



Kaleidoscope  
Australia  
Human Rights Foundation

# **EQU** **L GROUND**

**Submission to the UN Universal  
Periodic Review regarding the  
protection of the rights of LGBTI  
persons in Sri Lanka**

28th session of the Universal Periodic Review

March 2017

## 1. Executive Summary

- 1.1 In collaboration with EQUAL GROUND, Kaleidoscope<sup>1</sup> has prepared this report for the United Nations Human Rights Council (**UNHRC**) in respect of Sri Lanka.
- 1.2 There are several areas where Sri Lanka falls short of its obligations under international human rights law in relation to LGBTI persons, and there continue to be reports of widespread discrimination, harassment and, at times, violence directed towards members of the LGBTI communities within Sri Lanka<sup>2</sup>. The following matters are of particular concern:
- (a) the Sri Lankan *Penal Code 1883 (Penal Code)* continues to criminalise consensual same-sex sexual relations under sections 365 and 365A, and Sri Lankan law does not recognise same-sex marriages or civil unions;
  - (b) section 399 of the *Penal Code* and the *Vagrants Ordinance, 1841 (Vagrants Ordinance)* provide a legal means for arbitrary discrimination and harassment on the grounds of sexual orientation and gender identity/expression;
  - (c) individuals wishing to obtain a legal change of gender experience multiple legal and bureaucratic barriers; and
  - (d) an absence of express anti-discrimination laws prohibiting discrimination on the basis of sexual orientation, gender identity or intersex status has allowed for discrimination against LGBTI persons across a range of areas including health care, education, employment and housing.
- 1.3 Local NGOs<sup>3</sup> support the LGBTI community, advocate for equal rights, organise events and engage with the media to increase visibility. Whilst these efforts have contributed to social traction towards the recognition of LGBTI rights, these groups continue to face hostility and vilification<sup>4</sup>. Prejudicial and homophobic attitudes continue to surface in the media, further perpetuating stigma and negative stereotypes<sup>5</sup>.

---

<sup>1</sup> Kaleidoscope Human Rights Foundation (**Kaleidoscope**) is a non-governmental organisation that works with local activists to protect and promote the rights of lesbian, gay, bisexual, transgender and intersex (**LGBTI**) persons in the Asia-Pacific Region.

<sup>2</sup> "All five fingers are not the same" – Discrimination on grounds of gender identity and sexual orientation in Sri Lanka", August 2016, *Human Rights Watch* at <[https://www.hrw.org/sites/default/files/report\\_pdf/srilanka0816web.pdf](https://www.hrw.org/sites/default/files/report_pdf/srilanka0816web.pdf)>.

<sup>3</sup> For example, EQUAL GROUND, <<http://equal-ground.org/>>.

<sup>4</sup> "Sri Lankan LGBT activists fear attacks as thugs vow to 'take law into their own hands'", 10 May 2016, *Pink News* at <<http://www.pinknews.co.uk/2016/05/10/sri-lankan-lgbt-activists-fear-attacks-as-thugs-vow-to-take-law-into-their-own-hands/>>.

<sup>5</sup> "I threw away the cabinet paper aimed at legalising homosexuality-President" 25 January 2017, *BBC Sinhala* at <http://www.bbc.com/sinhala/sri-lanka-38748658>

"Sri Lankans are not people with such mental illnesses"- Minister of Justice, Wijeyadasa Rajapaksa" 20 January 2017 *Newsfirst* at

<http://newsfirst.lk/english/2017/01/eu-conditions-gsp-criticism/160185>

"The Government is against Homosexuality' –Minister of Health, Rajitha Senarathne" 18 January 2017 *FrontPage* at

<http://www.frontpage.lk/page/-The-Government-is-against-Homosexuality-Rajitha-/18297>

"The JVP's Jaundice: Inclination to Reactionary Politics", 16 December 2015, *Colombo Telegraph* at <<https://www.colombotelegraph.com/index.php/the-jvps-jaundice-inclination-to-reactionary-politics/>>.

- 1.4 The Sri Lankan government has shown a reluctance to engage with the issue of LGBTI rights and the need to protect the LGBTI community against prejudice and hostility. During a review of its record on civil and political rights by the United Nations Human Rights Committee in October 2014, the government of Sri Lanka repeatedly asserted that LGBTI persons in Sri Lanka are constitutionally protected from discrimination.
- 1.5 In September 2014, in reply to the Human Rights Committee's questions regarding LGBTI rights in Sri Lanka, the Sri Lankan government stated:
- "Article 12 of the Sri Lanka Constitution recognises non-discrimination based on the grounds of race, religion, language, caste, sex, political opinion, place of birth or any one of such grounds of Fundamental Rights. This measure protects persons from stigmatization and discrimination on the basis of sexual orientation and gender identities."*<sup>6</sup>
- 1.6 Article 16 of the Constitution provides that "*all existing written law and unwritten law shall be valid and operative notwithstanding any inconsistency*" with the Constitution. The impact of Article 16 is that existing laws, such as sections 365 and 365A of the Penal Code which criminalise consensual same-sex relations, take precedence over constitutional provisions.<sup>7</sup>
- 1.7 Whilst the Sri Lankan government's statement above gives the impression that the Sri Lankan Constitution (**Constitution**) affords LGBTI persons with specific legal protection, Article 12 does not explicitly list sexual orientation, gender identity or intersex status as prohibited grounds of discrimination. Without including express protections, the Constitution does not afford LGBTI persons with the level of protection asserted by the Sri Lankan government, particularly in light of the precedence taken by Article 16. The recent Concluding Observations of the Committee on the Elimination of Discrimination of Against Women highlighted this ambiguity in the constitutional framework<sup>8</sup>
- 1.8 There is considerable work required within the legal, regulatory and policy regime to address the human rights concerns of the LGBTI community of Sri Lanka and implement measures to bring Sri Lanka into compliance with its international obligations.

## 2. Terminology

- 2.1 **LGBTI**, in this report, is an abbreviation for lesbian women, gay men, bisexual people, transgender people and people with intersex variations.
- 2.2 **bisexual men** are men who are physically, romantically and/or emotionally attracted to both men and women.

---

<sup>6</sup> "Sri Lanka government says LGBT rights are constitutionally protected", 20 October 2014, *OutRight Action International* at <<https://www.outrightinternational.org/content/sri-lanka-government-says-lgbt-rights-are-constitutionally-protected>>.

<sup>7</sup> "Article 16 of the Constitution, that makes Muslim women second-class citizens, must go! – WAN", 20 August 2016, *Sri Lanka Brief*, at <<http://srilankabrief.org/2016/08/article-16-of-the-constitution-that-makes-muslim-women-second-class-citizens-must-go-wan/>>.

<sup>8</sup> Paragraph 10, Concluding observations on the eighth periodic report of Sri Lanka [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fLKA%2fCO%2f8&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fLKA%2fCO%2f8&Lang=en)

- 2.3 **bisexual women** are women who are physically, romantically and/or emotionally attracted to both men and women.
- 2.4 **cisgender** denotes a person whose sense of gender identity corresponds with the physical sex assigned to them at birth.
- 2.5 **gay men** are men who experience emotional, romantic and physical attraction to other men.
- 2.6 **gender identity** refers to an individual's own internal feelings and experiences of gender, which may or may not correspond to the sex that individual was assigned at birth.
- 2.7 **intersex** people have physical sex characteristics that do not fit typical notions of male or female bodies. Like everyone else, all intersex people have a gender identity, which may be male, female or another identity. Like everyone else, intersex people also have a sexual orientation, which may be straight, gay/lesbian, bisexual, asexual, etc. This reflects that intersex is not, in itself, a gender identity or sexual orientation, but rather a physical variation in sex characteristics.
- 2.8 **lesbian women** are women who experience emotional, romantic and physical attraction to other women.
- 2.9 **sexual orientation** refers to a person's emotional, physical and/or sexual attraction to persons of the opposite sex or gender, the same sex or gender, to both sexes and/or to more than one gender.
- 2.10 **transgender people** are people whose gender identity and/or expression is different from the physical sex they were assigned at birth. This is a gender identity, not a sexual orientation.
- 2.11 **transgender women** are people who were assigned male sex at birth but identify and live as women.
- 2.12 **transgender men** are people who were assigned female sex at birth but identify and live as men.

### 3. Positive steps taken by Sri Lanka

- 3.1 Sri Lanka has taken positive steps towards the recognition and protection of LGBTI human rights, including through establishing human rights-focused bodies and initiating a public process of constitutional reform.

#### *Human Rights Commission of Sri Lanka Act*

- 3.2 In 1996, Sri Lanka implemented the *Human Rights Commission of Sri Lanka Act (HRCSL Act)* to establish the Human Rights Commission of Sri Lanka (**HRCSL**). By virtue of the HRCSL Act, the HRCSL has the power to investigate complaints regarding infringements of fundamental rights, advise the government on measures and legal reform that will promote human rights, make recommendations regarding ratification of international treaties and generally promote awareness of human rights.<sup>9</sup>

---

<sup>9</sup> *Human Rights Commission of Sri Lanka Act, No 21 of 1996*, Section 10, Parliament of the Democratic Socialist Republic of Sri Lanka at <<http://www.hrsl.lk/PFF/HRC%20Act.pdf>>.

3.3 The HRCSL has been fundamental to the promotion of LGBTI rights in Sri Lanka. For example, in 2015, the HRCSL recommended to the Ministry of Health that a General Circular be issued allowing transgender persons to change their gender designation on their personal documentation<sup>10</sup>. Following ongoing discussions, on 16 June 2016 the Ministry of Health issued circular No. 01-34/2016 which instructed all medical institutions to have specialist psychiatric care available to transgender individuals, including assessment, counselling and issuing of a Gender Recognition Certificate which will assist with the process of changing the sex on a birth certificate.<sup>11</sup>

#### *Constitutional Reform*

3.4 In December 2015, a government-appointed independent task force was created with the purpose of publishing a comprehensive public report on constitutional reform. In its report, the task force recommended that the constitution be regarded as the supreme law of Sri Lanka and that the Sri Lankan judiciary be tasked with ensuring all legislation complies with the Constitution.<sup>12</sup> This recommendation was a positive step towards the human rights protections of the Constitution taking legal precedence over prior law and aligns with a broader movement in Sri Lankan society for the repeal of Article 16 of the Constitution.<sup>13</sup>

3.5 The Report on Public Representations on Constitutional Reform further emphasised that the LGBTI community was not demanding special rights but merely the same rights afforded to non-LGBTI persons and strongly recommended that discriminatory laws targeting the community be repealed<sup>14</sup>.

3.6 In March 2016, the HRCSL presented its proposal on constitutional reform<sup>15</sup>. The HRCSL endorsed the incorporation of a Draft Charter of Rights into a future constitution subject to certain amendments being made. Such amendments included strengthening the non-discrimination clause by adding the ground of sexual identity and adjusting the clause to be articulated in a broader and more open manner in line with international obligations.<sup>16</sup>

#### *HIV/AIDS Programmes*

---

<sup>10</sup> "Issuance of gender recognition certification to enable transgender persons to change personal documentation", *Human Rights Commission of Sri Lanka*, at <<http://hrctl.lk/english/2016/08/31/issuance-of-gender-recognition-certification-to-enable-transgender-persons-to-change-personal-documentation/>>.

<sup>11</sup> *General Circular No.: 01-34/2016*, 16 June 2016, Ministry of Health, Nutrition and Indigenous Medicine at <<http://hrctl.lk/english/wp-content/uploads/2016/08/GRC-E.pdf>>.

<sup>12</sup> "Sri Lanka, Events of 2016", World Report 2017, *Human Rights Watch*, at <<https://www.hrw.org/world-report/2017/country-chapters/sri-lanka#ff850f>>.

<sup>13</sup> "Article 16 of the Constitution, that makes Muslim women second-class citizens, must go! – WAN", 20 August 2016, *Sri Lanka Brief*, at <<http://srilankabrief.org/2016/08/article-16-of-the-constitution-that-makes-muslim-women-second-class-citizens-must-go-wan/>>.

<sup>14</sup> Paragraph 28, Chapter 12: Fundamental Rights, Report on Public Representations on Constitutional Reform  
[http://english.constitutionalassembly.lk/images/pdf/PRC\\_1.pdf](http://english.constitutionalassembly.lk/images/pdf/PRC_1.pdf)

<sup>15</sup> "The Human Rights Commission's Proposals for Constitutional Reform", *Human Rights Commission of Sri Lanka* at <<http://hrctl.lk/english/2016/06/16/the-human-rights-commissions-proposals-for-constitutional-reform/>>.

<sup>16</sup> Human Rights Commission of Sri Lanka Proposals for Constitutional Reform," Constitutional Reform Proposals-2016, at <<http://hrctl.lk/english/wp-content/uploads/2016/06/Proposals-for-Constitutional-Reform-by-HRC-in-English.pdf>>.

- 3.7 Sri Lanka should be commended for its National HIV/AIDS Strategic Plan 2013-2017 of which a guiding principle is that there shall be "no discrimination on the basis of gender, HIV status, sexual behaviour and/or sexual orientation"<sup>17</sup> in diagnosing and treating HIV/AIDS.
- 3.8 On 28 April 2016, the Sri Lankan Supreme Court handed down a landmark decision prohibiting HIV discrimination in educational settings. Importantly, the judgement included a general reminder to the state of Sri Lanka of its obligation to take necessary steps to protect, promote and respect the rights of persons living with HIV/AIDS.<sup>18</sup>
- 3.9 Research into HIV prevalence in Sri Lanka has determined that gay men are the second-most vulnerable population to HIV.<sup>19</sup> HIV-related stigma and discrimination is a major barrier in Sri Lanka to those affected accessing necessary health care. This, in turn, has an effect on access to education, employment and housing.
- 3.10 The implementation of a national plan and judicial determinations promoting anti-discrimination have led to greater public visibility and education regarding HIV and are positive steps towards combatting the prejudice that LGBTI people living with HIV/AIDS face.

#### **4. Obligations under international law to protect LGBTI persons from discrimination**

- 4.1 Sri Lanka became a member state of the United Nations on 12 December 1955 and has since acceded to and/or ratified a number of important human rights conventions, including the International Covenant on Civil and Political Rights (**ICCPR**),<sup>20</sup> the International Covenant on Economic, Social and Cultural Rights (**ICESCR**),<sup>21</sup> the Convention on the Elimination of all Forms of Discrimination Against Women (**CEDAW**)<sup>22</sup>, and the Convention on the Rights of the Child (**CRC**)<sup>23</sup>.
- 4.2 Whilst these treaties do not explicitly prohibit discrimination against persons on the basis of gender identity, sexual orientation or intersex status, they do afford the following protections against discrimination:

---

<sup>17</sup> "Chapter 3 - Guiding Principles for the National HIV/AIDS Response", National HIV/AIDS Strategic Plan 2013-2017, *National STD AIDS Control Programme and the Ministry of Health*, at <[http://www.aidsdatahub.org/sites/default/files/publication/NSP\\_Sri\\_Lanka\\_2013-2017.pdf](http://www.aidsdatahub.org/sites/default/files/publication/NSP_Sri_Lanka_2013-2017.pdf)>.

<sup>18</sup> "Sri Lanka's Supreme Court makes landmark decision prohibiting HIV discrimination", 2 May 2016, *UNAIDS*, at <[http://www.unaids.org/en/resources/presscentre/featurestories/2016/may/20160502\\_Srilanka\\_nodiscrimination](http://www.unaids.org/en/resources/presscentre/featurestories/2016/may/20160502_Srilanka_nodiscrimination)>.

<sup>19</sup> "Executive Summary", National HIV/AIDS Strategic Plan 2013 -2017, *National STD AIDS Control Programme and the Ministry of Health*, at <[http://www.aidsdatahub.org/sites/default/files/publication/NSP\\_Sri\\_Lanka\\_2013-2017.pdf](http://www.aidsdatahub.org/sites/default/files/publication/NSP_Sri_Lanka_2013-2017.pdf)>.

<sup>20</sup> *International Convention on Civil and Political Rights*, opened for signature 19 December 1966, 999 UNTS 171 (entered into force 23 March 1976).

<sup>21</sup> *International Covenant on Economic, Social and Cultural Rights*, opened for signature 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976).

<sup>22</sup> *Convention on the Elimination of All Forms of Discrimination against Women*, opened for signature 18 December 1979, 1249 UNTS 13 (entered into force 3 September 1981).

<sup>23</sup> *Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990).

- (a) Article 2 of the ICCPR states that each party to the covenant undertakes to "respect and to ensure to all individuals... the rights recognised in the [ICCPR], without distinction of any kind, such as race, colour, sex [...]";
- (b) Article 26 of the ICCPR states that "all persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour sex ... or other status";
- (c) Article 2 of the ICESCR states that each party to the covenant undertakes to "guarantee that the rights enunciated in the [ICESCR] will be exercised without discrimination of any kind as to race, colour, sex ... or other status";
- (d) Article 2 of the CEDAW requires State Parties to "condemn discrimination against women in all its forms"; and
- (e) Article 2 of the CRC requires State Parties to "respect and ensure the rights set forth in the [CRC] to each child...without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex...or other status".

4.3 These conventions, and in particular the ICCPR and ICESCR, form the foundation of the international framework for the universal protection of human rights. By becoming a signatory to these covenants, Sri Lanka strengthened its obligations under international law to protect and promote the human rights of LGBTI persons.

## 5. Discrimination against LGBTI persons

### *Marriage Law and Criminalisation of Same-Sex Relations*

5.1 Sections 365 and 365A of the Penal Code criminalise sexual relations between same-sex individuals, classifying same-sex relations as an "unnatural offence" subject to punishment of up to 10 years in prison. Consequently, LGBTI individuals are legally restricted from entering into marriage or civil unions which, in turn, leads to further discrimination under family and inheritance laws. For example, it is illegal for same-sex couples to adopt in Sri Lanka.<sup>24</sup>

5.2 Article 23 of the ICCPR contains an express right to marry<sup>25</sup> and the European Union Parliament recently voted in favour of an Annual Report which declared same-sex marriage to be a fundamental human right<sup>26</sup>. It is clear that, despite the Human Rights Committee's decision in *Joslin v New Zealand*<sup>27</sup>, which determined that the right to marry under article 23 of the ICCPR did not extend to same-sex couples, there is

---

<sup>24</sup> "LGBT rights in Sri Lanka", *Equaldex* at <<http://www.equaldex.com/region/sri-lanka>>.

<sup>25</sup> Article 23, *International Convention on Civil and Political Rights*, opened for signature 19 December 1966, 999 UNTS 171 (entered into force 23 March 1976).

<sup>26</sup> Thomas Williams, "European Parliament Declares Gay Marriage and Abortion 'Human Rights'", 13 March 2015, *Breitbart* at <<http://www.breitbart.com/national-security/2015/03/13/european-parliament-declares-gay-marriage-and-abortion-human-rights/>>.

<sup>27</sup> Human Rights Committee, *Views: Communication No 902/1999*, 75th sess, UN Doc CCPR/C/75/D/902/1999 (17 July 2002) ('*Joslin v New Zealand*').

increasing sentiment in the international community that international human rights law should be interpreted to include a right for same-sex couples to marry.<sup>28</sup>

- 5.3 Notwithstanding its international obligations, the Cabinet of Sri Lanka recently voted against legal reform that decriminalises consensual same-sex relations.<sup>29</sup>

*Recommendation*

- 5.4 We urge the UNHRC to recommend that Sri Lanka, at a minimum, amend the Penal Code so that the existing law does not directly discriminate against the LGBTI community.
- 5.5 We further urge the UNHCR to recommend that Sri Lanka pass laws that expressly recognise same-sex marriage.

*Transgender rights*

- 5.6 The Sri Lankan Ministry of Health has found that transgender people are often socially, economically, politically and legally marginalised in Sri Lankan society and are also particularly vulnerable to discrimination, harassment, violence and sexual assault.<sup>30</sup> For this reason, as previously mentioned, the HRCSL, in collaboration with the Ministry of Health, have taken steps to break down legal and bureaucratic barriers to transgender persons legally changing their sex on official documentation.
- 5.7 Furthermore, the procedure to obtain the Gender Recognition Certificate is provided for by way of a circular which document can be revoked at the discretion of the administrative authorities.
- 5.8 According to Human Rights Watch, despite the efforts of the HRCSL, transgender individuals continue to experience great difficulty in changing their gender designation, exposing them to ongoing humiliating scrutiny when having to produce their identity card, particularly in the context of health care and police checks<sup>31</sup>.
- 5.9 This also creates great difficulty for transgender persons trying to obtain employment, as their official documents do not reflect the gender with which they identify, with consequent repercussions on their ability to access housing and health care.<sup>32</sup>

*Recommendations*

- 5.10 We urge the UNHRC to recommend that the Sri Lankan government work with the Ministry of Health to implement a gender recognition procedure which allows

---

<sup>28</sup> See for example, Paula Gerber, Kristine Tay and Adiva Sifris, "Marriage: A Human Right for All?", 2014, 36 *Sydney Law Review* 643.

<sup>29</sup> "Sri Lanka officially refuses to go gay", 20 January 2017, *Sri Lanka Brief*, at <<http://srilankabrief.org/2017/01/sri-lanka-officially-refuses-to-go-gay/>>.

<sup>30</sup> *General Circular No.: 01-34/2016*, 16 June 2016, Ministry of Health, Nutrition and Indigenous Medicine at <<http://hrctl.lk/english/wp-content/uploads/2016/08/GRC-E.pdf>>.

<sup>31</sup> "'All five fingers are not the same' - Discrimination on the grounds of gender identity and sexual orientation in Sri Lanka", 2016, *Human Rights Watch*, p7 at <[https://www.hrw.org/sites/default/files/report\\_pdf/srilanka0816web.pdf](https://www.hrw.org/sites/default/files/report_pdf/srilanka0816web.pdf)>.

<sup>32</sup> *Ibid*, p 48.



individuals to alter their gender on official documentation without onerous bureaucratic obstacles or required medical procedures<sup>33</sup>.

- 5.11 We further urge that laws and regulations be put in place to protect LGBTI persons, and specifically transgender individuals, from being subject to arbitrary discrimination and harassment.

#### *Police abuse*

- 5.12 Section 399 of the Penal Code makes it an offence to "cheat by personation" and has been used to discriminate against those who do not conform to gender norms, affecting transgender individuals in particular.<sup>34</sup>
- 5.13 The Vagrants Ordinance empowers authorities to detain people who are loitering in public, with a particular focus on sex workers, and prohibits soliciting or committing acts of "gross indecency" or procuring "illicit or unnatural intercourse".
- 5.14 The lack of any anti-discrimination laws to the contrary has enabled police officers to apply these laws arbitrarily in order to harass and discriminate against individuals on the basis of their appearance or gender expression.
- 5.15 In October 2015, the UN Human Rights Council adopted a consensus resolution in which Sri Lanka pledged to undertake many human rights reforms. However, despite these undertakings, the Sri Lankan government failed to introduce reforms to the criminal justice system and, importantly, take measures to increase accountability for police abuse, which continues to impact on the LGBTI community.<sup>35</sup>
- 5.16 In a recent report produced by Human Rights Watch, 61 LGBTI persons were interviewed across 4 Sri Lankan cities and more than half reported that they had been detained by police without cause at least once. 16 individuals, mainly transgender and gay men, stated that they had suffered sexual or physical abuse by police.<sup>36</sup>

#### *Recommendation*

- 5.17 We urge the UNHRC to recommend that Sri Lanka put measures in place, firstly, to protect LGBTI persons from those who would use laws such as s 399 and the Vagrants Ordinance to arbitrarily harass, discriminate, detain and assault LGBTI individuals and, secondly, to hold those who do so accountable.
- 5.18 We further urge that the UNHRC recommend that anti-discrimination and sensitivity training be conducted for all police officers to ensure that police officers respect the rights of LGBTI individuals to privacy, equality and protection from discrimination and harassment.

---

<sup>33</sup> Ibid, p 2.

<sup>34</sup> "'All five fingers are not the same" - Discrimination on the grounds of gender identity and sexual orientation in Sri Lanka", 2016, *Human Rights Watch*, p6, 16 and p59 at <[https://www.hrw.org/sites/default/files/report\\_pdf/srilanka0816web.pdf](https://www.hrw.org/sites/default/files/report_pdf/srilanka0816web.pdf)>.

<sup>35</sup> "Sri Lanka: Delays Set Back Justice", 12 January 2017, *Human Rights Watch* at <<https://www.hrw.org/news/2017/01/12/sri-lanka-delays-set-back-justice>>.

<sup>36</sup> "Sri Lanka: Challenging 'Gender Norms' Brings Abuse", 15 August 2016, *Human Rights Watch* at <<https://www.hrw.org/news/2016/08/15/sri-lanka-challenging-gender-norms-brings-abuse>>.

### *Lack of anti-discrimination laws*

- 5.19 LGBTI persons in Sri Lanka currently have no legal protection against discrimination on the basis of sexual orientation, gender identity or intersex status. Discrimination is of particular concern in the areas of housing, health care, employment, and education.
- 5.20 Sri Lanka has some minority-protective laws and policies in place, such as the *Prevention of Social Disabilities Act, No 1 of 1957* and the *National Policy on Disability for Sri Lanka 2003*, however, they offer no specific protection from discrimination on the basis of gender identity, sexual orientation or intersex status.<sup>37</sup>

### *Recommendation*

- 5.21 We urge the UNHCR to recommend that a framework of legal reform be implemented which actively prevents and prohibits discrimination against LGBTI persons, particularly in the context of education, housing, employment, accommodation and access to health care.
- 5.22 In order to achieve such protections, the Sri Lankan government will need to enact comprehensive anti-discrimination legislation. It is recommended that this is accompanied by an amendment to Article 12 of the Constitution to include gender identity, sexual orientation and intersex status as prohibited grounds of discrimination.

## **6. Measures to protect the human rights of LGBTI persons**

- 6.1 We encourage the UNHRC to make the following recommendations to Sri Lanka:
- (a) Amend or repeal sections 365 and 365A of the Penal Code to legalise same-sex consensual sexual relationships.
  - (b) Expressly include gender identity, sexual orientation and intersex status as prohibited grounds for discrimination under s 12 of the Constitution and repeal or amend Article 16 in order to give precedence to the provisions of the Constitution above prior law.
  - (c) Introduce legislation to legalise same sex marriage or civil unions and afford such unions with the same rights as heterosexual partnerships.
  - (d) Enact legislation or policy that enables individuals to change their gender designation on official documentation without imposing bureaucratic obstacles or requiring medical procedures.
  - (e) Pass comprehensive national legislation that prohibits discrimination on the basis of sexual orientation, gender identity or intersex status, specifically in the areas of employment, education, health care, political activities, and the provision of accommodation, goods and services. This includes implementing effective measures to identify, prevent and respond to such discrimination, including express protections for LGBTI persons.

---

<sup>37</sup> "'All five fingers are not the same" - Discrimination on the grounds of gender identity and sexual orientation in Sri Lanka", 2016, *Human Rights Watch*, p47 at <[https://www.hrw.org/sites/default/files/report\\_pdf/srilanka0816web.pdf](https://www.hrw.org/sites/default/files/report_pdf/srilanka0816web.pdf)>.

- (f) Ensure laws such as section 399 of the Penal Code and the Vagrants Ordinance are not applied arbitrarily and discriminatorily against LGBTI persons. This should include the introduction of training for police on the appropriate application of these laws and clear guidance on their duty to respect the rights of all people regardless of their gender expression, gender identity, sexual orientation or intersex status.
- (g) Introduce training for nurses, doctors, and other staff in the health system on non-discrimination and health issues affecting LGBTI people, particularly the issues of genital cutting surgeries on persons of intersex status , and transgender individuals seeking gender affirmation surgeries.