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Situation of LGBTI+ persons in Sri Lanka

Joint NGO Submission to the Universal Periodic Review by Coalition of Civil Society Organizations with Équité Sri Lanka

Joint Submission Partners

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1. Introduction

1.1. This submission is made by the Coalition of Civil Society Organizations with Équité Sri Lanka covering the situation of LGBTI+ community within the country. Within the contemporary political context of the country, the Rights of the people have been challenged and violated immensely and the conditions at present does not facilitate safe living conditions within the country. Hence as a marginalized community, the Rights of the LGBTI+ community are being challenged in many layers within the socio-economic and political conditions of the LGBTI+ community.

2. Methodology

2.1. In preparation for this report, Équité Sri Lanka conducted district-level consultations with a total of 125 LGBTI+ persons around the country during March- June 2022. The participants for consultations were mostly selected through the existing network of the organizations making this submission. These consultations discussed rights violations faced by LGBTI+ individuals after the year 2018, focusing on the period of the current UPR cycle. These consultations covered five thematic areas

- (1) domestic violence,
- (2) workers' rights,
- (3) Law and justice and access to legal services,
- (4) Access to physical, mental, and sexual health-related services, and
- (5) Freedom of expression, assembly and Association, other rights and concerns of LGBTI+ persons. In addition, Bridge for Equality and Rajarata Gemi Pahana have contributed with cases that have been collected on an organizational level. Also, various media reports, documented case studies, and published reports are used in the preparation of this report. A list of case studies used in the preparation of this report is attached as an annexure.

3. International Commitments and previous reviews

3.1. In the UPR review meeting held in November 2017, Sri Lanka noted that the general right to equality and non-discrimination, reflected in the constitution, implicitly included non-discrimination on the grounds of sexual orientation, and also stated that they intend to provide an explicit guarantee of non-discrimination on the grounds of sexual orientation through the new constitutional reform process which was then ongoing. (A/HRC/37/17, para 82). The implicit guarantee of non-discrimination based on sexual orientation, and gender identity by the constitution has been made at multiple international forums since 2014 (for example see, section 'Non-Discrimination' under ICCPR concluding observations in 2014).¹ However, we notice a continuing pattern of violations against LGBTI+ individuals which the state has not taken any concrete actions to address over the years.

3.2. In the last cycle of UPR, (1) prevent and combat all kinds of discrimination, in particular those on the grounds of ethnicity and sexual orientation (Italy), and (2) Ensure respect for the rights and fundamental freedoms of lesbian, gay, bisexual, transgender and intersex persons, by investigating and sanctioning acts of discrimination and violence against such persons (Argentina) were the only two recommendations concerning LGBTI+

¹<http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPrICAqhKb7yhsrw%2B3KEAFqUx9WCYsjqQZ0KRa6xm48AXwgE4ZiJutO%2F%2FqDB2usGzDH8jCdGApre8%2BLTMQ5BrT3AtTU7ib4rIc8vovg2n4JopHu24uYZPrQ8i>

community that were supported by the Sri Lankan government. (A/HRC/37/17 - Para. 116)

- 3.3. All the recommendations on decriminalization of same-sex consensual relationships or related penal code amendments were noted by the Sri Lankan government. (Honduras, Netherlands, Brazil, Canada, Sweden, Uruguay, Australia A/HRC/37/17 - Para. 117)
- 3.4. The recommendation made by Honduras which was noted by the Sri Lanka government also contained a proposal to adopt all necessary measures to combat discrimination and violence based on sexual orientation or gender identity, and guarantee access to lesbian, gay, bisexual, transgender, and intersex people to health services. (A/HRC/37/17 - Para. 117)
- 3.5. In March 2017, the Concluding observations on the eighth periodic report of Sri Lanka of CEDAW also refers to the state party's proposal of the subcommittee on fundamental rights of the Constitutional Assembly to specifically include sexual orientation and gender identity as a ground for non-discrimination in the new constitution. (CEDAW/C/LKA/CO/8, para 10).
- 3.6. Much promised a new constitution that was expected to include an explicit guarantee of non-discrimination on the grounds of sexual orientation and gender identity (A/HRC/WG.6/28/LKA/1, para 14, para 33, para 137) failed to become a reality as the constitutional reform process was not continued by the current government of Sri Lanka appointed in 2020.

4. Legal and policy context

- 4.1. In Sri Lanka, same-sex relationships are criminalized under colonial origin sodomy laws, especially under the Penal code introduced by the British in 1883. The penal code provisions section 365, 365A, and vagrancy ordinance of 1841 criminalizes consenting same-sex sexual relationships between adults. Penal code section 399: cheating by impersonation has been often used to arbitrarily arrest and detain transgender persons and crossdressers. Special laws relating to the military are also used to prosecute LGBTI+ persons serving in the military.
- 4.2. Limited scope of fundamental rights law within the Sri Lankan constitution discriminatively impacts LGBTI+ persons. Article 16 in the Sri Lankan constitution² does not permit filing fundamental rights petitions against the existing laws, even at a violation of fundamental rights or other constitutional provisions. Also, fundamental rights petitions could be only filed against infringement of rights by administrative and executive actions, preventing filing fundamental rights petitions against private parties.
- 4.3. In October 2020, the Ministry of Youth and Sports led committee appointed a committee to look into proposals on Penal Code reforms in Sri Lanka. The proposed penal code reforms are expected to cover a range of laws concerning sexual offenses³, including laws that impact LGBTI+ individuals. The proposed amendments suggested decriminalizing same-sex relationships in private spaces while permitting the criminalization of sexual activities in public spaces. Such amendments would not address the majority of the

² Article 16 (1). All existing written law and unwritten law shall be valid and operative notwithstanding any inconsistency with the preceding provisions of this (Fundamental Rights) Chapter.

³ <https://www.dailymirror.lk/news-features/ministry-of-youth-and-sports-led-committee-meets-to-finalise-penal-code-reforms/131-205165>

current prosecutions under alleged sexual activities in public spaces, would discriminatively impact LGBTI+ individuals in cruising areas, and unable to afford private hotels or rooms.

4.4. In December 2021, the Colombo Chief magistrate dismissed a case filed against three gay men who have been arrested in June 2020, when Narahenpita (Colombo) Police raided a private hotel. They have been accused of alleged same-sex conduct despite having engaged in any sexual activity at the time of the arrest. They have been subjected to Police torture and to forced anal examinations by Judicial Medical Officers (JMOs) after being arrested. The dismissal of Case No. 34131/3/20, was based on a letter by the Attorney General informing the Police that the Attorney General will not pursue the case.⁴

5. Arbitrary Arrests and detention and inhuman, degrading treatment by the Police

5.1. A number of incidents of arbitrary arrests and detention were reported by community members at the community consultations conducted by Équité Sri Lanka and a few were reported in the media. However, in most of the cases, no formal complaints have been made regarding these incidents due to fear of reprisals.

5.1.1. In June 2022, an Indian and a Sri Lankan lesbian couple who have been planning to move to India were arrested, after the Sri Lankan woman's family members complained to the Police regarding their same-sex relationship. They were produced before the Akkaraipattu Magistrate who ordered the two women to be examined by a psychiatrist and a report of psychiatric evaluation be prepared on them.⁵

5.1.2. In the Gampaha district consultation, five transgender crossdressers who work as sex workers stated that they have been arrested by the Police on multiple occasions and detained under false accusations, and subjected to various mistreatments. They mentioned that there were instances when they were forced to have sex with the Police and their money and mobile phones were seized by the Police. They further alleged that they were forced to be naked at the Police station in front of everyone, to check whether they are male or female and often subjected to inhuman, degrading treatment.

5.1.3. Many similar incidents were reported within the community consultations carried out by Équité Sri Lanka.^{6 7 8}

5.2. Though similar arrests and maltreatment by the Police are quite common, LGBTI+ community members often do not make complaints to the legal bodies regarding the violations they face, due to fears that they would face reprisals. The criminalization of homosexuality and homophobic attitudes of the law enforcement officers are among the

⁴ [HTTPS://WWW.DAILYMIRROR.LK/BREAKING_NEWS/COLOMBO-CHIEF-MAGISTRATE-DISMISSES-CASE-AGAINST-THREE-GAY-MEN-FOR-HOMOSEXUALITY/108-226559](https://www.dailymirror.lk/breaking_news/colombo-chief-magistrate-dismisses-case-against-three-gay-men-for-homosexuality/108-226559)

⁵ [HTTPS://WWW.TIMESNOWNEWS.COM/MIRROR-NOW/IN-FOCUS/SRI-LANKA-INDO-LANKAN-LESBIAN-LOVERS-ARRESTED-FOR-HAVING-ABNORMAL-RELATIONSHIP-THREATEN-TO-KILL-SELF-IF-NOT-ALLOWED-TO-GO-INDIA-ARTICLE-92481995](https://www.timesnownews.com/mirror-now/in-focus/sri-lanka-indo-lankan-lesbian-lovers-arrested-for-having-abnormal-relationship-threaten-to-kill-self-if-not-allowed-to-go-india-article-92481995)

⁶ Case study Documented by Equite Sri Lanka. Trincomalee District

⁷ Case study Documented by Bridge for Equality. Gampaha District.

⁸ Case study Documented by Bridge for Equality. Colombo District.

major reasons behind such a lack of interest in making complaints.

5.3. Also we were informed that complaints made by the LGBTI+ persons regarding the violations they faced have not been accepted by the Police with regard to other incidents.

5.3.1. In the consultation held in Gampaha district, some transgender sex workers alleged the Police of planting evidence by putting drugs and explained that they are afraid of taking legal action due to such harassment they have to face.

5.4. Long court delays and inability to afford the legal costs are another reason that most underprivileged groups such as sex workers do not seek justice against the daily violations of rights they face from law enforcement. As also noted above, non-recognition of gender diversity in prison and remand settings also lead to further violations of LGBTI+ persons who are getting arrested.

5.5. Subjecting LGBTI+ persons to forced medical tests after being arrested based on their SOGIE violates their fundamental rights and dignity.

5.5.1. In October 2020, Equal Ground and Human Rights Watch published a report revealing that Sri Lankan authorities have subjected at least seven people to forced physical examinations since 2017 in an attempt to provide proof of homosexual conduct. These exams included forced anal examinations and a forced vaginal examination⁹. As a response, the Justice Minister issued a statement saying that it is a “disturbing revelation” that must be immediately looked into and he also said that he “strongly believes that no person should be discriminated against or made to suffer any form of abuse, indignity or injustice on the basis of their gender, sexual preference or identity.”¹⁰

5.5.2. In other cases, LGBTI+ individuals have been forced to undergo psychiatric evaluations due to their SOGIE.

6. Domestic violence and homelessness

6.1. While most of the laws do not recognize same-sex relationships, the Prevention of Domestic Violence Act No 34 of 2005 recognizes ‘co-habiting partners’ using gender-neutral language. However, we could not find any instances where same-sex partners have taken legal actions using the Prevention of Domestic Violence Act despite many experiences of domestic violence from their family members.

6.2. Within every consultation, the participants revealed that the LGBTI+ community members are often subjected to domestic violence by their parents and other family members due to their SOGIE. In addition to violence and abuse, they have also been prevented from engaging in community work and pursuing their career and educational opportunities.

6.2.1. In the consultation held in Gampaha, five participants detailed specific incidents of physical, mental, and verbal harassment, discrimination, and stigma that they experienced from family members. One participant has been forced to leave the parental home by his parents due to his SOGIE, while four others had left their home

⁹ <https://www.hrw.org/news/2020/10/20/sri-lanka-forced-anal-exams-homosexuality-prosecutions>

¹⁰ https://www.dailymirror.lk/breaking_news/Forced-anal-probe-on-LGBT-people-Justice-Minister-disturbed/108-198954

due to harassment they experienced from family members. Two of them have been physically assaulted by their siblings. They have been also told that they would be disinherited from any parental property, asked to leave their homes, and even threatened not to come to the area where family members are living. They have not made any complaints to the Police about the violence they had faced, due to two reasons mainly (1) their unawareness of the existing legal redress, and (2) fear of reprisals from law enforcement authorities.

- 6.2.2. In May 2022, a 22 years old lesbian woman was forcefully detained in a room in a house by family members after she came out to the family. She had been forced to undergo conversion therapies, and not allowed to leave the house or attend her job. Subsequently, she made a complaint at the Welisara Mahabage Police station in Gampaha district through a friend. However, Police have encouraged the family members to detain her further and make a complaint at the Police station claiming homosexuality is a mental illness, with the expectation of filing a legal case against her. However, she has been released from detention with the intervention of HRCSL.¹¹
- 6.2.3. Another young gay man in Kegalle, experienced various insults, and humiliation from relatives after his coming out to the family. As a result, he has distanced himself from his family and has left home. Another young gay man in Kegalle after his family found out about his affair with another man was subjected to psychological, emotional, and verbal abuse and was forced to leave the country.
- 6.2.4. In another case a transwoman in Kegalle has been prevented from attending counseling sessions before applying to the GRC. She has been even prevented from participating in any LGBTI+ community-related work.
- 6.2.5. In October 2019, the family members of a transwoman in Batticaloa prevented her from attending beautician training, when she had continued the course for one month, destroyed her make-up equipment, and was subjected to psychological and emotional abuse for around one year.

7. Stigma and discrimination in the health settings

- 7.1. In July 2021, Ama Dissanayake a counselor who conducted training for Police officers in Kandy made a controversial homophobic statement¹² equating homosexuality with same-sex pedophilia. The video of the training session was published on her YouTube channel¹³ and shared on other social media platforms. She also promotes and conducts conversion therapy for LGBTI+ persons. In response to this incident, LGBTI+ activists made complaints to the Human Rights Commission of Sri Lanka (HRCSL)¹⁴ and also filed a Writ Petition at the Court of Appeal¹⁵. In September, HRCSL issued an order to

¹¹ <https://sinhala.lankanewsweb.net/05/09/16267/>

¹² <https://www.themorning.lk/lgbt-discrimination-by-sri-lanka-police-violation-of-their-own-laws-in-training/>

¹³ <https://youtu.be/SLJVEsO6syo?t=3619>

¹⁴ <https://www.news19.lk/homophobic-police-training-in-kandy-hrcsl-gives-igp-14-days-to-respond/>

¹⁵ <https://www.ft.lk/news/Court-of-Appeal-allows-Equal-Ground-others-to-serve-notice-to-Police-Ama-Dissanayake-over-homophobic-training/56-726059>

the Inspector General of Police (IGP) to respond within 14 days¹⁶. However, the outcome of the HRCSL investigation is yet not publicized. In November, a group of 10 LGBTI+ and civil society activists filed a writ petition at the Court of Appeal requesting an order prohibiting Police from conducting training, lectures, seminars, etc. that marginalize and violate the fundamental rights of LGBTI+ people in Sri Lanka¹⁷ for allegedly violating the rights of and discriminating against the LGBTI+ community in Sri Lanka.¹⁸

7.2. In 2016, the Ministry of Health (MoH) issued a circular on issuing the Gender recognition certificate (GRC) to transgender persons undergoing or completing the gender transition process, formalizing the process of changing legal documents from assigned sex to their gender identity¹⁹. As the process only recognizes the binary identities of man, and woman, persons of non-binary identities have been excluded from it. Despite the gender recognition certificate has reduced a lot of difficulties faced by the transgender community in changing their legal documents according to their gender identity, still, they face discrimination, and stigma in the hands of state officials and bureaucracy, who are not often aware of the gender recognition certificate and its process.

7.3. GRC process was largely an outcome of the intervention of the thematic sub-committee on LGBTI+ persons at the HRCSL²⁰. It was unfortunate that the sub-committee has currently discontinued its operations.^{21 22 23}

7.4. In the community consultations, LGBTI+ community members provided a number of instances in which they have encountered violations of their rights including breach of confidentiality, verbal and psychological abuse by medical staff, not recognizing one's gender identity when admitting to the wards, and other forms of discrimination, harassment, and stigma at medical settings, while accessing health services. Such discrimination and abuse in health settings may limit, exclude or prevent them from accessing health services, which could result in discrimination or discourage them from accessing health services.

7.5. There were incidents in which medical doctors have influenced parents of transgender persons not to support their gender transition process. Such advice coming from medical professionals has turned supportive families into more abusive environments.

7.5.1. When a transgender woman in Batticaloa has been to Batticaloa Government hospital to receive her hormone therapy in November 2021, the medical doctor asked her to accompany her parents the next day. When she visited the hospital the next day with her parents, the medical doctor had advised them that she was having a mental illness, and had asked not to allow her to act according to her own wishes. As a consequence, the previously much supportive family has stopped supporting her and started harassing her.

¹⁶ <https://www.news19.lk/homophobic-police-training-in-kandy-hrcsl-gives-igp-14-days-to-respond/>

¹⁷ https://www.dailymirror.lk/print/front_page/Civil-society-activists-seeks-Courts-intervention-against-Alleged-discrimination-of-LGBTIQ-community-by-police/238-224749

¹⁸ <https://www.equal-ground.org/breaking-news-court-of-appeal-grants-leave-to-proceed-with-equal-grounds-writ-petition-against-police-ama-dissanayake-over-homophobia-and-dis/>

¹⁹ <http://www.health.gov.lk/CMS/cmsmoh1/viewcircular.php?cno=01-34/2016&med=english>

²⁰ https://www.hrcsl.lk/thematic_sub_com/rights-of-lgbtiq-persons/

²¹ <https://www.hrcsl.lk/about/members-of-the-commission/>

²² <https://www.hrcsl.lk/new-chairperson-and-commissioners-to-the-human-rights-commission-of-sri-lanka/>

²³ [HTTPS://SRILANKABRIEF.ORG/SRI-LANKA-HUMAN-RIGHTS-COMMISSION-DOWNGRADED-BY-UN-BODY-THE-GLOBAL-ALLIANCE-OF-NATIONAL-HUMAN-RIGHTS-INSTITUTIONS/](https://srilankabrief.org/sri-lanka-human-rights-commission-downgraded-by-un-body-the-global-alliance-of-national-human-rights-institutions/)

- 7.5.2. A 27-year trans woman also from Batticaloa has experienced another similar incident at the Jaffna teaching hospital. On 20th March 2020, the consultant endocrinologist scolded her father for giving permission to undergo the gender transitioning process.
- 7.6. There were also other incidents in which doctors and medical staff verbally abused and discriminated against LGBTI+ persons.
- 7.6.1. A trans woman from Battialoa said that on 27th January 2020, a venereologist at the sexual health clinic at a government hospital had verbally abused her saying “you faggot you will get HIV if you continue to be a homosexual.”
- 7.6.2. In another incident at a government hospital in Colombo, a head nurse had not allowed any visitors to visit a transgender person who had undergone a gender transition surgery, as she thought the surgery was unnecessary. She has also denounced and humiliated the transgender person in front of other medical staff for doing an ‘unnecessary surgery’.
- 7.6.3. In another incident, a consultant psychiatrist allegedly accused a transgender person for being ‘mentally sick, a fraud, a criminal’ when they had gone there to get documents relating to GRC. They have also been asked unnecessary personal questions that do not relate to her transition processes such as her bloodline and her character.
- 7.7. The participants of the consultation also made allegations of breaching their confidentiality, by revealing their identity and medical information to external parties.
- 7.7.1. In one instance, a staff member of Chilaw Sexually Transmitted Infections (STI) Clinic shared identifying details of Males who have sex with other males (MSM) with external parties.
- 7.7.2. In another incident, a staff member of Rajarata Gemi Pahana - an LGBTI+ rights CSO in Anuradhapura which provides community outreach services on sexual health faced a breach of confidentiality, when a medical doctor informed the hospital staff, that the patient had visited STI clinic on the previous day on 5th February 2021 hinting that medical precautions should be taken as he could be having an STI, even though his visit was actually relating to some office work.
- 7.8. Non-recognition of gender identity different from assigned sex was another issue experienced by transgender persons.
- 7.8.1. A trans woman aged 26 years in Trincomalee was forced to admit to the male ward when she received resident treatment at the Trincomalee government hospital from 20th to 25th November 2021. Her request to be admitted to the female ward has been ignored by the medical doctor. She had also faced sexual harassment in the hospital bathroom when an unknown man sexually harassed her by hugging her from behind. There has been nobody to help her or to listen to her when had shouted aloud and came running outside. As the ward was overcrowded she was forced to share her bed with another male which she found much uncomfortable and violated her privacy and human dignity.

8. Discrimination and harassment at educational institutions

- 8.1. Young adults who participated in the consultations mentioned of few incidents of physical, emotional, and psychological abuse they faced at their schools after their SOGIE or love affairs with same-sex persons were learned by the school teachers or administration. Since it is a taboo subject to discuss the sexuality of school-age children, most of the violations they face might not be reported to LGBTI+ organizations.
- 8.1.1. In 2020, a young gay man, a student studying Advanced Level Examination in 2022 at the St. Mary's college in Kegalle has been subjected to disciplinary inquiry, verbal harassment, emotional abuse, and threats demanding to quit the school after he came out during the school age and published several write-ups about the LGBTI+ issues in Social media. Since education has now shifted into the online space now, this issue remains dragging on for more than two years without a settlement.
- 8.1.2. Three transgender persons in Kegalle currently aged 23-26 years, told that they had been verbally harassed while schooling specifically due to their appearances. Two of them had been told by the teachers "You won't get the lower one (sexual organ), by behaving like this" with a humiliating tone. They have been labeled as bad students and teachers have not allowed them to associate with any other students.

9. Discrimination by other government officials

9.1. Discrimination and violence from the Police:

- 9.1.1. There were multiple incidents in which Police officers refused to accept complaints made by transgender persons regarding the violations and abuses they have faced from others. Also, they have faced verbal abuse from Police officers.
- 9.1.1.1. In one incident, a Police officer at the Police Station in Karaitivu, Ampara district, belonging to Eastern Province, Police had first refused to accept a complaint regarding a physical assault faced by a transgender person, on the basis that she should provide the residential addresses of the alleged perpetrators. When the victim managed to find the residential addresses of the alleged perpetrators, the Police asked to reach an amicable settlement and asked her to forgive them.
- 9.1.1.2. On 4th October 2021, a transgender person in Galle has been scolded by a Police officer's asking her not to bring "faggot cases", he has advised her just to change the way that she dresses, and to behave like a man. On 22nd March, a Police officer who had visited to settle a dispute between a neighbor and a transwoman in Gamapha, has verbally abused the transgender woman focusing on her attire and outer appearance, humiliated her and name called her abusive terms.

9.2. Discrimination from other government officials

- 9.2.1. There is a number of incidents that transgender persons applying for a Gender Recognition Certificate (GRC) have been subjected to various delays as the relevant officers are unaware of the GRC process and also due to discriminatory attitudes and ignorance of the state officials.
- 9.2.1.1. In January 2021, when a transgender woman has been to meet the Grama Niladari (the village officer) to apply for the GRC, the officer refused to provide a letter confirming her gender identity that is different from the assigned sex. When she had shown the medical reports and other supporting documents, he still had refused

the request claiming that the Divisional Secretary had not advised him on such a procedure.

10. Discrimination at job interviews and workplaces

10.1. Discrimination at job interviews:

10.1.1. Discrimination at job interviews is one of the common problems faced by many LGBTI+ persons. Transgender persons whose gender expression is different from the assigned sex have been more vulnerable to such experiences.

10.1.1.1.1. A young gay man in Kegalle with a feminine gender expression had been asked questions about why he walks and talks in such a way by the interviewer. He believes that he was not selected for the job opportunity because of his gender expression.

10.1.1.1.2. A similar incident was reported in Puttalam district, where a gay man with a feminine gender expression has been harassed by the job interviewers questioning his voice, and the manner he walks and behaves. He also said that he was refused the job opportunity because of his gender expression.

10.1.1.1.3. In another case, another male-to-female transgender person in Gampaha district has been humiliated by the job interviewers when she went to a job interview at a coconut fertilizer company. She has been asked whether she could do the things that men could do.

10.2. Toilet discrimination: Many transgender persons experience face difficulties in using toilets in public spaces and workplaces as they are generally categorized as either male or female. Many transgender persons have faced issues when selecting toilets according to their gender identity.

10.3. Other harassments at workplaces: LGBTI+ persons have been subjected to verbal, emotional, and other forms of abuse and discrimination, breach of privacy, and loss of job opportunities due to SOGIE at the workplace.

10.3.1. A gay man with feminine gender expression working at a Jewellery shop in Puttalam gets regularly humiliated and is subjected to physical, verbal, and mental abuse because of his gender expression. However, he continues the job, as he is unable to find another job due to the current economic crisis in the country.

10.3.2. In another case in Anuradhapura in Central Province, a work colleague of a young gay man whose mobile phone was accessed, released a recording of a video phone call on social media that the latter had made with his partner. After the video was seen by other colleagues in his workplace and relatives, he has been subjected to humiliation, verbal harassment, and emotional abuse. Based on complaints made by them to the management of the workplace, he has been sacked from his job,

considering he has been a shame or an insult to the name of the workplace.

10.3.3. In Trincomalee of the Eastern Province, a 24-year-old (FTM) transgender man who had published facebook posts saying that they would like to help fellow LGBTI+ members has been subjected to verbal and emotional abuse by his workplace colleagues.

11. Political homophobia

11.1. Homophobic and transphobic statements made by politicians that were quite rampant in the past, have now seemingly reduced in the context of Sri Lanka's economic crisis in 2022. Homophobic statements made by former President Sirisena against PM Wickramasinghe and bragging about the removal of LGBTI+ demands from the National Human Rights action plan became quite well known. In the context of Sri Lanka's General election held in the year 2020, then election candidate Wijedasa Rajapakse (current Minister) published an election pamphlet claiming that he did not allow to pass an act titled "homosexual Act" as it is against the culture of the country. Also another election candidate, Medical Doctor Kavinda Jayawardena also made a homophobic statement at a television interview claiming that homosexuality is a mental illness²⁴. President Rajapakse's brother Mahinda Rajapakse and other politicians also made fun at the main Opposition candidate for not having children²⁵.

12. Issues relating to media ethics on reporting LGBTI+ issues:

12.1. There are numerous instances where LGBTI+ issues have been reported in sensationalized, and moralized language. Such media reporting has often created stereotypical attitudes towards LGBTI+ individuals and also caused various issues in their personal lives. According to Media Ownership Monitor in Sri Lanka, 54.8% of the television audience, 45.59% of the radio audience, and 79.4% of the newspaper audience is controlled by a specific political party, politician, or political grouping, or by an owner with a specific political affiliation²⁶. Media ethics on reporting on issues related to gender and sexuality have not been well developed among the journalists and media communities, in a context where media communities resist the government's attempts to bring any regulatory framework and advocate for a self-regulatory mechanism. Though LGBTI+ community has long advocated against the conversion therapy advertisements, some newspapers still publish such advertisement which promises to "correct same-sex sexual attraction or behavior".

13. Reprisals faced by LGBTI+ HRDs

²⁴ <https://www.ucanews.com/news/sri-lankan-poll-candidate-under-fire-for-homophobic-remarks/88986>

²⁵ <https://economynext.com/womens-activists-demand-mahinda-apologise-to-jalani-over-remark-over-childless-women-72334/>

²⁶ <http://sri-lanka.mom-gmr.org/en/findings/findings/#!1b8d4b8675e576d13f6353ba0afc8092>

13.1. LGBTI+ HRDs have faced threats, intimidation, frequent Police visits to the office, surveillance, and inquiries by Police, threats from religious groups, difficulties to rent office spaces, and other challenges.

13.1.1. On the 18th of March 2018, the office premises in Galle district belonging to a CSO working on HIV/AIDS prevention and LGBTI+ rights were forcefully opened and entered by villagers in the presence of police and media in the absence of its staff. Two persons in the network of the NGO who inquired about what was happening were attacked by the villagers in front of the police and media, in the presence of Police officials.^{27 28}

13.1.2. Raja Rata Gami Pahana another regional CSO who works with sex workers and the LGBTI+ community within the North Central Province faced multiple reprisals and challenges due to their work.

13.1.2.1. They have found it extremely difficult to rent office space as the landlords were not comfortable renting the spaces for an organization that works with the LGBTI+ community and sex workers.

13.1.2.2. Their staff has been verbally harassed by the locals for working at their organization.

13.1.2.3. After the locals have lodged multiple complaints against the organization for allegedly “facilitating prostitution and spreading homosexuality,” Police have frequently visited, questioned staff members, and conducted multiple inquiries regarding the organization.

13.1.2.4. In April 2022, an intelligence officer who is attached to the Army detained two of their staff members who were providing condoms to the sex workers at a hotspot in Anuradhapura town. The officer had verbally abused the staff members and refused to answer the phone calls given by the organizational director while attempting to take them forcefully to the Police station when the organization had been able to get the intervention of the Human Rights Commission to get them released. The incident has been documented at the Regional office of Human Rights Commission of Sri Lanka in Anuradhapura.

13.2. In some cases, activists were subjected to hate speech and abusive comments online.

13.2.1. Rajarata Gemi Pahana was subjected to online vilification and targeted fake news campaigns by a religious group.

13.2.2. Anitha, a 61-year-old transgender activist in Gurunagar, Jaffna who was involved in organizing the Jaffna Queer Festival in 2021 was subjected to many abusive comments in various social media groups after a website published an article claiming that organizing the Jaffna queer festival in parallel to the Maaveerar Naal (Remembrance festival for fallen Tamil rebels) was culturally inappropriate²⁹. As this

²⁷ <https://youtu.be/rPgX1ZWQ3LQ?t=761>

²⁸ <https://www.inform.lk/wp-content/uploads/2019/03/2018-march-english-repression-of-dissent-in-sl-in-jan-march2018.pdf>

²⁹ http://www.tamilkingdom.com/2021/11/234_0845566174.html?m=1

news became viral, she faced a lot of difficulties from friends, and family members.³⁰

13.2.3. In June 2022, a young activist who was involved in organizing the Pride March in Colombo was subjected to online hate speech and vilification.

14. Freedom of Expression

14.1. Writer Shakthika Sathkumara was arrested in April 2019 and was detained for more than 4 months until he was released on bail in August 2019³¹ for writing a story that hints at a same-sex relationship between two Buddhist monks. Sathkumara was charged with allegedly inciting religious hatred under the ICCPR Act 2007. His arrest indicates that restrictions on freedom of expression exist for artists, literary writers, and activists in speaking or writing about same-sex relationships, especially in the context of religion.

14.2. In several cases, people were arrested for alleged public indecency for publishing a semi-nude photo, running a porn fan page, and producing a pornography video. In 2018 two school-age youths were arrested for posing in a semi-naked photo taken at Pidurangala rock, where a Buddhist temple is also located based on a complaint made by the Buddhist monk, for exposing their naked buttocks. In September 2020, a Police constable was arrested for maintaining an ‘indecent’ facebook page for MILF porn fans. In October 2021, a couple was arrested for making an outdoor pornography video nearby a waterfall. After the porn video became viral, Police arrested a heterosexual couple who made the video. Court ordered a fine and suspended sentence against the couple. Though these incident does not involve any same-sex conduct, there is a probability that similar charges may be brought against LGBTI+ individuals. Also we note that there are many instances of videos that were made for personal use between intimate partners having been non-consensually published in porn websites, while the existing legal framework does not differentiate between consensual and non-consensual porn.

15. Recommendations

15.1. The government should repeal Article 16 of the constitution and allow the filing of fundamental rights petitions when existing law contravenes with the Fundamental Rights chapter in the constitution.

15.2. The government should allow the filing of Fundamental Rights petitions against the violations of human rights which are conducted by private parties who are offering public services (hotels, public transport, educational institutions, religious institutions, workplaces, etc.)

15.3. The government should repeal section 365 and 365A of the penal code, and specific sections of other laws that criminalize homosexuality including the vagrancy ordinance,

³⁰ Jaffna District consultation meeting

³¹ <https://www.ft.lk/News/Writer-Shakthika-released-on-bail/56-683408>

Air Force Act, and Army Act.

- 15.4. The government should enforce that Rape, and non-consensual sex of males should be recognized under the common legal sections concerning rape, and sexual offenses.
- 15.5. Department of Registration should take action to regulate uniformity in the Gender Recognition Certificate issuance procedure.
- 15.6. The Ministry of Health should introduce a national regulating body to deploy and overview uniformity in counseling services. The conditions of these services/service providers must ensure SOGIESC Rights.
- 15.7. The Ministry of Health should introduce a regulating body to deploy and overlook the uniformity in providing services to transgender persons, especially in the issuance of medication required for transitional process (hormones) and gender reassignment surgeries ensuring their accessibility and affordability.
- 15.8. The government should enforce the Trans protection bill which has been produced by the Ministry of Justice.
- 15.9. The government should enforce civil authorities to establish proper infrastructural facilities and regulate services with uniformity and inclusivity to safeguard the rights of LGBTI+ persons.
- 15.10. The government should Introduce laws to ban conversion therapies, other treatments or practices that attempt to “correct” LGBTI+ persons for their SOGIE.
- 15.11. The government should introduce laws to ban any form of virginity test and forced anal or vaginal tests, forced HIV testing.
- 15.12. The government should enforce the Domestic violence act to be inclusive and take proactive actions to address incidents of domestic violence faced by LGBTI+ persons at their homes.
- 15.13. The government should ratify C190 to ensure workplace security for LGBTI+ individuals.
- 15.14. National Institute of Education should introduce SOGIESC in both teacher training and school curriculums to ensure comprehensive sexual education.
- 15.15. The government should establish a national-level regulating body for digital media and press to regulate and overview ethical reporting.
- 15.16. The judges institute and other related groups should intervene in issuing directions to prevent courts from issuing orders against LGBTI+ individuals for a psychiatrist evaluation solely based on their SOGIE.
- 15.17. The government should establish proper infrastructure and service mechanisms to facilitate inclusivity within Prisons, Detention Centers, Rehabilitation Centers to ensure the rights of the LGBTI+ persons.

