



A submission to the United Nations Human Rights Council Universal Periodic Review of Sri Lanka

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Stakeholders:

- 01.EQUAL GROUND – Colombo
- 02.Estate Community Care Organization – Mathugama
- 03.Rural Women’s Front – Galle
- 04.Rajarata Gami Pahana – Anuradhapura
- 05.Sinhala, Tamil Rural Women’s Network – Nuwara Eliya

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Recalling that all human beings are born free and equal in dignity and rights and that all human beings are entitled to the enjoyment of human rights without distinction of any kind, and that states have a duty to respect, protect and fulfill these rights, EQUAL GROUND is greatly worried and disturbed by the wide-spread human rights violations that LGBTIQ persons are currently facing in Sri Lanka. This paper summarizes some of the major challenges that the LGBTIQ community of Sri Lanka is currently still facing in relation to their human rights. These include, but are not limited to, the criminalization of sexual activity between adult persons of the same sex, state sanctioned hate media on the basis of sexual orientation, use of the legal system to harass human rights defenders working for LGBTIQ rights, impunity for crimes committed against LGBTIQ people, violence, death threats and extrajudicial killings based on sexual orientation, marginalization and wide-spread persecution of LGBTIQ individuals. Sri Lanka has ratified several key human rights conventions and has important human rights obligations under the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination Against Women, the International Convention on the Elimination of All Forms of Racial Discrimination, The Convention on the Rights of the Child and the Universal Declaration of Human Rights.¹ As the Yogyakarta Principles observe, all persons, regardless of their sexual orientation or gender identity, are entitled to the full enjoyment of all human rights.² In spite of the rights obligations that the Sri Lankan state is bound by, LGBTIQ persons in Sri Lanka are currently facing systematic stigma and discrimination due to their sexual orientation and/or gender identity and state actors often ignore or fuel the discrimination and abuse of LGBTIQ individuals. As such the Sri Lankan state often fails to respect, protect and/or fulfill the human rights of the LGBTIQ individuals in the country.

Criminalization or same sex sexual behavior:

The national legislation of Sri Lanka still regards sexual activity between two consenting adults of the same sex as a crime.³

The sweeping statements in the Penal Code, addressing the alleged ‘indecent’ of ‘unnatural sex’, serves to criminalize and stigmatize LGBTIQ individuals. In 1995, human rights activists attempted to repeal the Penal Code, which was introduced by the British in 1883. The attempt was met with hostility and disapproval. Instead of decriminalizing homosexuality, the Ministry of Justice exchanged the word ‘males’ in the original legal text with the gender neutral term ‘persons’, thereby criminalizing same sex sexual activity between women as well. The human rights based initiative to repeal the law thus led to increased legal discrimination against the LGBTIQ community. The rights situation of LGBTIQ individuals in Sri Lanka is further complicated by the fact that the Constitution of Sri Lanka fails to guarantee the right to privacy.

Provisions against sexual activity between consenting adults have been found to constitute violate international human rights law. In the case of *Toonen v Australia* from 1994, the UN Human Rights Committee ruled that laws criminalizing consensual same-sex activity violate right to privacy and the

¹ OHCHR, Status by Treaty, available through the website: <http://www.unhcr.ch/tbs/doc.nsf/newhvstatbytreaty?OpenView&Start=1&Count=250&CollapseView> accessed March, 15th 2012

² *The Yogyakarta Principles*, (<http://www.yogyakartaprinciples.org/>)

³ Penal Code of the Democratic Republic of Sri Lanka, Chapter 19, Article 365 and 365 A

right to equality before the law as expressed in articles 17(1) and 26 of the International Covenant on Civil and Political Rights.⁴

The Yogyakarta principles which clarify state obligations under existing human rights law in relation to sexual orientation and gender identity, and which have been prepared and signed by several internationally distinguished human rights experts, also highlight that criminal and other legal provisions that directly or indirectly prohibit sexual activity among people of the same sex who are over the age of consent must be repealed.⁵

Universal Periodic Review 2008 and EQUAL GROUND's submissions

EQUAL GROUND submitted a detailed individual report to the UNHCR for the Sri Lankan UPR in 2008 with underlining existing situation of Sri Lankan LGBTIQ persons.⁶ Also two joint submissions were produced to the UNHCR with International Lesbian and Gay Association, International Lesbian and Gay Association of Europe and ARC International.⁷ The other submission was produced as a collective of civil societies in Sri Lanka.⁸ However, it is remarkable that no LGBTIQ issues were reviewed during the review process of the UPR of Sri Lanka at the UNHRC.

Current situation vis a vis the LGBT community in Sri Lanka

01. Removal of proposed provisions to legalize homosexuality from government's action plan for human rights.

The Sri Lankan government consulted civil society organizations to contribute their suggestions to a proposed government's action plan for human rights in 2010 based on recommendations made with regards to the UPR of Sri Lanka in 2008 by the peer review process. However, no LGBT organization in Sri Lanka was invited to contribute. The 1st and 2nd drafts of the proposed human rights action plan included a provision for legalizing homosexuality submitted by civil society participants. This particular provision was taken out from the final draft by the President of Sri Lanka.⁹

This reflects the government's intolerance of LGBTIQ people and their reluctance to establish non-discriminatory provisions and remedies for LGBTIQ persons.

⁴ Toonen v Australia, CCPR/C?50/D488/1992, April 4, 1994

⁵ *The Yogyakarta Principles*, principle 2B, printed by EQUAL GROUND, 2010

⁶ Available through the website

http://lib.ohchr.org/HRBodies/UPR/Documents/Session2/LK/EG_LKA_UPR_S2_2008_EqualGround_uprsubmission.pdf, accessed March 15, 2012

⁷ Available through the website

http://lib.ohchr.org/HRBodies/UPR/Documents/Session2/LK/IGLA_LKA_UPR_S2_2008_InternationalLesbianandGayAssociation_Etal_uprsu_bmission_JOINT.pdf, accessed March 15, 2012

⁸ Available through the website

http://lib.ohchr.org/HRBodies/UPR/Documents/Session2/LK/AFMD_LKA_UPR_S2_2008_AssociationofFamilyMembersoftheDisappeared_Etal_uprsubmission_JOINT.pdf, accessed March 15, 2012

⁹ The Sunday Times, September 11, 2011 (<http://sundaytimes.lk/110911/Columns/cafe.html>)

02. Violence against Lesbian and Bisexual Women in Sri Lanka

Lesbian and bisexual women are still hidden in the spectrum of human rights and they suffer from violent crimes associated with their sexuality as well as their gender. The violence imparted on these women is mostly based on their sexual orientation. Stigma and shame associated with being Lesbian or Bisexual induce parents to force their children into heterosexual marriages to stop them from engaging in sexual relations or loving intimate relationships with persons of the same sex, Eg. *Chandra is a 43 years old woman from Anuradhapura. Chandra identifies herself as lesbian and she was in relationship with Maala. But once their relationship was found out by her parents they locked her up and gave her in marriage to a man who was 8 years younger than her.*¹⁰

Parents and other family members locking individuals in the home upon finding out they are homosexuals: Eg. *Chaturi is 22 years old young woman from Galle, Sri Lanka. She started a same sex relationship with one of her friends. Due to this, her relationship was broken up by her family and she is now not given permission to work, is chaperoned constantly by her mother and not allowed out on her own. Further she is not allowed to use her mobile phone and cannot be in contact with her girlfriend under any circumstances.*¹¹

Individuals tend to harm themselves to escape the shame of homosexuality and the unfortunate circumstances they are forced into when family interference and violence prevents them from being with the one they love. Eg. *Sumanawathi is 53 years old woman from Nuwara Eliya District who was in a same sex relationship. She and her girlfriend Chandra lived together and also looked after Sumanawathi's ailing mother. When her mother passed away, Sumanawathi's brother forced her to get in to a heterosexual marriage by threatening he would take back all the property that was bequeathed to her if she did not agree to marry. As a result of her marriage, her girlfriend, Chandra committed suicide.*¹²

Blackmail is commonly faced by lesbian women who may be 'outed' or who come out (being open about their sexuality).¹³ Religion, traditional beliefs and cultural practices lead women to internalized homophobia which often leads them to harming themselves physically and in many instances, to suicide. Lesbian and bisexual women are forced in to institutions where it is believed they will be cured of homosexuality. In the home, lesbian and bisexual women are sometimes raped to cure them of homosexuality. In some cases, religion is used in an attempt to cure lesbian and bisexual women of their sexual orientation and physical violence such as beating have also been used in the home to punish lesbian and bisexual women.

¹⁰ STRUGGLING AGAINST HOMOPHOBIC Violence and Hate Crimes, EQUAL GROUND, 2011 – Case Study No 01 (<http://www.equal-ground.org/newweb/resouces.php>)

¹¹ STRUGGLING AGAINST HOMOPHOBIC Violence and Hate Crimes, EQUAL GROUND, 2011 – Case Study No 06 (<http://www.equal-ground.org/newweb/resouces.php>)

¹² STRUGGLING AGAINST HOMOPHOBIC Violence and Hate Crimes, EQUAL GROUND, 2011 – Case Studies 05 and 14 (<http://www.equal-ground.org/newweb/resouces.php>)

¹³ Stigma Index for Sri Lankan LGBT People, EQUAL GROUND, 2012

It is the state's responsibility to establish a system to prevent these kinds of violence and hate crimes against lesbian and bisexual women by decriminalizing homosexuality and by giving state provisions on equality and non discrimination.

03. The stigma and discrimination face by Sri Lankan LGBTIQ people

Sri Lankan LGBT persons reported significant social exclusion for being LGBT. This is proven by the social research, The LGBT Stigma Index¹⁴, which was conducted by EQUAL GROUND. In the past 2 years, many participants reported they were excluded from social gatherings or activities (e.g. weddings, funerals, parties, clubs etc.,) because of their sexual orientation and/or gender identity.

The stigma suffered by LGBT Sri Lankans extends beyond social exclusion, with many reporting having been verbally insulted, harassed and/or threatened due to their sexual orientation and/or gender identity. Discrimination suffered was frequently even more severe, with many reporting that they had been physically abused (harassed, threatened, assaulted, raped, battered), and others reporting that they had been subjected to emotional/psychological trauma and/or abuse. In both forms of severe abuse, LGBT persons suffering severe abuse reported that the abuse was because of their sexual orientation or gender identity.

The discrimination suffered by LGBT Sri Lankans also limits access to work, health services, and education. Discrimination in the health care system was less overt.

The study also provides evidence that anti-LGBT stigma was internalized by participants, leading to negative feelings about oneself, making decisions to limit their own opportunities to avoid stigma and fear of experiencing stigma.

04. Impunity of crimes committed against LGBTIQ people and police harassment

The following incident verifies the prevailing homophobia in Sri Lanka and its oppressive side-effects. Similar incidents particularly perpetrated by the Sri Lankan Police are still happening to LGBT individuals in Sri Lanka on a regular basis. Most LGBT individuals are fearful and too intimidated to report such incidents fearing they would be subject to further attacks if they did.

In a case recorded earlier this year (Jan 2012): *A graduate student Saman, working on his Master's thesis on 'Safer Sex' in Galle (southern Sri Lanka) was accosted by plain clothed policemen while he was conducting a questionnaire interview with several men. They were arrested and several of them were beaten. An effeminate man who went by the pseudonym "Geetha" was sodomized by 3 police officers by inserting a wooden stick into his anus. The OIC of the police station slapped Saman and threatened him with years in jail, accusing him of promoting homosexuality. He was thrown into a cell with such force that he fell and damaged his ankle.*¹⁵

¹⁴ Stigma Index for Sri Lankan LGBT People, EQUAL GROUND, 2012

¹⁵ Available on the web <http://www.youtube.com/watch?v=nRuj27pt65o> accessed on March 15, 2012

In a second recorded case: *Two gay men using a public toilet in Colombo were harassed by policeman who demanded that they produce their ID. They were then taken to the police station and when asked why they were arrested they were scolded using derogatory terminology for gays and accused of having sex in the toilet. Eventually they were put into the police jeep and taken to another area. The men begged the police to let them go. The police then asked for money to release them.*¹⁶

05. Status of media on addressing LGBTIQ issues

State sponsored and owned media continue to publish homophobic and hate inciting articles on the LGBTIQ community. In July of 2010, the Daily Mirror – a very popular English newspaper – published an editorial which charged amongst many things that *“Some controversial moves are being made by groups within the Colombo social circles along with a few diplomats and leading civil society figures to create an impression that heterosexuality is an outdated, obsolete disposition. Most of these individuals one-time heterosexuals turn gays”* it went on to say *“Their promotion of vices including extensive use of drugs and aggressive promotion of their ideology have slowly started hitting the foundations of Sri Lankan society especially the family unit.”* In conclusion it stated *“the country can do well without these undesirable elements.”*¹⁷

Similarly, *The Rivira*, a Sinhala newspaper published series of articles (every weekend for a month) in its Sunday editions maligning the LGBT community and inciting violence against them. The articles included assertions such as: *“... ulterior motive of harming the cultural decencies and morality of Sri Lanka”* likening LGBT persons to *“mangy dogs who are involved in this dastardly low and heinous acts(homosexual sex).”* It further stated that there were plans *“to open 24 homosexual centers covering all 24 districts of the island, with the ulterior motive of harming the cultural decencies and morality of Sri Lanka.”*

In one of the articles on the 11th September 2011, the organization was identified by name, their detailed address was also offered up and pictures of their field workers were clearly published. It also highlighted that parents needed to take extreme precautions to protect their sons, based on the infantile notion that if a man is gay, he must necessarily be a pedophile too.¹⁸

Summary and Recommendations

In summary, LGBTIQ people in Sri Lanka largely suffer in silence because of the criminalization of same sex sexual behavior, which fuels negative stereotyping of the LGBTIQ population as well as wide-spread discrimination. The scope of the law was increased in 1995 to include same sex sexual relations between women. Provisions against sexual activity between consenting adults have been found to violate international human rights law.

¹⁶ <http://www.youtube.com/watch?v=uGnw5KuELhk&feature=related>

¹⁷ The Editorial, Daily Mirror, July 29,2010 and Groundviews (<http://groundviews.org/2010/08/03/a-homophobic-editorial-professional-negligence-or-genuine-belief/>)

¹⁸ The Rivira 18th September 2011 (<http://www.rivira.lk/2011/09/18/janaindex.htm/>)
<http://www.rivira.lk/2011/09/18/vimarshana.htm/>The Rivira 09th October 2011/<http://www.rivira.lk/2011/10/09/vimarshana.htm>
The Rivira 30th October 2011/<http://www.rivira.lk/2011/10/30/vimarshana.htm>

The voices of LGBTIQ largely remain unheard because of a society that condemns them and denies their existence. The LGBTIQ community and LGBTIQ rights defenders face a lack of recognition and respect, and stigma and discrimination means that LGBTIQ individuals are denied their human rights and the ability for self-expression. Furthermore widespread stigma, discrimination and threats of, or encouragement to use, violence against sexual minorities go without condemnation and punishment.

The state sanctions or ignores stigma and discrimination on the basis of sexual orientation or gender identity and there is no legal protection against discrimination on these grounds. LGBTIQ persons are often traumatized by threats of physical harm, extortion and blackmail. The resentment towards LGBTIQ individuals is great among the police and LGBTIQ individuals are exposed and are vulnerable to violence, blackmail and harassment in the hands of the police. Furthermore the impunity for crimes related to hatred or discrimination against LGBTIQ individuals is highly prevalent.

In addition human rights defenders who work for the rights of LGBTIQ people face harassment, legal sanctions, threats and violence. According to our knowledge the Sri Lankan State does not take any specific active measures to protect the LGBTIQ community against stigma, discrimination and violence, neither do they take any active measure to safeguard Human Rights Defenders working for LGBTIQ rights in this country.

EQUAL GROUND therefore recommends the Sri Lankan State to immediately decriminalize same sex sexual relations between persons who are over the age of consent and to ensure that the same age of consent applies to sexual activities between persons of the same sex and persons of a different sex. Furthermore, EQUAL GROUND recommends the State of Sri Lanka to take immediate and targeted steps to embody the principles of equality and non-discrimination on the basis of sexual orientation both in public and in private, in the national constitution of Sri Lanka and ensure the effective realization of these principles. Finally, EQUAL GROUND recommends the state of Sri Lanka to immediately include the right to privacy in the national constitution.