



## **LGBTIQ Rights**

### **SUMMARY OF KEY ISSUES FROM PREVIOUS UPR CYCLES**

During its second review Sri Lanka received two recommendations on sexual orientation and gender identity. One recommendation called for strengthened measures to eliminate all discriminatory treatment based on sexual orientation or gender identity and the other recommended decriminalisation of consenting homosexual relationships between persons over the age of consent by repealing Section 365A of the Penal Code. Both were noted.

### **NATIONAL FRAMEWORK**

The Constitution of Sri Lanka does not recognize rights of LGBTIQ persons. Article 12 of the Constitution states that, "No citizen shall be discriminated against on the grounds of race, religion, language, caste, sex, political opinion, place of birth or any such grounds" however, LGBTIQ identities are not explicitly recognized and often excluded from protection especially because of Article 15(7) permits derogations from the equality clause to "protect(ion) of public health or morality".

Same-sex sexual conduct is criminalized by the Sections 365, 365A of the Penal Code on the grounds of being "against the order of nature" and "gross indecency. The statute has imposed 2 year imprisonment for persons engaged in such behaviours.

On January 2017, the Cabinet denied the inclusion of the rights of LGBTIQ persons, including sexual orientation and gender identity in the National Action Plan for the Promotion and Protection of Human Rights (2017-2022), on the basis that it is against the country's culture.

Since June 2016, Sri Lanka has permitted the request of a 'Gender Recognition Certificate' by transgender individuals. However, the Circular issued by the Director General of Health Services (General Circular No. 01-34/2016, 16 June 2016) appears to require two different procedures to be carried out together (hormone treatment as well as surgery) in the legal recognition of the gender identity of a transgender individual.

### **CHALLENGES**

### **IMPACT**

Criminalization of Same-sex sexual conduct.

Provisions in the Penal Code of Sri Lanka criminalize Same-sex sexual conduct. As a result, legal actions are taken by police upon receiving information regarding such conduct.

Lack of constitutional provision for equal treatment before the law

Provision for Right to equal treatment under Article 12 of the Constitution does not cover LGBTIQ persons. As a result, LGBTIQ persons cannot legally challenge any official discrimination based on their gender identities.



**CHALLENGES**

**IMPACT**

Limitations of existing 'Gender Recognition Certificate' procedure.

Some state interventions such as the "Gender Recognition Certificate" are problematic and invasive as it requires an evaluation by a psychiatrist or a testimony by parents as opposed to self-identification of gender.

SOGIESC (Sexual Orientation, Gender Identity & Expression and Sex Characteristics ) based discrimination.

LGBTIQ persons are denied equal enjoyment of rights such as health, housing, education and social protection. As a result, many experience poverty, deprivation and vulnerability. There are cases of LGBTIQ persons being refused employment based on their gender identity. They face harassment and ill-treatment owing to their sexual orientation or gender identity.

**RECOMMENDATIONS**

1. Amend the Penal Code of Sri Lanka to decriminalize consensual Same-sex sexual conduct.
2. Ensure that sexual orientation and gender identity is included as a ground for non-discrimination in the Constitution and reflected in all other laws and policies, as recommended by the Fundamental Rights Sub-committee of the Constitutional Assembly.
3. Permit and revise self-identification of gender by removing the requirement of evaluation by a psychiatrist or a testimony by parents in the Gender Recognition Certificate, allow any transgender individual, upon request, to obtain a change in their gender designation on all identity documents.
4. Adopt comprehensive anti-discrimination legislation and policies enshrining the principles of equality for LGBTIQ persons.
5. Recognise intersecting forms of discrimination, including on the basis of sex and sexual orientation, and adopt and implement policies and programs which address intersectional discrimination.
6. Eradicate harassment and ill-treatment of LGBTI persons owing to their sexual orientation or gender identity, including when perpetrated by public officials
7. End discrimination against LGBTI persons in access to employment.
8. Allow full access to public services for LGBTI persons.
9. Develop, implement, and intensify training programs and public awareness efforts to educate law enforcement officers, public employees and the general public to address discriminatory stereotypes against LGBTIQ persons.