article 15 of the Constitution, such rights are restricted in the interest of national security and public order. The Government has reiterated the necessity for protests to be carried out within the framework of the law that does not morph into acts tantamount to criminal obstruction and/or unlawful occupation. Within such ambit, anyone can exercise their rights and freedoms.

E. Cross-cutting issues

Equality and non-discrimination Recommendations 116.31-39, 60

31. In view of the diversity of the demographic and cultural composition of Sri Lanka, the Sri Lankan legal system provides for a multiplicity of laws to accommodate and preserve the respective cultural and religious rites and traditions of such communities. The general law of the country takes a subordinate position in the sphere of Customary or Personal Laws, as applicable to the respective communities.¹⁷ Therefore, matters such as marriage, divorce, succession to personal property etc. related to specific communities or ethnic/religious groups are being governed by the personal laws applicable to them.

32. As concerns were raised that some of these personal laws are discriminatory, particularly for women and girls, to ensure compliance with equality and non-discrimination provisions enshrined in the Constitution, Sri Lanka has included a policy commitment in its NHRAP to review all legislations.

33. Accordingly, the Land Development Ordinance (LDO) (Amendment) Act¹⁸ was enacted to ensure that both male and female children will equally have rights to succession, inheritance and joint ownership irrespective of gender.¹⁹ The Ministry of Land decided that, “According to the ordinance there was lesser priority given to women when bestowing land, gender equality is to be resolved in this regard. In an event where the succession is not nominated; the person who has developed or in occupancy or in possession of the property or who has the certificate, or the donation given in their name gets the ownership of the land. The names of the adopted children are also to be included in the entitlement schedule”.

34. Further, the Muslim Marriages and Divorce Act (MMDA)²⁰ was identified for review. A ten-member Muslim Law Reforms Advisory Committee appointed by the Minister of Justice in December 2020 has handed over their report to the Hon. Minister in June 2021, and the same has been submitted to the Cabinet of Ministers. The Advisory Committee has been requested to make further observations.

Non-discrimination on grounds of sexual orientation

Recommendations 116.37, 38, 39 & Voluntary Pledge 125

35. The right to equality and non-discrimination guaranteed by the Constitution implicitly includes non-discrimination on grounds of sexual orientation, and this position has been upheld by the Supreme Court of Sri Lanka in a recent pronouncement on Penal Code offences that may be applied to same sex sexual conduct.²¹ A number of criminal proceedings filed on grounds of sexual orientation have also been dismissed, accepting submissions that homosexuality is neither a disease of mind nor an offence.²² Further, Sri Lanka College of Psychiatrists, the country's main medical body on mental health and psychiatry, made a public statement that it does not consider homosexuality a mental illness in 2021.

36. Taking cognizance of the Supreme Court judgement, a number of criminal proceedings on non-discrimination have been revisited. Following consultations in 2022 between civil society representatives working on Lesbian, Gay, Bisexual, Transgender, Intersex, Queer + (LGBTIQ+) rights and the IGP, with the participation of all relevant stakeholders, a Senior Deputy IGP was appointed to address issues and difficulties faced by the LGBTIQ+ community.

37. In 2022, a private member's bill was submitted to the Parliament seeking to amend the Penal Code with the aim of protecting the LGBTIQ+ community.

38. The National STD/AIDS control programme²³ of the Ministry of Health (MoH) operates 30 Antiretroviral Medication centres across the country providing services free of charge. Legal gender recognition could be obtained by transgender persons in 3-5 days²⁴ as per existing regulations.

Reconciliation and accountability

GoSL position on HRC resolution 30/1 and successive HRC resolutions

Recommendations 116.89-91 & Voluntary Pledge 128

39. Sri Lanka's withdrawal of co-sponsorship of HRC resolution 30/1 and its categorical rejection of the said resolution and its succeeding resolutions (34/1, 40/1, 46/1, 51/1) was based on grounds of serious constitutional, substantive and procedural issues, as elaborated in the statement by the Minister of Foreign Affairs of Sri Lanka at the High-Level Segment of the UNHRC 43.²⁵ The decision to co-sponsor resolution 30/1 was not endorsed by the Parliament, as it was in contravention of the Constitution, impinging the sovereignty of the nation.

40. Notwithstanding the rejection of resolution 30/1, Sri Lanka continued its engagement with the Council in a spirit of cooperation and dialogue. The GoSL is of firm belief that measures aimed at promoting domestic reconciliation and human rights, if they are to be meaningful and sustainable, must be based on cooperation with the country concerned, be compatible with the aspirations of its people, and be consonant with its domestic legal framework. In this context, the GoSL has continued to implement post-conflict reconciliation processes through domestic mechanisms.

Domestic mechanisms for national reconciliation

Recommendations 116.63, 64, 65, 69-88, 92-94, 131, 133, 171 & Voluntary Pledge 126

41. During the period under review, the domestic processes, the OMP, the OR, the ONUR and the 'Presidential Commission of Inquiry (PCoI)' have carried out many productive and constructive activities. The Sustainable Development Council (SDC) is an important supportive pillar for these efforts.

42. Some of the key developments during the reporting period are as follows:

(a) The OMP and the OR have become operational with the appointment of Commissioners and necessary financial provisions have been provided to these offices to carry out their statutorily mandated tasks. A victim-centric approach is taken in their engagement with the public.



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Agenda item 6

Universal periodic review

Report of the Working Group on the Universal Periodic Review*

Sri Lanka

* The annex is being circulated without formal editing, in the language of submission only.



- 65.264 Continue efforts to provide efficient social protection to low-income households and vulnerable groups, as well as equal access to quality education for all children (Malaysia);
- 65.265 Review the domestic laws that are discriminatory against women and prevent gender equality, in particular by establishing a minimum age of 18 years for marriage (Norway);
- 65.266 Undertake awareness-raising campaigns, targeting the tourism sector and the general population, on the prevention of the sexual exploitation of children in travel and tourism, with a wide dissemination of the Global Code of Ethics for Tourism of the World Tourism Organization (Panama);
- 65.267 Enact laws to eradicate the sexual exploitation of girls, boys and adolescents in the context of tourism (Ecuador);
- 65.268 Pursue the development of various policies to ensure the full enjoyment of the rights of persons with disabilities (Turkmenistan);
- 65.269 Develop policies and programmes that promote and protect persons with disabilities and ensure their integration into society (Jordan);
- 65.270 Strengthen the national and local resources allocated to the required facilities for children with disabilities and enhance employment opportunities for persons with disabilities (Gambia);
- 65.271 Take administrative, legislative and other measures to guarantee Indigenous Peoples their fundamental rights, including the recognition of their legal status, access to land, linguistic identity, access to health, education and other fundamental rights (Paraguay);
- 65.272 Repeal sections 365 and 365A of the Penal Code, end the criminalization of same-sex conduct and ensure equality and non-discrimination in relation to sexual orientation and gender identity (United Kingdom of Great Britain and Northern Ireland);
- 65.273 Ensure that the rights of LGBTIQ+ persons are respected and take steps to end discrimination and harassment of LGBTIQ+ communities, including by amending the Penal Code to decriminalize same-sex relations (United States of America);
- 65.274 Amend the Penal Code in order to decriminalize sexual conduct between consenting persons of the same sex and take concrete measures to combat discrimination and violence against lesbian, gay, bisexual, transgender and intersex persons (Uruguay);
- 65.275 Repeal the regulatory framework and administrative acts that criminalize, restrict and stigmatize relationships between people of the same sex and/or gender, with a view to guaranteeing respect for the rights and fundamental freedoms of all members of the LGBTIQ community (Argentina);
- 65.276 Amend laws and policies to guarantee the equal rights of women and lesbian, gay, bisexual, transgender and intersex individuals, including by decriminalizing consensual same-sex conduct (Australia);
- 65.277 Decriminalize same-sex relations, by repealing Sections 365 and 365A of the Penal Code (Canada);
- 65.278 Continue efforts to guarantee the rights of LGBTIQ+ people, by considering a ban on conversion therapies and repealing laws that criminalize homosexuality (Chile);
- 65.279 Repeal all legal provisions criminalizing homosexuality (Costa Rica);
- 65.280 Repeal section 365A of the Penal Code, criminalizing homosexuality, and introduce legislation to prevent criminal and hateful behaviour towards LGBTIQ persons (Czechia);

- 65.281 Receive the visit requested by the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity (France);
- 65.282 Decriminalize and legalize same-sex relations between consenting adults (Iceland);
- 65.283 Ensure that all persons can obtain or amend identity documents as per their self-perceived gender identity, free from medical or diagnostic requirements (Iceland);
- 65.284 Decriminalize same-sex activities in accordance with international human rights standards (Israel);
- 65.285 Increase steps taken to end discrimination based on sexual orientation and sexual identity, including through relevant legislation (Israel);
- 65.286 Repeal all laws that criminalise same-sex relations between consenting adults (Latvia);
- 65.287 Repeal articles 365 and 365A of the Penal Code and specific articles of other laws that criminalize homosexuality (Mexico);
- 65.288 Amend the Penal Code, particularly sections 365 and 365A, to decriminalize consensual same-sex conduct and displays of affection, and repeal the Vagrants Ordinance (Kingdom of the Netherlands);
- 65.289 Take further steps to eradicate all forms of discrimination and violence against minority communities, including women, girls, disabled people and the LGBTQI+ communities (New Zealand);
- 65.290 Repeal sections 365 and 365A of the Penal Code and sections of other laws that criminalize homosexuality (Norway);
- 65.291 Review legislation to fully guarantee the right to equality and non-discrimination, particularly concerning decriminalization and non-discrimination on the grounds of sexual orientation and gender identity (Brazil);
- 65.292 Introduce legal provisions that ensure that all rape and non-consensual sexual acts are recognised in law as illegal regardless of sexual orientation or gender (Malta);
- 65.293 Strengthen measures to protect the rights of migrants and refugees (Morocco);
- 65.294 Ensure the socioeconomic growth of, and address the marginalization faced by, the formerly stateless Tamils of Indian origin in the country (South Africa).
66. All conclusions and/or recommendations contained in the present report reflect the position of the submitting State(s) and/or the State under review. They should not be construed as endorsed by the Working Group as a whole.



International Covenant on Civil and Political Rights

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Human Rights Committee

Concluding observations on the sixth periodic report of Sri Lanka*

1. The Committee considered the sixth periodic report of Sri Lanka¹ at its 3969th, 3970th and 3971st meetings,² held on 8 and 9 March 2023. At its 3988th meeting, held on 21 March 2023, it adopted the present concluding observations.

A. Introduction

2. The Committee welcomes the submission of the sixth periodic report of Sri Lanka and the information presented therein. It expresses appreciation for the opportunity to renew its constructive dialogue with the State party's delegation on the measures taken during the reporting period to implement the provisions of the Covenant. The Committee is grateful to the State party for its written replies³ to the list of issues,⁴ which were supplemented by the oral responses provided by the delegation, and for the additional information provided to it in writing.

B. Positive aspects

3. The Committee welcomes the adoption by the State party of the following legislative measures:

- (a) Office on Missing Persons Act No. 14 of 2016;
- (b) Local Authorities Elections (Amendments) Act No. 16 of 2017;
- (c) Assistance to and Protection of Victims of Crime and Witnesses (Amendment) Act No. 27 of 2017;
- (d) Office for Reparations Act No. 34 of 2018;
- (e) International Convention for the Protection of All Persons from Enforced Disappearance Act No. 5 of 2018;
- (f) Land Development (Amendment) Act No. 11 of 2022.

4. The Committee also welcomes the ratification of, or accession to, the following international instruments by the State party:

- (a) International Convention for the Protection of All Persons from Enforced Disappearance, on 25 May 2016;

* Adopted by the Committee at its 137th session (27 February–24 March 2023).

¹ [CCPR/C/LKA/6](#).

² See [CCPR/C/SR.3969](#), [CCPR/C/SR.3970](#) and [CCPR/C/SR.3971](#).

³ [CCPR/C/LKA/RQ/6](#).

⁴ [CCPR/C/LKA/Q/6](#).



(b) To ensure that the legislative process for enacting a new anti-terrorism or national security law is inclusive and transparent and facilitates the free, open and meaningful participation of a wide range of stakeholders, including the Human Rights Commission of Sri Lanka, civil society and the public;

(c) To ensure that individuals suspected of, or charged with, terrorist acts or related crimes are provided, in law and in practice, with all appropriate legal safeguards, in particular the rights to be informed of the charges against them, to be brought promptly before a judge and to have access to legal counsel, in line with article 9 of the Covenant and the Committee's general comment No. 35 (2014) on liberty and security of person;

(d) To facilitate independent, effective and regular monitoring of all places of detention without prior notice and on an unsupervised basis, including by the Human Rights Commission, to carry out inspections of the situation of individuals detained under the Prevention of Terrorism Act;

(e) To ensure that all deaths in custody are promptly, independently and effectively investigated, that perpetrators are held accountable, with penalties commensurate with the seriousness of the crimes, and that victims' families are provided with full reparations.

Discrimination on the basis of sexual orientation and gender identity

18. While noting the Supreme Court's pronouncement that consensual same-sex activity should not result in custodial sentences, the Committee remains concerned that lesbian, gay, bisexual and transgender persons continue to face criminalization under sections 365, 365A and 399 of the Penal Code and discrimination on a daily basis, including in accessing health care, employment and housing. It is also concerned by reports that lesbian, gay, bisexual and transgender persons are victims of arbitrary arrests and detention and are subjected to forced anal examinations in an attempt to gather evidence for prosecutions for same-sex conduct. It regrets that police officers handling cases of violence against lesbian, gay, bisexual and transgender persons often treat the victims as criminals (arts. 2, 7, 9, 17 and 26).

19. Bearing in mind the Committee's previous recommendations,⁷ the State party should step up its efforts:

(a) To repeal provisions of the Penal Code, including sections 365, 365A and 399;

(b) To provide effective protection against all forms of discrimination and violence, including abuse by police officers, on the basis of sexual orientation and gender identity, both in law and in practice, and ensure that such violations are promptly and effectively investigated, that perpetrators are held accountable, with penalties commensurate with the seriousness of the crimes, and that victims have access to full reparations;

(c) To combat negative stereotypes and prejudice against lesbian, gay, bisexual and transgender persons, including through training and awareness-raising campaigns for judges, prosecutors, law enforcement officials and the general public.

Gender equality

20. While noting the amendment made to the Land Development Ordinance of 1935, which removed certain discriminatory provisions, the Committee is concerned that discriminatory provisions against women remain in force in the areas of marriage, inheritance and property, as set out in personal laws, including the Muslim Marriage and Divorce Act of 1951 and the Jaffna Matrimonial Rights and Inheritance Ordinance of 1911. While noting the positive impact of the mandatory quota for women in local government positions, the Committee regrets the low political representation of women at the national and provincial levels and allegations of harassment and verbal attacks, including defamatory and sexist

⁷ Ibid., para. 8.

Decriminalisation

Global Trends with a Focus on Asia

The decriminalisation of consensual same-sex sexual activity between adults is a critical step to complying with international human rights law. Globally, many of these laws, rather than being of local origin, were inherited through British colonialism and retained by default upon independence. Particularly since the late 20th century, there has been a trend which has seen a growing number of countries decriminalise through legislative reform or through judicial intervention.

Decriminalisation through legislative reform in Asia

Over the past decades, several countries in Asia have decriminalised consensual same-sex sexual conduct between adults through laws enacted by Parliament. Most recently, this includes Singapore in 2022 and Bhutan in 2021.

Furthermore, it is worth noting that numerous countries in Asia have no history of criminalising consensual same-sex sexual activity as independent countries, including Cambodia, Laos, the Philippines, Taiwan, Japan (with the exception of a very brief period in the late 1800s) and South Korea.

Singapore (2022)

On 29 November 2022, Singapore's Parliament voted to repeal section 377A of the Penal Code 2008, which had criminalised same-sex sexual activity between men ('gross indecency', carrying a maximum penalty of two years' imprisonment). The law was officially struck from the books on 3 January 2023.¹

This followed almost a decade of legal cases challenging section 377A, which in February 2022 had resulted in the Singapore Court of Appeal formalising a moratorium on the arrest of men engaged in consensual, same-sex sexual activity. However, the Court had declined to remove section 377A from the statute books.²

93 MPs voted in favour of repealing the law, with only three voting against (two from the Workers' Party, one Nominated MP).³ The initiative was led by the Singaporean government, with an announcement of plans to repeal being made by the Prime Minister in August 2022. It was prompted at least in part by the legal cases which had been brought to challenge the law, and advice by the Attorney General that there was a risk section 377A might be struck down by the courts in a future challenge.⁴

Bhutan (2021)

¹ [https://www.epw.in/engage/article/repeal-377a-and-future-lgbtq-rights-singapore#:~:text=On%2029%20November%2C%202022%2C%20after,2023%20\(Yan%20Han%202023\).;https://www.humandignitytrust.org/lgbt-the-law/a-history-of-criminalisation/](https://www.epw.in/engage/article/repeal-377a-and-future-lgbtq-rights-singapore#:~:text=On%2029%20November%2C%202022%2C%20after,2023%20(Yan%20Han%202023).;https://www.humandignitytrust.org/lgbt-the-law/a-history-of-criminalisation/).

² <https://www.humandignitytrust.org/lgbt-the-law/a-history-of-criminalisation/>.

³ <https://www.straitstimes.com/singapore/politics/parliament-repeals-section-377a-endorses-amendments-protecting-marriage-definition>.

⁴ <https://www.straitstimes.com/singapore/politics/repealing-s377a-the-right-thing-for-govt-parliament-to-do-ministers>.

In 2020, the Parliament of Bhutan adopted the Penal Code (Amendment) Act, which amended Penal Code's Section 213 prohibiting "unnatural sex". 63 out of 69 MPs voted in favour of the Bill, with six abstaining.⁵ It received royal assent on 17 February 2021, coming into force the same day and decriminalising consensual same-sex sexual activity.⁶

The process had begun in 2019 when the National Assembly, the lower house of Parliament, passed a bill repealing Section 213. The upper house, known as the National Council, unanimously adopted the Penal Code (Amendment) Bill. However, rather than re-affirming the vote of the lower house to remove the criminalising section, they chose to retain the provision and amend it.⁷

Section 213 was amended to the following: "A defendant shall be guilty of the offence of unnatural sex, if the defendant engages in sexual conduct that is against the order of nature. However, homosexuality between adults shall not be considered unnatural sex."⁸

China (1997)

In 1997, China's "hooliganism" laws, which are believed to have criminalised homosexuality, were repealed.⁹

Hong Kong (1991)

Following recommendations made by the Law Reform Commission of Hong Kong in 1983, the Crimes (Amendment) Ordinance was passed in 1991. This amended the law to decriminalise consensual same-sex sexual activity in private between adult males.¹⁰ It also introduced a new provision, Section 118F, which criminalised "homosexual buggery", but not where it takes place in private.¹¹

The law provided for strict criteria in relation to the "in private" requirement compared to heterosexual sexual conduct.¹² Furthermore, it provided for an unequal age of consent (16 for heterosexual couples, 21 for male same-sex couples).¹³ Both these aspects of the law were challenged before the courts in later years and were held to be discriminatory and unconstitutional (see below for further details), demonstrating the importance of decriminalisation which does not include further discriminatory restrictions on consensual same-sex sexual activity between adults.

Thailand (1957)

⁵ <https://thebhutanese.bt/amended-penal-code-decriminalizes-homosexuality-and-is-tougher-on-rapists/>.

⁶ <https://www.humandignitytrust.org/lgbt-the-law/a-history-of-criminalisation/>;
<https://76crimes.com/2021/03/11/bhutan-drops-its-law-against-sodomy/>.

⁷ <https://www.humandignitytrust.org/lgbt-the-law/a-history-of-criminalisation/>.

⁸ <https://www.humandignitytrust.org/news/kings-assent-leads-himalayan-nation-of-bhutan-to-become-latest-country-to-decriminalise-same-sex-activity/>.

⁹ <https://www.humandignitytrust.org/lgbt-the-law/a-history-of-criminalisation/>.

¹⁰ [https://www.hkreform.gov.hk/en/publications/rhomosexual.htm#:~:text=The%20key%20recommendation%20was%20to,\(Amendment\)%20Ordinance%20in%201991..](https://www.hkreform.gov.hk/en/publications/rhomosexual.htm#:~:text=The%20key%20recommendation%20was%20to,(Amendment)%20Ordinance%20in%201991..)

¹¹ https://www.humandignitytrust.org/wp-content/uploads/resources/Secretary_of_Justice_v_Yau_Yuk_Lung_Zigo.pdf.

¹² https://www.humandignitytrust.org/wp-content/uploads/resources/Secretary_of_Justice_v_Yau_Yuk_Lung_Zigo.pdf.

¹³ <https://www.equaldex.com/log/15152>.

In 1957, the Thai Penal Code (1956) came into effect, which did not contain any provisions criminalising consensual same-sex sexual activity between adults.¹⁴

If useful, additional information on the examples of decriminalisation given above can be provided.

Decriminalisation through litigation in Asia

Several countries in Asia have decriminalised consensual same-sex sexual activity through the courts, which have held criminalising provisions to be in breach of LGBT persons' human rights and unconstitutional.

India (2018)

The Supreme Court of India found in *Navtej Singh Johar v Union of India* that the criminalisation of same-sex sexual acts was unconstitutional, as it violated a number of rights including to equality before the law, non-discrimination, freedom of expression, and protection of life and personal liberty.¹⁵

Hong Kong (2006-7)

In *Leung v Secretary of Justice*, the Hong Kong Court of Appeal held in 2006 that the differential age of consent between same-sex and heterosexual couples (21 as opposed to 16) was in violation of the rights to equality and privacy and therefore unconstitutional.¹⁶

In 2007, in *Secretary of Justice v Yau Yuk Lung Zigo*, the Hong Kong Court of Final Appeal examined the constitutionality of Section 118F, which criminalised "homosexual buggery" other than in private. The Court held that the differential treatment of LGBT persons, by imposing a statutory offence on male same-sex couples which did not apply to heterosexual couples, was not justified and therefore constitutionally invalid.¹⁷

Nepal (2007)

The National Code (1963) criminalised "unnatural sexual intercourse", a term which was left undefined and could be interpreted as including same-sex intimacy. In *Sunil Babu Pant and Others v. Nepal Government and Others* (2007), the Nepal Supreme Court ruled that same-sex sexual intercourse was not to be construed as "unnatural".

The Court in *Sunil Babu Pant* held that LGBT people should not be discriminated against in the enjoyment of their rights guaranteed by the Constitution and by international human rights instruments. The Court further took the view that if these matters of intimacy fell within the ambit of the private sphere for heterosexual couples, the same should be secured for LGBT couples; and that the selection of a sexual partner fell entirely within the ambit of the right to self-determination of such an individual.¹⁸

¹⁴ <https://www.equaldex.com/log/312>; <https://database.ilga.org/thailand-lgbti>.

¹⁵ <https://www.humandignitytrust.org/wp-content/uploads/resources/2018.09.06-Johar-v-India-judgment-Indian-SC.pdf>.

¹⁶ https://www.humandignitytrust.org/wp-content/uploads/resources/Leung_v_Secretary_of_Justice.pdf.

¹⁷ <https://www.humandignitytrust.org/resources/secretary-of-justice-v-yau-yuk-lung-zigo-hong-kong-court-of-final-appeal-2007-10-hkcfar-335/>.

¹⁸ https://www.humandignitytrust.org/wp-content/uploads/resources/Sunil_Babu_Pant_and_others_v_Nepal_Government_and_others.pdf.

Decriminalisation through legislative reform outside Asia

Several jurisdictions outside of Asia have decriminalised through legislative reform since the 2010s, continuing on from trends that began as early as the 1940s and 1950s.

For instance, most recently, in May 2024, Niue enacted the Niue (Sexual Offences) Amendment Bill, removing “buggery” as a criminal offence. The offence had carried a maximum penalty of 10 years’ imprisonment, and had been inherited from New Zealand (itself at the time a British protectorate state), which had annexed Niue in 1901. The law had been retained upon independence.¹⁹

In April 2023, the Parliament of the Cook Islands voted to decriminalise same-sex sexual activity between men. The Crimes Act 1969 had criminalised “indecent acts” and “sodomy”, with a maximum penalty of five years’ imprisonment. The Crimes (Sexual Offences) Amendment Bill removed these provisions, coming into force on 1 June 2023. The Cook Islands, too, had inherited their provisions from British colonialism.²⁰

Other examples of jurisdictions which decriminalised through legislative reform in recent years include:

- Angola (February 2021)
- Gabon (June 2020)
- Seychelles (2016)
- Nauru (2016)
- Mozambique (2015)
- Palau (2014)
- Northern Cyprus (2014)
- São Tomé and Príncipe (2012)
- Lesotho (2012)

Decriminalisation through litigation outside Asia

Finally, there has been a global trend of decriminalisation of consensual same-sex sexual activity through the courts, including:

- Namibia (June 2024)
- Dominica (April 2024)
- Mauritius (October 2023)
- Barbados (December 2022)
- Saint Kitts & Nevis (August 2022)
- Antigua & Barbuda (July 2022)
- Botswana (June 2019)
- Belize (August 2016)

¹⁹ <https://www.humandignitytrust.org/lgbt-the-law/a-history-of-criminalisation/>.

²⁰ <https://www.humandignitytrust.org/lgbt-the-law/a-history-of-criminalisation/>.

Human Rights Violations faced by LGBTQ People in Sri Lanka

(October 2023 – October 2024)

An Analysis by BRIDGE to Equality

The Bridge to Equality Project, now in its second phase, documented 326 cases of rights violations from October 2023 to October 2024, with 226 submitted to the Human Rights Commission of Sri Lanka. Focused on marginalized communities, the project highlights systemic discrimination, particularly against LGBTQ individuals, including transgender people and other sexual minorities. The data reveals patterns in perpetrators, victim demographics, and locations, helping inform future policy to protect fundamental rights and improve access to justice.

Key Findings

- 100% of the violations are violations of the Right to equality of the survivors (Article 12 of the Constitution of Sri Lanka. Besides that, the most common violations involve freedom from cruel and degrading treatment (Article 11 of the Constitution).
- Primary perpetrators:
 - Police (194 cases)
 - Hospital staff (45 cases)
- Geographic concentration:
 - Colombo (99 cases)
 - Gampaha (91 cases)
- Outside the Western province, more cases were received from Anuradhapura; 15 cases (4.6%)
- Transpersons whose who are attracted to the opposite gender 53.07%, have been the most affected.
- The next most prevalent sexual orientation amongst the survivors are Gay men: 34.05%
- The most prevalent gender identity amongst the survivors is Transwoman: 42.02% followed by Male (Gay): 33.13%.
- The most prevalent race and religion of the survivors is Sinhala Buddhist but that is due to the concentration of cases in the Western province which is an area with a rather high percentage of Sinhala Buddhist citizens. However, 45 of the survivors are Tamil Hindus.
- Majority of the survivors have a basic formal education with A/L (Advanced Level): 53.37% and O/L (Ordinary Level): 34.97%
- The majority of the survivors fall within the obtaining a monthly income of Rs. 21,000 - 30,000 range, a significant portion of survivors (20.25%) refused to disclose their income and incomes above Rs. 50,000 are less common, with percentages decreasing as the incomes increases.
- The most prevalent age group of the survivors is "21 - 30" at 59.2% followed by the age group "31 - 40" with 21.78%.

Recommendations

1. **Implement training programs for law enforcement and medical staff to reduce discrimination:** A significant number of perpetrators are identified within law enforcement authorities, creating substantial barriers for survivors to report violations or seek justice. To address this, Community-Based Organizations (CBOs) and state institutions must prioritize awareness workshops and sensitization programs specifically targeting these groups.
2. **Expand Outreach in High-Prevalence Areas:** Increase awareness and education campaigns in regions like Colombo, Gampaha, and Anuradhapura to promote rights, encourage reporting, and build trust in legal and medical systems.
3. **Tailored Support for Marginalized Groups:** Develop specialized support programs for transgender individuals and sexual minorities, focusing on mental health, economic empowerment, and community-building.
4. **Use Data for Policy Reform:** Leverage collected data to push for legal reforms that protect LGBTQ+ individuals, particularly transgender people, from systemic discrimination, and ensure regular monitoring for accountability.



BRIDGE to Equality - BRIDGE project which aims to improve the protection of human rights for LGBTQ people in Sri Lanka through the use of international human rights law to enable justice actors (judges, lawyers and other legal professionals), activists and human rights defenders to improve justice outcomes for the LGBTQ community; with a focus on overcoming challenges imposed by the current legal framework, as well as the overall promotion and protection of human rights of LGBTI people.

BRIDGE is jointly implemented by DAST, National Transgender Network and Young Out Here in partnership with the International Commission of Jurists since 2021.



www.bridge2equality.org



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HUMAN RIGHTS VIOLATIONS

FACED BY THE LGBTQ PEOPLE IN SRI LANKA

(August 2021 – March 2023)

An analysis by BRIDGE

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SECTION 1: TERMINOLOGY

LGBTQ:	LGBTQ is an acronym for lesbian, gay, bisexual, transgender, and queer or questioning
Lesbian:	A woman who is physically, emotionally, and / or spiritually attracted to other women.
Gay:	A person physically, emotionally, and / or spiritually attracted to someone of the same sex. Usually used to describe men loving men and frequently used to identify the whole LGBTIQ community– as in ‘Gay Community’.
Bisexual:	A person physically, emotionally, and / or spiritually attracted to both men and women.
Transgender:	A person whose sense of personal identity and gender does not correspond with their birth sex.
Questioning:	A person who is questioning their sexuality or gender identity.
Queer:	A word that describes sexual and gender identities other than straight and cisgender. Lesbian, gay, bisexual, and transgender people may all identify with the word queer.
Survivors:	The LGBTQ persons who have suffered human rights violations are referred to in this brief as survivors.
Perpetrators:	The identified individuals who have been responsible for subjecting the survivors to human rights violations are referred to as perpetrators

Documentation Officers (DOs) :	These are Field officers working in the grassroots with YOH & NTN, tasked with finding survivors. These DOs are often members of the community with connections within the community and / or substantial social media influence.
Fundamental rights :	Fundamental rights are the human rights declared and recognized by the Constitution of the Democratic Socialist Republic of Sri Lanka and as per (Article 4(d)) of the Constitution of the Democratic Socialist Republic of Sri Lanka, they "shall be respected, secured and advanced by all the organs of government, and shall not be abridged, restricted or denied save in the manner and to the extent provided by the Constitution." These rights are set out in Chapter III of the Constitution and include Articles 11, 12, 13, and 14.
Common crimes :	Common crimes are criminal offenses that are committed against persons. The bulk of the common crimes are defined in the Penal Code Ordinance No. 2 of 1883 of Sri Lanka and some others are defined in legislation such as the Motor Traffic, Act, No. 8 of 2009, the Vagrants Ordinance of 1842, etc.
Identifying factors:	These are the various factors the survivors have in common such as age, gender, sexual orientation, geographical location, economic status, etc.
Out status:	If the survivor is publicly open about their sexual orientation / gender identity.
Minority ethnic groups:	This refers to the minority ethnic groups in Sri Lanka, and in this Data Brief includes Tamils and Muslims among others, mostly concentrated in the Northern and Eastern Provinces of Sri Lanka.

SECTION 2: INTRODUCTION

Individuals in Sri Lanka are protected from discrimination based on 'sex' and "other such grounds" under Article 12(2) of the Constitution (enacted in 1978). However, "carnal intercourse and acts of 'gross indecency between same-sex individuals (described in law as "acts against the order of nature") are criminalized under Section 365 and Section 365A of Sri Lankan Penal Code, 1833, thus, criminalising consensual same-sex sexual acts regardless of the gender of those involved. These penal laws together with various social stigmas, have subjected LGBTQ individuals to an array of prejudices, injustices, and violence for decades. While the movement towards the decriminalisation of same - sex relationships has grown in strength since it emerged in the late 1990s, these legal, political and social barriers remain.

The objectives of this data analysis brief are as follows;

- To analyse the offenses and human rights violations committed against a cross-section of the LGBTQ community based on their sexual orientation or gender identity and expression.
- To provide quantitative analysis of the key issues faced by members of the community, the common denominators relating to the most prevalent type of human rights violations, and the perpetrators of the said violations.
- To support the work and strengthen the knowledge of local activists, lawyers, and human rights defenders in understanding domestic issues faced by the LGBTQ community.
- To effectively engage with the Human Rights Commission of Sri Lanka (HRCSL) and UN human rights mechanisms along with the UN Independent Expert on Sexual Orientation and Gender Identity and Expression.
- To focus on overcoming challenges imposed by the current legal framework and facilitating the overall promotion and protection of the human rights of the LGBTQ community.

SECTION 3:

METHODOLOGY

The Data brief quantitatively analyses 235 Human Rights Violations (HRV)), collected throughout two years with the help of two organizations Young Out Here (YOH) and the National Transgender Network (NTN). It aims to analyse the issues faced by the LGBTQ community of Sri Lanka.

YOH & NTN collected the cases in the form of interviews by Documentation Officers ('DO's of the respective organisations, both YOH & NTN have 10 DOs each). The DOs have used their contacts and reached out to the survivors. Following this they have conducted interviews with the survivors and gathered information by filling the information gathering sheets drafted by the Local Legal Advisor of YOH & NTN regarding the HR violations committed against them. Cases where the survivors have consented to submit to the police or the Human Rights Commission have been submitted to those institutions with Written Consent and the remaining have been recorded for documentation.

BRIDGE took measures to gather cases from the North-East including communicating with networks already in place. Unfortunately, there are only two documentation officers located in the North and East regions of the country thus the resources to collect data from these regions of the country are limited. In 2022-23 BRIDGE succeeded in building relationships with the networks to gather relevant information from the North - East. The provided data must be understood in this context.

The Data Brief will identify the prevalent violations against LGBTQ persons in Sri Lanka, with the use of the identified cases, and quantify the survivors based on common denominators such as age, gender, sexual orientation, geographical location, economic status, type of violation, remedy sought, etc and identify key findings.

SECTION 4:

EXPLANATION

1.2 What are Human Rights Violations?

Human rights are the basic rights and freedoms that belong to every person in the world, from birth until death. Fundamental rights are human rights recognized by the Constitution.

The Constitution of the Democratic Socialist Republic of Sri Lanka declares and recognises the Fundamental Rights of Citizens protected under the Laws of the Country¹. Article 4(d) of the Constitution is directed at all organs of the government and aims to uphold the sovereignty of the people by respecting and securing their fundamental rights. These rights are protected through Chapter III of the Constitution and is outlined in Articles 10, 11, 12, 13, and 14 under the same Chapter and include the right to thought, conscience, and religious liberty (Article 10), protection against, cruel, inhumane, or humiliating treatment (Article 11), given equal protection under the law and not discriminated against based on race, religion, language, caste, sex, political stance, or place of birth (Article 12(1)& Article 12(2).), protected against unlawful arrests and detention and the right to a fair trial (Article 13 (1), (Article 13(2) & (Article 13(3) and the presumption of innocence until proven guilty (Article 13(5), right to free speech, freedom of assembly, the right to join Trade Unions, etc., and the right to information (Article 14).

¹[Article 4(d)] of the Constitution of Sri Lanka: Fundamental rights that "shall be respected, secured, and advanced by all institutions of Government, and shall neither be abridged, restricted, or denied except perhaps in the manner specified provided by the Constitution".

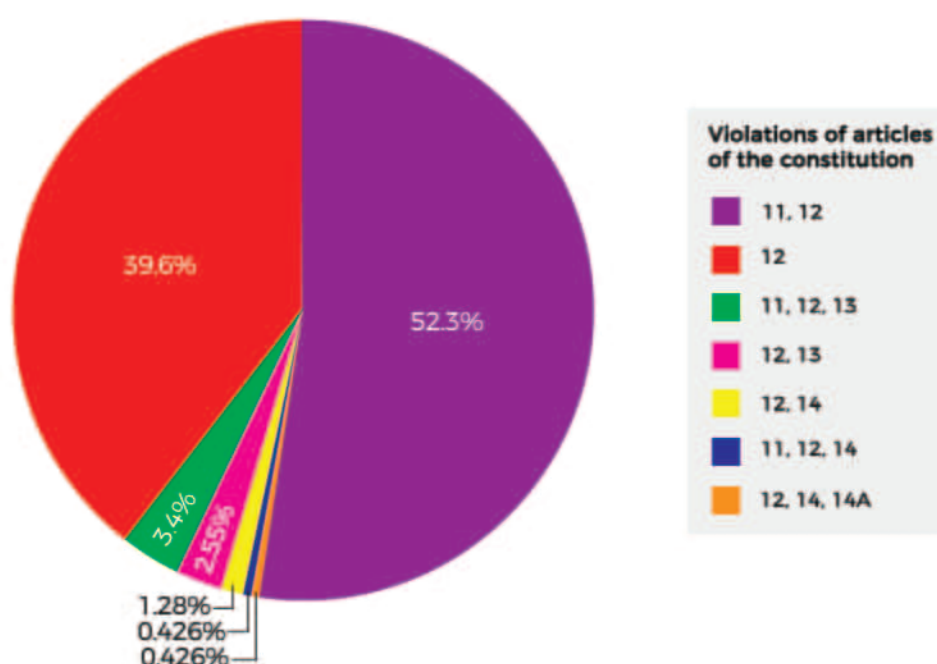
SECTION 5:

ANALYSIS OF THE CASES

(HUMAN RIGHTS VIOLATIONS)

The Data brief quantitatively analyses 235 cases out of which 149 cases **have been submitted to the Human Rights Commission (HRCSL)** but the survivors of the remaining have not consented for such submission.

The human rights violations that were identified among the survivors include, violations of Article 11², Article 12(1) & (2)³, Article 13⁴, Article 14⁵ and Article 14A⁶. The most prevalent violations are Article 12 violations (100%) since each of the violations are Article 12 violations coupled with other violations. The next most prevalent are Article 11 violations (56%), followed by Article 13 violations (6%), Article 14 violations (2.17%) and Article 14A violations (0.50%).



It was evident in the analysis, that the most prevalent group of violations are Article 11 coupled with Article 12 violations.

² Article 11 of the constitution provides: "No person shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."

³ Article 12 (1) provides that, "All persons are equal before the law and are entitled to the equal protection of the law."

Article 12(2) provides that, "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."

⁴ Article 13 provides that, "(1) No person shall be arrested except according to procedure established by law. Any person arrested shall be informed of the reason for his arrest. (2) Every person held in custody, detained or otherwise deprived of personal liberty shall be brought before the judge of Freedom of thought, conscience and religion Freedom from torture Right to equality Freedom from arbitrary arrest, nearest competent court according to procedure established by law and shall not be further held in custody, detained or of liberty except upon and in terms of the order of such judge made in accordance with procedure established by law."

⁵ Article 14 provides: "(1) Every citizen is entitled to - (a) the freedom of speech and expression including publication; (b) the freedom of peaceful assembly; (c) the freedom of association; (d) the freedom to form and join a trade union; (e) the freedom, either by himself or in association with others, and either in public or private"

⁶ Article 14A "(1) Every citizen shall have the right of access to any information as provided for by law, being information that is required for the exercise or protection of a citizen's right"

The majority of the perpetrators (96) out of 235 were police followed by the medical sector.

Perpetrator	Frequency	Percentage %
Police	96	40.85%
Medical sector	64	27.27%
Grama Niladharis / Officers in Municipal Councils	22	9.78%
Divisional Secretariat	9	4.25%
Army	8	3.40%
Public school staff	5	2.13%
Registrar General's Department	6	2.55%
Railway station staff	3	1.28%
Vocational Training Authority	2	0.85%
Sri Lanka Examination Department	2	0.85%
CTB Bus staff	2	0.85%
Attorney Generals Department	2	0.85%
Children and Women Bureau	1	0.43%
Not indicated	1	0.43%
Military Police	1	0.43%
Grama Niladhari	1	0.43%
Ceylon Fishery Harbors Corporation	1	0.43%
Labour Department	1	0.43%
State Bank	1	0.43%
Provincial Council	3	1.25%
Municipal Council	1	0.43%
Navy	1	0.43%

1.1 Analysis of Human Rights violations against the common denominators of the survivor

District	Frequency	%
Gampaha	57	24.26%
Galle	35	14.89%
Colombo	35	14.89%
Jaffna	15	6.38%
Puttalam	14	5.95%
Kandy	11	4.68%
Anuradhapura	10	4.26%
Batticaloa	8	3.40%
Kegalle	7	2.98%
Kurunegala	8	3.44%
Ampara	6	2.55%
Polonnaruwa	3	1.28%
Nuwara Eliya	3	1.28%
Ratnapura	3	1.27%
Hambantota	3	1.27%
Mannar	2	0.85%
Matara	3	1.27%

The above depiction may not be an accurate demonstration of the demographical locations due to the limited number of cases from the Northern and Eastern Provinces as a result of the limited number of documentation officers in the North and the East.

Age	Frequency	%
21-30	128	54.47%
31-40	65	27.66%
41-50	23	9.79%
Not indicated	9	3.83%
50 or more	5	2.13%
16-20	5	2.13%

Gender Identity	Frequency	%
Transwoman	87	37.02%
Male	85	36.17%
Transman	32	13.62%
Female	21	8.94%
Non Binary	9	3.83%
Not indicated	1	0.43%

Sexual Orientation	Frequency	%
Heterosexual	60	25.53%
Not indicated	52	22.13%
Gay	49	20.85%
Bisexual	36	15.32%
Lesbian	24	10.21%
Homosexual	7	2.98%
Pansexual	3	1.28%
Queer	2	0.85%
Other	2	0.85%

Education level	Frequency	%
A/L	121	51.49%
O/L	60	25.53%
Degree	21	8.94%
Primary education	15	6.38%
Not indicated	9	3.83%
No Educational Background	4	1.70%
Diploma	3	1.28%
Post Graduate/ Masters	1	0.43%
Sasrapathi	1	0.43%

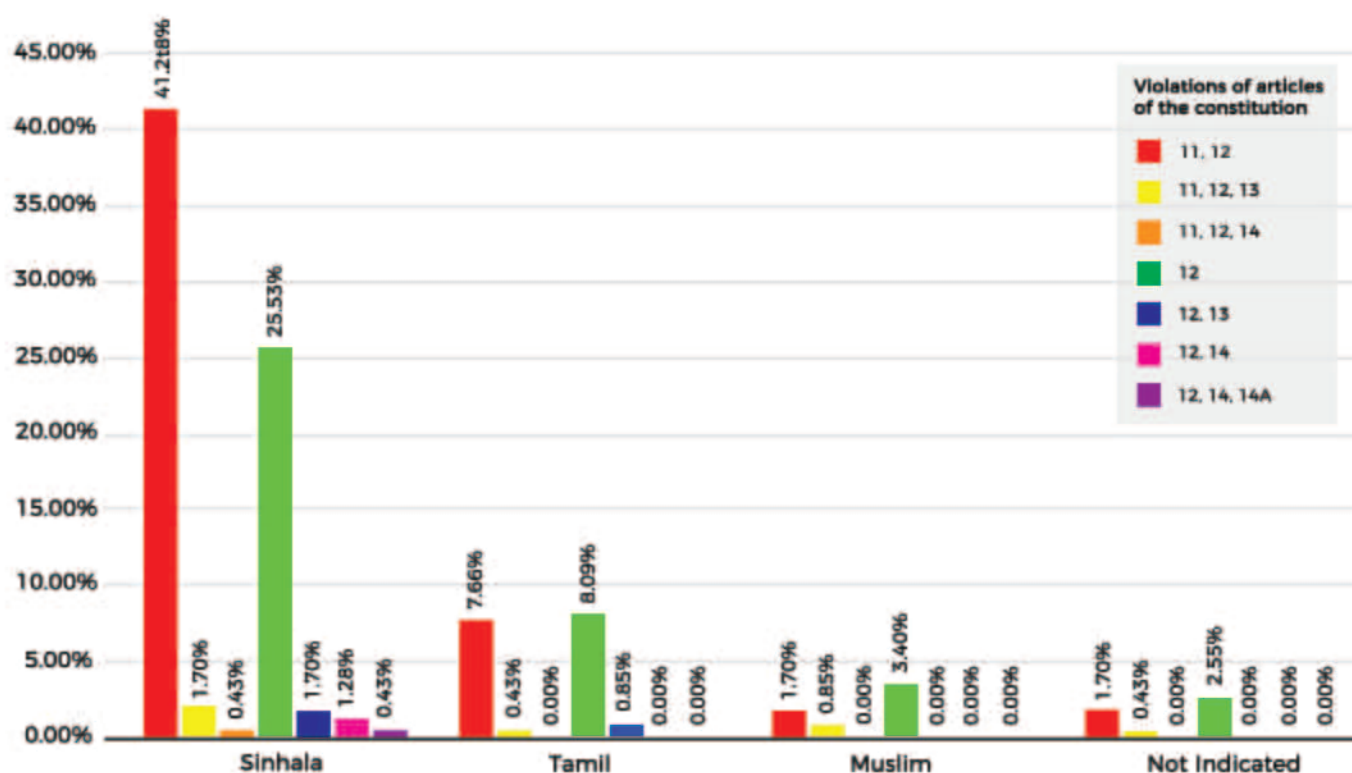
Income status	Frequency	%
20,000-40,000	82	34.89%
10,000-20,000	54	22.98%
40,000 or more	44	18.72%
No income	33	14.04%
Not indicated	16	6.81%
Irregular	6	2.55%

Ethnicity	Frequency	%
Sinhala	170	72.34%
Tamil	40	17.02%
Muslim	14	5.96%
Not indicated	11	4.68%

Religion	Frequency	%
Buddhist	154	65.53%
Hindu	36	15.32%
Islamic	15	6.38%
Not indicated	11	4.68%
Catholic	10	4.26%
Christian	6	2.55%
Atheist	3	1.28%

1.2. Prevalence of the Human Rights Violations

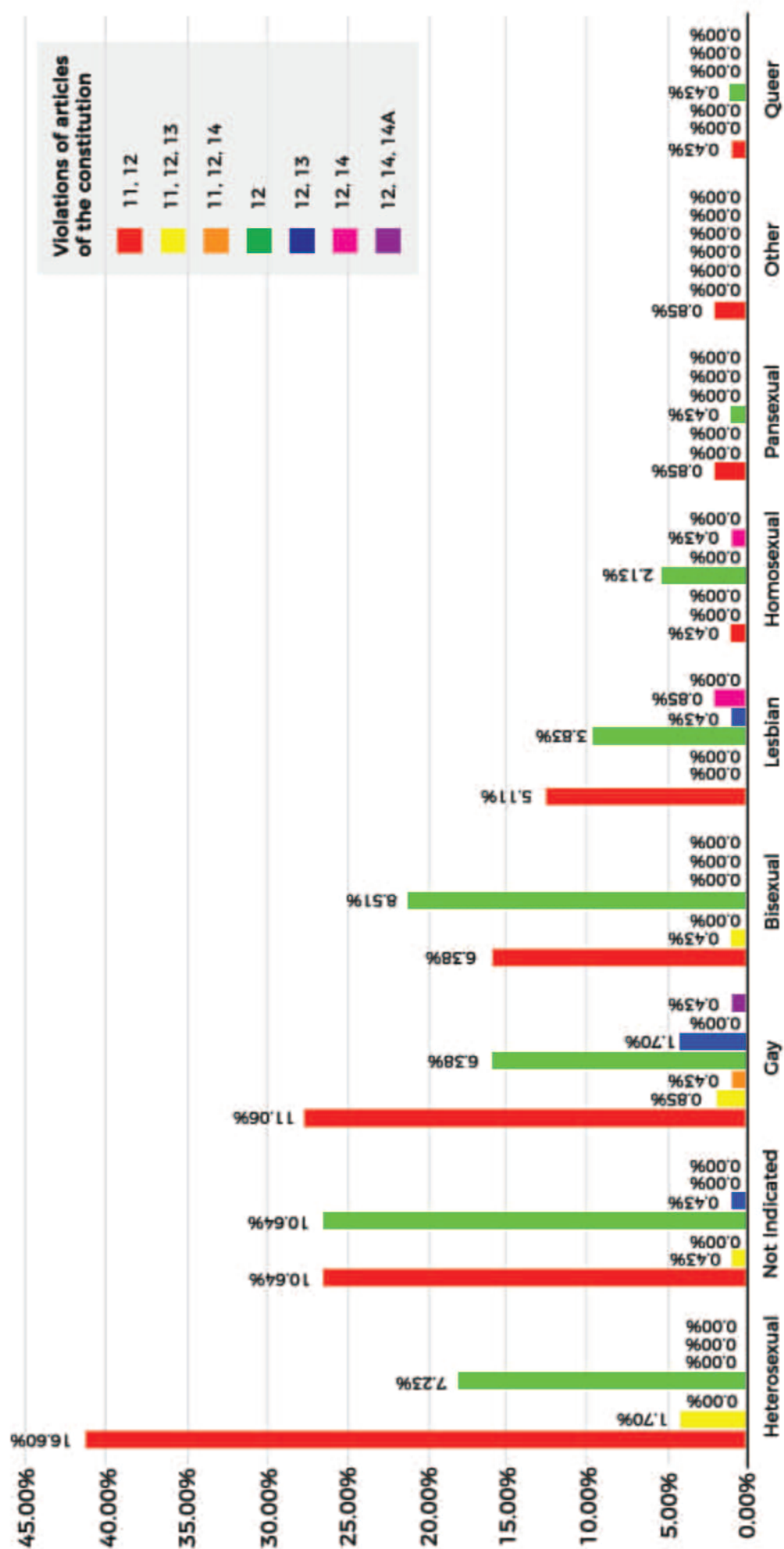
The correlation between ethnicity of the survivors and HR violations



Article 11 together with Article 12 violations are the most prominent group of violations and people of Sinhala ethnic groups are prevalently subjected to it.

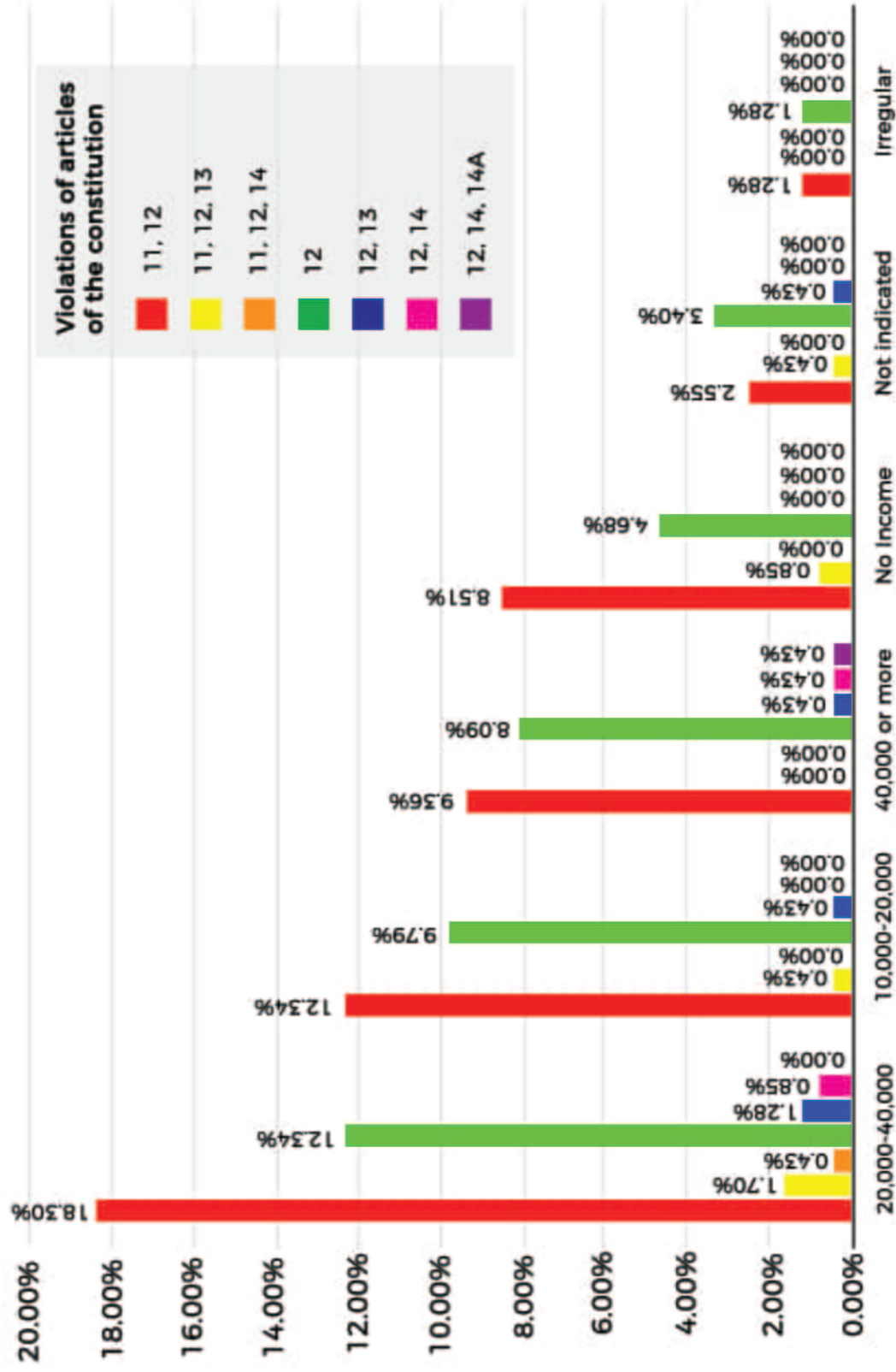
Note that despite the lack of data from the Northern and Eastern provinces there are still substantial Article 12 violations against Tamils.

The correlation between sexual orientation of the survivors and HR violations



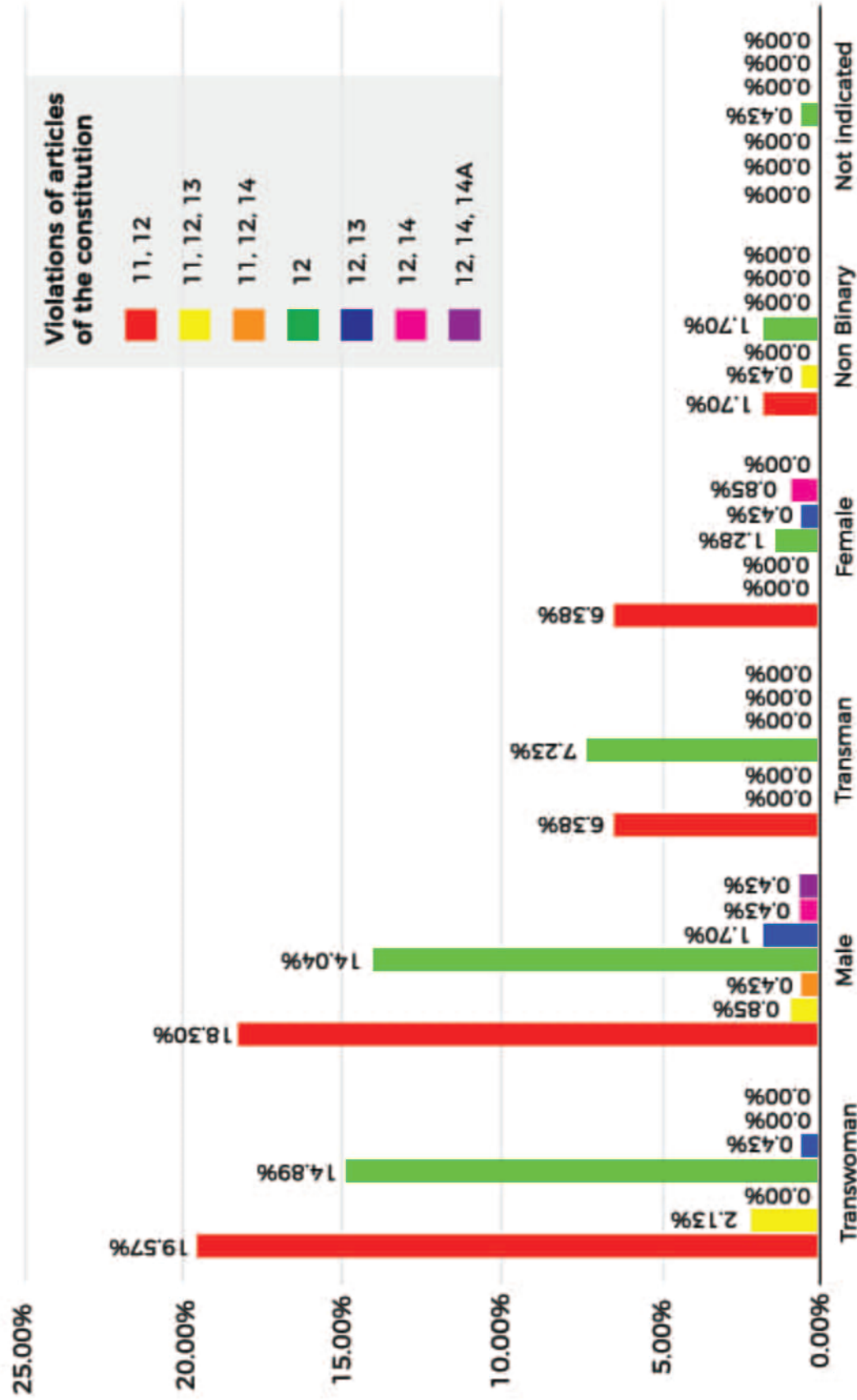
This graphical representation demonstrates that the most prevalent violation is Article 11, 12 and the most vulnerable group in this regard are heterosexual individuals but please note that all heterosexual survivors here are Transmen or Transwomen.

The correlation between income of the survivors and Human Rights Violations



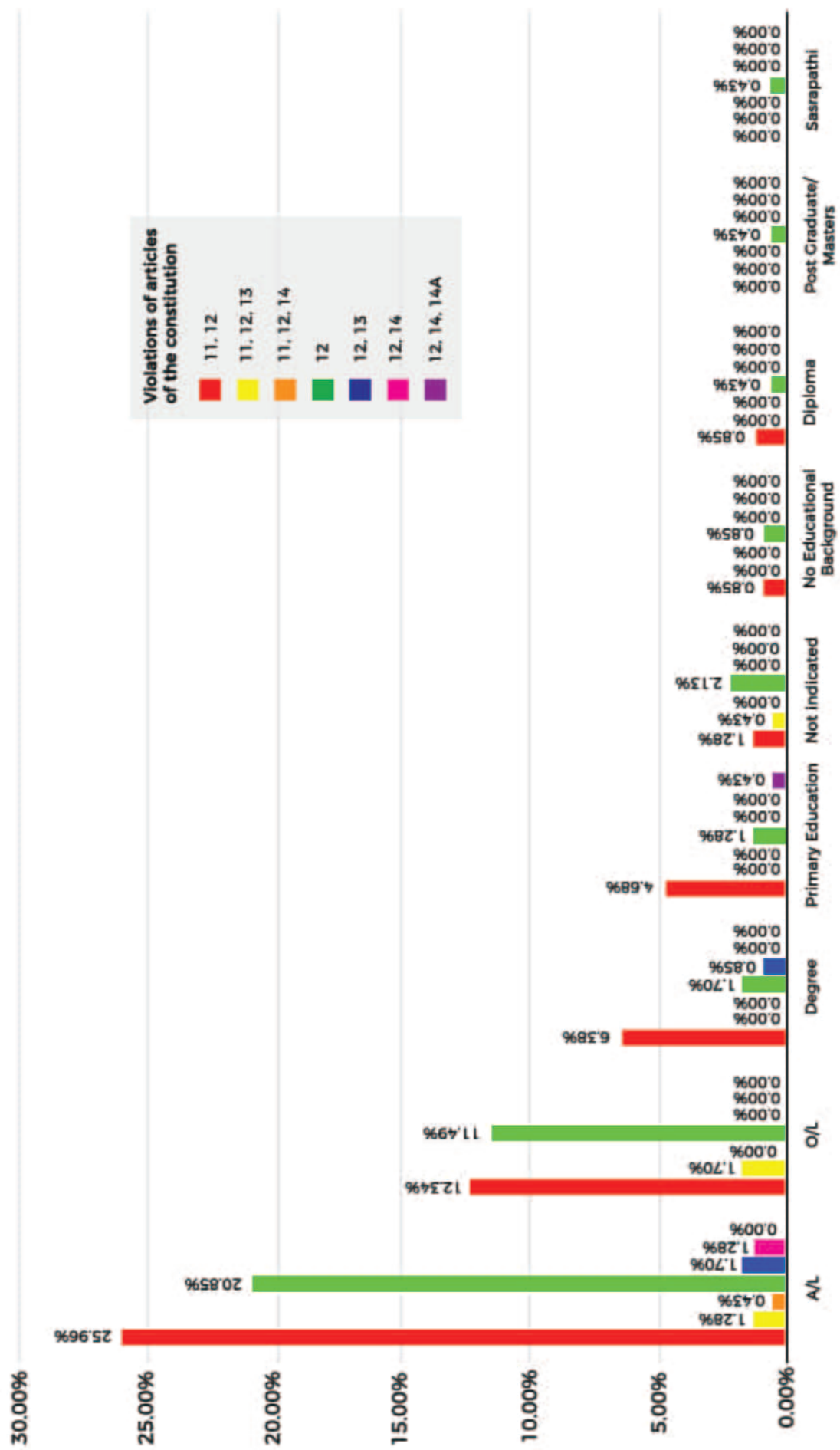
This graphical representation demonstrates that survivors with the lowest form of income are susceptible to Human rights violations, the most prevalent being Article 11 and 12 violations.

The correlation between gender of the survivors and HR violations



This graphical representation demonstrates that the most vulnerable gender groups to be Transwomen followed by male survivors (almost all who identify as gay or bisexual) and the most prevalent type of HR violation is Article 11 and 12 violations.

The correlation between education status of the survivor and HR violations



This graphical representation shows that the most prevalent violation is Article 11 and 12 and the most susceptible group is those with Ordinary Level education status.

1.3. Personal Narratives

Some survivor testimonies are as follows:

M.P. was discriminated due to her sexual orientation at the STD clinic where she was ridiculed and insulted.

"The doctor then proceeded to scold me, very harshly that why are you in need of getting tested so often, "do you have that much sex?" "Are you that depraved to have sex all the time and why are you having sexual relations with other men?" he also asked "if you are in such dire need of sex and are so depraved then why not get married?"

G.T. was unlawfully arrested, discriminated, humiliated and taken advantage of by Police Officers;

"After going through my purse they found two condoms and they announced that we must come with them now to the police station. They hit us on the head a few times as well. We then asked the officer if it is illegal to have condoms with us and they replied saying that it is none of our business and we shouldn't be wisecracking with them and giving them attitude.

.....The two officers then took us to a nearby bush and asked us to do them a sexual favour. We were forced to perform fellatio on them. The officers were in uniform this whole time, and they even lit a cigarette during the act. Because we were too scared and unfamiliar with what will happen we did as they demanded."

V.S. was harassed in the police station, humiliated and discriminated;

"The Police Officer talking to another person in remand about VS said, 'Bring a punk over there and have a good time until you get out.' He pulled me inside the powder room, trying to take off my clothes, I screamed for them to take me out, put me in another powder room, the officer who was standing in the chair near the door with his back to the powder room was not listening."

R.M. was insulted and humiliated by the Hospital staff when they went to the Hospital to visit a friend who had met with an accident;

"My friend is a trans woman. She was admitted to a ward in Jaffna Hospital due to a sudden accident. When I went to see her, one of the hospital nurses looked at me and asked, "Brother, where are you going?" I replied, "My friend has met with an accident and I have come to take care of her. To which he replied, "You cannot stay here, people like you are thieves, wrongdoers, you cannot stay here"

S.G. and their friend were taken to the police station because according to the Police Officer "කට වැඩි" ('you talk too much'). This survivor was hesitant to submit their case to the HRCSL because they were not out with their sexual orientation/gender identity.

..."But the policemen talked to me and insulted me and my friend referring to us as පොන්කයෝ (derogatory Sinhala slang referring to a homosexual person) First, we were accused of being on the beach to pay for sex, then we were called us robbers and further insulted and they arrested us."

H.G. and their friend was falsely accused of being drunk and on drugs by a bunch of Police officers in civilian clothing, beaten up, taken to the police station and thrown in remand when they suggested that their sobriety could be proven with a medical test from Asiri Medical, which was closeby:

"While we were inside the cell, they were repeatedly calling us homophobic slurs like "පොන්කයෝ", insulting our appearance, and saying that we looked like girls. One Officer who was still angry at my friend's earlier comments about getting a medical report told him repeatedly in a threatening manner "මං උමට මෙඩිකල් පොන්කන්නම්" (I will show you a medical)."

SECTION 6:

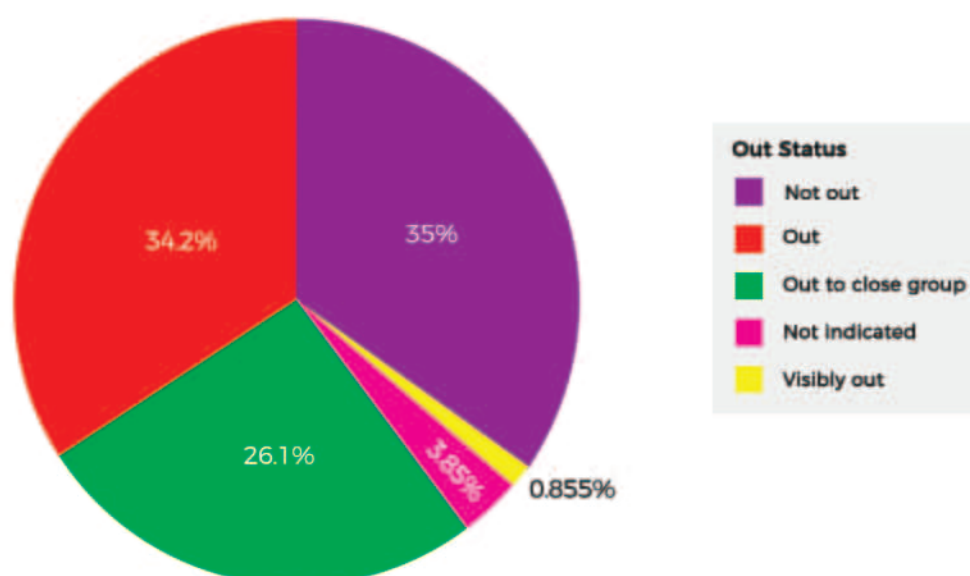
KEY FINDINGS

01. Based on the testimonies of the survivors Human (HR) violations most of them were not too keen to complain or go to the authorities due to various socio-economic reasons which included;

- Fear of being discriminated against due to their sexual orientation/gender.
- Fear of family members/employers finding out about their gender and sexual orientation in the event of pressing charges.
- Pressure to keep their stories to themselves to prevent being ridiculed by their next of kin.
- Fear of being oppressed further.
- It is a great deal of procedural inconvenience that may result in no favourable justice.

02. Majority of the cases have been submitted to the Human Rights Commission (HRCSL) and the survivors of the remaining case have not consented to such submission.

03. 35% of the survivors of HR Violations are **not out** to the public.



04. The most prevalent violations are Article 12 violations (100%) since each of the violations are Article 12 violations coupled with other violations. The next most prevalent are Article 11 violations (56%), followed by Article 13 violations (6%), Article 14 violations (2.17%) and Article 14A violations (0.50%).

05. The majority of the survivors of HR violations were found in the Gampaha district with a percentage of 25.26%. (not a conclusive deduction due to the limited number of cases from the Northern and Eastern provinces)
06. The most prevalent age group of survivors of HR violations were aged between 21-30 years old.
07. The most prevalent gender of survivors of HR violations were Transwomen (37.02%)
08. The most prevalent sexual orientation of the survivors of HR violations was heterosexual (25.53%) but all survivors identified as such were Transmen and Transwomen
09. The most prevalent race/ ethnicity amongst the survivors of HR violations was identified to be Sinhalese (72.34%) (not a conclusive deduction due to the limited number of cases from the North and East).
10. The majority of the survivors of HR violations were A/L qualified persons (51.49%)
11. The majority of the survivors of HR violations earn a low-income and fall within the income bracket 20,000-40,000 (34.89%).
12. The perpetrators of HR violations were identified to be Police (40.85%), Medical sector (26.81%), Grama Niladharis/officers in Municipal Councils(9.36%), Divisional secretariat (3.83%), Army (3.4%), State school staff (2.13%), Registra General's Department (2.13%), Railway station staff (1.28%), Vocational Training Authority (0.85%), Sri Lanka Examination Department (0.85%), CTB Bus staff (0.85%), Attorney Generals Department (0.85%), Child and Women Bureau (0.43%), Not indicated (0.43%), Millitary Police (0.43%), Grama Niladhari(0.43%), Ceylon Fishery Harbors Corporation (0.43%), Labour Department (0.43%), Provincial Council (0.43%), Municipal Council (0.43%), Navy (0.43%)

SECTION 7:

CONCLUSION

To conclude, the objective of the Data Brief was to quantify the violations faced by the LGBTQ community in Sri Lanka based on the 235 cases collected from August 2021-March 2023.

The analysis shows that some LGBTQ persons are reluctant to go to the authorities (such as the Human Rights Commission of Sri Lanka or the Police) due to existing penal laws and various social stigmas that continue to exist in society. These stigmas may include inaccurate perceptions that LGBTQ persons are psychologically unwell or that it is a 'trend' or 'lifestyle' that conflicts with Sri Lankan culture.

SECTION 8:

RECOMMENDATIONS

Reflecting on the deductions of the study and with careful consideration towards the socio-economic status of the survivors, the procedural and legal complications, social standards, and ingrained social stigmas, recommendations are made to safeguard rights and ensure the just and equitable treatment of the LGBTQ community. These recommendations are directed toward the survivors, the HRCSL, civil society organizations, public officials, and the Government:

General Recommendations

1. Legal Reform:

Same-sex relationships are criminalised in Sri Lanka, therefore the continued discrimination and harassment they are subjected to by law enforcement and state officials will continue to be justified. While there has been a progression in gender recognition with the introduction of the gender recognition certificate (of which however most public officials are unaware) with the existence of rigid laws criminalizing them LGBTQ persons will struggle to be treated equally and accepted. Therefore, only the complete repeal of these draconian laws, including section 365 and section 365A⁷ of the Sri Lankan Penal Code, 1833⁸, will ensure the safeguard of the rights of these individuals and ensure that the public authorities do not abuse their power and discriminate against the liberties of these individuals. There is currently a bill to decriminalise LGBTQ persons already in discussion in the Parliament of Sri Lanka and a positive result in this regard will be a victory towards the welfare of LGBTQ persons in Sri Lanka.

2. Encourage survivors to seek litigation :

Challenging discriminatory actions is an important part of legal reform. Discriminatory actions can be challenged in the Supreme Court in terms of the fundamental rights provided for in the constitution. Actions can also be challenged in the Court of Appeal using its writ jurisdiction. For example, EQUAL GROUND and seven others including the Executive Director of the Centre for Policy Alternatives, filed a petition in the Court of Appeal of Sri Lanka, seeking a Writ of Prohibition against the conducting of a training program for the police where malicious, erroneous and discriminatory remarks were made about the LGBTQ community.

Therefore, survivors should be encouraged to go to court with their grievances. This however requires individuals to have faith in the legal system of the country and the lack therein has led to survivors refusing to vocalize the discriminations they are faced with.

⁷Section 365A, which criminalizes 'acts of gross indecency' in public or in private, with a penalty of up to two years' imprisonment and/or a fine upon conviction, is applicable to consensual same-sex sexual acts regardless of the gender of those involved. Section 365A originally criminalised 'any act of gross indecency' between males. However, in 1995, the provision was amended to replace the term 'male person' to 'person', thereby expanding the its scope and bringing women who engage in consensual same -sex sexual conduct acts within its ambit.

⁸Violations under this section can result in up to ten years in prison and a fine. The Penal Code was enacted during colonial rule and has been subjected to several amendments since.

3. Educate LGBTIQ individuals about their rights :

LGBTQ individuals in Sri Lanka need to be educated on the various laws and constitutional provisions that they can rely on when they are treated differently due to their gender or sexual orientation. Although the deductions of the Data Brief do not indicate a substantial number of violations from places outside of the Western Province, it is important to devise mechanisms to educate individuals from all around the island on their rights and what they can do in case of a violation. While LGBTIQ persons in Colombo may have easy access to support services, members of the community in other parts of the island have had difficulties in accessing the same services. Therefore, these awareness / education programs must be conducted in Sinhala and Tamil in other parts of the country as well, where a majority of the marginalized are located. Accurate legal information should be conveyed to members of the community. It could be in the form of a document that can be handed over to them in medical clinics, awareness programs, etc. This document can contain all the laws and policies relating to LGBTQ persons in Sri Lanka simplified in all three languages.

Specific Recommendations

RECOMMENDATIONS TO THE GOVERNMENT

4. Reform within educational institutions (Schools and higher education institutions) :

2.13% of perpetrators of HR violations are teachers and lecturers of public and private educational institutions. This includes discrimination and bullying in educational institutions. Educational institutions should develop strong anti-bullying policies to safeguard LGBTQ students. Further, they need to implement sensitizing programs with students and teachers on issues regarding gender identity, sex education, sexual and reproductive health rights, and sexual orientation. This will help build a safe space for children who are struggling with their gender or sexual identity to open up about their issues and seek necessary guidance. It will further enable teachers to be more empathetic and understanding about these sensitive topics and handle the situation better.

5. Share experiences and hardships of LGBTQ persons, with public and government officials (including public medical officers) to sensitize them regarding their problems :

Based on the experiences shared by the survivors it is quite apparent that the public and government officials who are sometimes the perpetrators of these violations lack empathy and while it is vital to educate them about gender identity and sexual orientation it is equally important to realize that an officer will act on his will if he lacks empathy towards his peers. Therefore, education programs designed for public officials and law enforcement personnel should include education on human values such as non-violence and right conduct.

RECOMMENDATIONS TO THE HRCSL

6. Maintain a log of the key violations, key perpetrators, and the nature of survivors in reference to LGBTQ individuals :

A statistical record of the key violations, the key perpetrators and the nature of survivors amongst the cases submitted to the HRCSL will assist civil society organisations to reach out to the grassroots and provide support to address the striking issues amongst LGBTQ individuals. This will also help civil societies both local and international to get a broad idea of the socio-economic status of the community in Sri Lanka. This therefore will become a tool in the reform and development of community-based activities in the future.

RECOMMENDATIONS TO THE POLICE AND MILITARY

7. Include sexuality and gender training into training sessions for police officers and members of the armed forces :

40.85% of perpetrators of HR violations are committed by the Police, while 3.40% are committed by the Army and 0.43% are committed by the Navy. Therefore, simply having laws and policies in place is not adequate, it is important to uphold them. To do this, the law enforcement authorities should be made aware of these laws and policy decisions and the intricacies of gender and sexual identity. Many survivors revealed that the police officers were unaware of the gender identification certificate, demonstrating that there is a flaw in the system. An interview with a police officer from the 'Hulftsdorp' Police Station regarding the treatment of LGBTQ individuals revealed that Police officers are not provided sexuality and gender awareness training during departmentally mandated training sessions. Public officials who are responsible to enforce the law to treat all citizens equally should be provided proper education on LGBTQ individuals and the discrimination and challenges they face in our society.

8. Share experiences and hardships of LGBTQ persons, with police officers and Members of the Military to sensitize them regarding their problems :

Based on the experiences shared by the survivors it is quite apparent that the police and members of the military specifically the Army and the Navy lack empathy and have committed violations against the survivors due to certain prejudices they hold regarding members of the LGBTQ community. While it is vital to educate them about gender identity and sexual orientation it is equally important to realize that an officer will act on his will if he lacks empathy towards his peers. Therefore, education programs designed for Police officers and the Military should include education on human values such as non-violence and right conduct.

RECOMMENDATIONS TO CIVIL SOCIETY ORGANISATIONS

9. Create social media awareness on LGBTQ helplines :

Various civil society organizations such as Equal Ground have helplines set up to support LGBTQ individuals in times of need and the information about these helplines has to be publicized to those in all parts of the island and the best way to put this in motion would be to use social media platforms abundantly used by young generations including LGBTQ persons such as 'Facebook', 'Tiktok' and 'Instagram'.

10. Create an LGBTQ help app :

This is a suggestion directed toward civil societies. It is important to have a helpline and people they can reach out to for support and guidance in times of need. Civil society Organizations that provide legal assistance to LGBTQ individuals can be made popular via social media. The app can be developed in such a way that it contains contact information for legal, economic, and psychological support for individuals in need and enable survivors to enter an issue and receive immediate guidance. Such mechanisms of easy assistance would ensure immediate assistance to those in need, at all times, regardless of where the violation or discrimination has taken place.

11. Create a support network between parents, families, and friends of LGBTQ individuals:

The key findings demonstrate that most survivors refused to go to the authorities about the violations committed against them due to the fear of shaming their families. The various social stigmas against these individuals need to be systematically reformed to achieve justice for these individuals. While this is not a process that can be put into place overnight, it is however possible to help families with LGBTQ persons understand and be desensitized. It can be proposed to create a network where family members of LGBTQ persons can reach out to family members of other LGBTQ persons who have already gone through the emotional and social issues of their family members and help them form a friendship, for advice and share each other's experiences, which will help them understand what their family members are going through and take a sympathetic approach.

RECOMMENDATIONS TO PRIVATE SECTOR

12. Educate the workforce :

The survivor testimonies demonstrated that most LGBTQ individuals have been subjected to discrimination and subject to violations committed against them at their workplaces. Further, some survivors have also been passed on for job opportunities simply due to their gender or sexual orientation. Thus, strategically planned sensitization programs for both the private and public sectors would be imperative. These programs can include an open discussion of gender and sexuality issues and the challenges that come with them. This will ensure the protection of the rights of LGBTQ individuals and enable them to have better access to employment opportunities both within and outside public / private organizations.

RECOMMENDATIONS TO SURVIVORS

13. Approach the Authorities in reference to HR violations committed against the survivor and encourage other LGBTQ individuals to do the same :

While there are certain legal mechanisms available to support survivors against discrimination committed against them, it is important to seek these legal reliefs for their benefit. It is important to have a record of such incidents to build advocacy for policy changes and legal reform. Therefore, all survivors must recognise that their story will help other members of their community to avoid injustice.

14. Inform the police and public officers and other perpetrators that their actions are violations of the survivor's sovereignty and therefore the survivor has a right to take legal action against them :

It is important to make public officers aware that the survivor is aware of their Human Rights and that they will not stand for discriminations against them based on their sexual orientation and / or gender identity. This might urge perpetrators to think twice when committing violations against other members of the community.



BRIDGE to Equality - BRIDGE project which aims to improve the protection of human rights for LGBTQ people in Sri Lanka through the use of international human rights law to enable justice actors (judges, lawyers and other legal professionals), activists and human rights defenders to improve justice outcomes for the LGBTQ community; with a focus on overcoming challenges imposed by the current legal framework, as well as the overall promotion and protection of human rights of LGBTI people.

BRIDGE is jointly implemented by DAST, National Transgender Network and Young Out Here in partnership with the International Commission of Jurists since 2021.



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GRAVE CRIME ABSTRACT FOR THE YEAR 2023 FOR WHOLE ISLAND FROM 01.01.2023 TO 31.12.2023

ANNEX 23

Crimes		Cases Recorded	Mistake of Law fact	Complaint Designed	Total True Cases	Plaints Filed	Accused Unknown	Otherwise Disposed of	Ending in Conviction	Ending in Discharge	Total Disposed	Investigation Pending	Pending in MC	Pending with A.G	Pending in DC/HC	Total pending	Total Disposed
1	Abduction (Sec 354-360)	573	1	0	572	171	15	5	5	0	25	381	161	5	0	547	26
2	Kidnapping (Sec 355-360)	205	2	2	201	68	5	2	4	0	11	128	62	0	0	190	15
3	Arson (Sec 418,419,421)	483	0	0	483	138	80	4	15	2	101	262	117	3	0	382	101
4	Mischief over Rs. 50000/= (Sec 410,417,420,426)	321	0	0	321	101	21	4	9	1	35	198	87	1	0	286	35
5	House Breaking (Sec440,446)	12138	9	3	12126	2652	3525	19	350	15	3909	5885	2268	64	0	8217	3921
6	Grievous Hurt (Sec 316,317)	1457	0	0	1457	584	21	94	32	4	151	851	453	1	1	1306	151
7	Voluntarily Causing Hurt by Dangerous Weapons (Sec 315)	2275	0	0	2275	764	39	80	30	8	157	1465	644	7	2	2118	157
8	Murder (Sec296,297)	573	1	0	572	123	21	1	1	0	23	416	112	12	9	549	24
9	Attempt to murder/Abetment to commit suicide(Sce 300,301,299)	165	0	0	165	20	6	2	0	0	8	136	18	3	0	157	8
10	Rape of Women over 16 years of age (364(1),364(2),364(3) 364(a)	291	0	2	289	45	8	1	0	0	9	217	44	19	0	280	11
11.a	With the consent of the victim. Statutory Rape (Women under 16 years) (Sec 364(1),364(2),364(3) 364(a)	1259	0	0	1259	109	8	0	0	0	8	993	109	149	0	1251	8
11.b	Without the consent of the victim. Statutory Rape. (Women under 16 years)	375	0	0	375	40	5	1	1	0	7	286	38	44	0	368	7
12	Unlawful Assembly/ Riot (Sec140-149)	18	0	0	18	7	1	0	0	0	1	10	7	0	0	17	1
13	Robbery (p.c. Sec 380,385)	3150	2	8	3140	799	651	41	79	4	775	1677	675	13	0	2365	785
14	Sec365,365a,365b)	675	0	1	674	59	9	4	0	1	14	525	54	81	0	660	15
15	Extortions (p.c.Sec318,373 -378)	145	0	1	144	52	9	5	5	2	21	83	40	0	0	123	22
16	.Cheating, Misappropriation, Criminal Breach of Trust in respect of over Rs. 500,000/- (P.c	3875	3	1	3871	750	565	74	30	9	678	2526	637	30	0	3193	682
17.a	Praedial Products Theft Over Rs. 5,0000/- (P.c	78	1	0	77	20	14	0	3	0	17	42	17	1	0	60	18
17.b	Cattle Theft Over Rs. 5,0000/-	1682	14	2	1666	417	258	5	23	3	289	989	386	2	0	1377	305
17.c	Properties Theft Over Rs. 5,0000/-	6968	29	2	6937	1971	1648	14	297	7	1966	3307	1653	11	0	4971	1997
18	Counterfeiting Currencies and Possession (P .c	82	0	0	82	4	4	0	0	0	4	73	4	1	0	78	4
19	Offences against the state(P.c Sec114-126)	1	0	0	1	0	0	0	0	0	0	1	0	0	0	1	0
20	Cruelty to children ((P.c Sec 308,308a)	97	0	0	97	19	1	0	1	0	2	71	18	6	0	95	2
21	Sexual Exploitation of Children (P.c Sec360 b)	24	0	0	24	5	0	0	0	0	0	19	5	0	0	24	0
22	Procuration and Trafficking of persons (P.c Sec360(a),©	10	0	0	10	2	0	1	0	0	1	8	1	0	0	9	1
23	Offences under the offensive weapons Act No.18of 1966 (	143	0	0	143	33	4	0	0	0	4	105	33	1	0	139	4
24	Possession of automatic or repeater shot guns Act No.22 of 1966 Section 13 is here by Amended by the Authority	33	0	0	33	7	0	0	0	0	0	26	7	0	0	33	0
25	The Manufacture of any quantity of Heroin, Cocaine, Morphine, Trafficking, Import, Export or possession of dangerous Drugs of and above 5gms of Heroin, 2gms or more of Cocaine, 3gms or more of Morphine, 500gms or more of Opium, 5kgs or more of cannabis and 1kgs of Hashish. 10gsm or more of Methampitamin (Ice)(The AmendmentAct No13 of poisons,opium andDangerous Drugs Ordinance under Authority 218 of 1984 is to be read with	7685	0	0	7685	2518	14	4	331	26	375	5111	2132	42	25	7310	375
26	Obstructions to Police Officers (p.c Sec183,344)	188	0	0	188	34	2	0	2	0	4	147	32	5	0	184	4
	Total	44969	62	22	44885	11512	6934	361	1218	82	8595	25938	9814	501	37	36290	8679