

**Living without legal protection:  
constant fear from stigma,  
discrimination and violence against  
LGBTIQ community in Sri Lanka**



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This publication is commissioned by ILGA Asia - the Asian Region of the International Lesbian, Gay, Bisexual, Trans and Intersex Association, representing more than 170 LGBTI organizations in East, South, Southeast, and West Asia. The document has been produced in consultation with member organisations and key partners as suggested by member organisations in the country. Permission to quote or otherwise use the information has been provided by the informants.

The analysis in the report is intended to recommend ILGA Asia to produce a strategic plan for 2021-2025. Positions in the report lie with the participants of the consultations and interviews, and do not reflect the values and viewpoints of the collective network.

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To protect the safety and privacy of members and informants, their names have been omitted from the publication where appropriate.



# Executive Summary

This report contains the analysis of data gathered through eight Key Informant Interviews (KII) and four Focused Group Discussions (FGDs) conducted as part of the in-country consultations in Sri Lanka for the ILGA Asia Strategic Plan development for the 2021-2025 period.

Data gathering for this report was conducted through Key Informant Interviews (KII) and Focus Group Discussions (FGD). Four focus group discussions were held with LGBTIQ community members. Eight key informant interviews were conducted with identified individuals who represented the LGBTIQ activists and advocates, community and legal sector. The KII participants also represented diverse sexual orientations and gender identities.

The findings revealed a mix of challenges faced by the LGBTIQ community in Sri Lanka across civil, political, economic, social and cultural rights spectrum. Some members and advocates of the community believes that all efforts of the community should be concentrated and accelerated towards decriminalization where as a significant part of the community believes that efforts should be concentrated on gaining economic, social and cultural rights (ESC) for LGBTIQ community more than civil and political rights as ESC rights are more relatable to everyday LGBTIQ community members. In addition, the KII and FGD participants agreed that the LGBTIQ community movement and its activists in the country lack a common goal which contributes to siloed efforts but do not necessarily result in the desired outcomes.

However, the LGBTIQ community movement of the country, of which the origins could be traced back to 1995 to the establishment of the first LGBTIQ organization, Companions on a Journey, have had many accomplishments. Among them, the existence of more than 10 LGBTIQ identified organizations, issuance of the gender recognition certificate, the recent acknowledgement of equal rights for



LGBTIQ people by left wing political parties and the positive statements by consecutive Attorney Generals are key.

In spite of these achievements, gaining equal rights for LGBTIQ individuals through decriminalisation and enactment of enabling laws that protect ESC rights of the LGBTIQ community is miles away. The Minister of Justice met a group of human rights advocates in November 2020 and has initiated a process to redefine archaic articles in the Sri Lankan Penal Code and the importance of protecting the right to privacy of consenting adults. Yet, the current political regime has not explicitly expressed any sentiment over the LGBTIQ rights arguments ever since the appointment of the Executive President and parliament. However, like the previous governments, there is threat that the current government will use the nationalistic, cultural and religious argument if it does not want to support the human rights course in general.



# Introduction

This report contains the analysis of data gathered through eight Key Informant Interviews (KII) and four Focused Group Discussions (FGD) conducted as part of the in-country consultations in Sri Lanka for the ILGA Asia Strategic Plan development for the 2021-2025 period.

## Methodology - Data gathering

Data gathering for this report was conducted through Key Informant Interviews (KII) and Focus Group Discussions (FGD).

Eight key informant interviews were conducted with identified individuals who represented the LGBTIQ activists and advocates, the LGBTIQ community and the legal sector. The KII participants also represented diverse sexual orientations and gender identities.

The four FGDS conducted for this data gathering included the following;

- FGD with gay, bisexual and queer men - nine
- FGD with Lesbian, bisexual and queer women - six
- Transgender people - eleven
- LGBTIQ organizations' representatives - five

Two questionnaires were used to guide both KIIs and FGDs which were developed and finalized in consultation with ILGA Asia. The data gathering took place during October and November 2020. The data were analysed using two methods:

### Method 1

Recurrent themes, words, and topics during the KIIs and FGD were used to analyse the data

### Method 2

The FGD and KII questionnaires were also used to analyse the data.



## Data gathering challenges

The KII and FGDs were initially planned to be conducted as physical meetings. However, due to COVID-19 situation, all meetings were rescheduled as online meetings. Despite the difficulties of conducting online meetings and interviews on sensitive topics, all possible actions were taken to secure the privacy and confidentiality of all participants. The participants were also provided with an internet allowance to compensate for their time and resources to take part in the KIIs and FGDs.







# LGBTIQ - Laws and interpretations

Discrimination on the basis of sexual orientation or gender identity is as common as discrimination based on other grounds of religion, disability, economic status or health, particularly in the South Asian region.<sup>1</sup> In the context of Sri Lanka, the society attempts to impose social norms of sexual orientation and gender identity upon their individuals by way of customs and intimidation which is predisposed by oppressive laws.<sup>2</sup>

Same-sex sexual conduct, i.e. “carnal intercourse against the order of nature” is illegal in Sri Lanka. Article 12 of the Constitution of the Democratic Socialist Republic of Sri Lanka (as amended) provides that all persons are equal before the law and elaborates that citizens shall not be discriminated against on grounds of race, religion, language, caste, sex, political opinion, and place of birth, which covers discrimination against sexual orientation and gender identity. However, the effectiveness of this Article is challenged by the existence of Article 16 of the Constitution which further provides that ‘All Written and unwritten law shall be valid and operative notwithstanding any inconsistency with the preceding provisions of this Chapter’.<sup>3</sup>

The National Law affecting the Lesbian, Gay, Bisexual, Transgender, Intersex and Queer (LGBTIQ) community in Sri Lanka is stated under Sections 365 and 365A of the Penal Code (as amended by the Penal Code (Amendment) Act, No. 10 of 2018) where homosexual acts are punishable by imprisonment up to ten years. Up until 1995, the law applied to only men, however, the amended Act becomes gender

<sup>1</sup> *The Yogyakarta Principles; Principles on the application of international human rights law in relation to sexual orientation and gender identity*, [http://www.yogyakartaprinciples.org/principles\\_en.pdf](http://www.yogyakartaprinciples.org/principles_en.pdf)

<sup>2</sup> *The Yogyakarta Principles; Principles on the application of international human rights law in relation to sexual orientation and gender identity*, [http://www.yogyakartaprinciples.org/principles\\_en.pdf](http://www.yogyakartaprinciples.org/principles_en.pdf)

<sup>3</sup> Sections 365 of the Penal Code (as amended by the Penal Code (Amendment) Act, No. 10 of 2018; Constitution of the Democratic Socialist Republic of Sri Lanka Chapter III Article 12 Right to equality; Constitution of the Democratic Socialist Republic of Sri Lanka Chapter III Article 16 Existing written law and unwritten law to continue in force.

neutral, criminalizing both male and female consensual homosexual activity (Penal Code (Amendment) Act No 22 of 1995).<sup>4</sup>

In addition to the specific Penal laws, there are many other local and state implemented laws governing specific crimes which are disproportionately used against the LGBTIQ community; for example the Vagrancy Law (The Vagrants Ordinance, No. 20 of 1947)<sup>5</sup> in Sri Lanka and the Gender Impersonation Law (as per the Penal Code Section 399)<sup>6</sup> which are used to intimidate, arbitrarily question, arrest and detain individuals such as butch lesbians, masculine-looking women, and transgender persons whose appearance do not conform to gender norms.<sup>7</sup>

It is important to note that there is no actual history of criminalization of homosexual behaviour prior to colonization in South Asia. It is an outcome of British imperialism, based on Judeo-Christian values, exported to all colonial countries, changing their legal environment.<sup>8</sup>

The mixing of those laws with the religious values of the South Asian region has ensured that, even after the British

<sup>4</sup> S365: Unnatural Offences, Penal Code (as amended 1995): 'Whoever voluntarily has carnal intercourse against the order of nature with any man, woman, or animal, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be punished with fine and where the offence is committed by a person over eighteen years of age in respect of any person under sixteen years of age shall be punished with rigorous imprisonment for a term not less than ten years and not exceeding twenty years and with fine and shall also be ordered to pay compensation of an amount determined by court to the person in respect of whom the offence was committed for injuries caused to such person.'

- S365A: Gross Indecency, Penal Code (as amended 1995): 'Any person who, in public or private, commits, or is a party to the commission of, or procures or attempts procure the commission by any person of, any act of gross indecency with another person, shall be guilty of an offence, and shall be punished with imprisonment of either description, for a term which may extend to two years or with fine or with both and where the offence is committed by a person over eighteen years of age in respect of any person under sixteen years of age shall be punished with rigorous imprisonment for a term not less than ten years and not exceeding twenty years and with fine and shall also be ordered to pay compensation of an amount determined by court to the person in respect of whom the offence was committed for the injuries caused to such person.'

<sup>5</sup> Vagrants Ordinance, 1842, <https://www.srilankalaw.lk/Volume-VIII/vagrants-ordinance.html>.

<sup>6</sup> Penal Code, 1885, [https://ihl-databases.icrc.org/applic/ihl/ihl-nat.nsf/0/2962721b86fc380ac125767e00582c62/\\$FILE/Penal%20Code.pdf](https://ihl-databases.icrc.org/applic/ihl/ihl-nat.nsf/0/2962721b86fc380ac125767e00582c62/$FILE/Penal%20Code.pdf)

<sup>7</sup> Sri Lanka government says LGBT rights are constitutionally protected (*Outright Action International*),

<https://www.outrightinternational.org/content/sri-lanka-government-says-lgbt-rights-are-constitutionally-protected>

<sup>8</sup> Aditya Bandhopadhyay, *Laws affecting persons in South Asia: A desk review*, (RFSU & SIDA 2009).

themselves had decriminalized sodomy in 1967, its active criminalization continued in South Asia, justified in the name of local cultural values.<sup>9</sup>

Despite the existence of the non-discrimination clause of Article 12(2) of the Sri Lankan Constitution<sup>10</sup>, the Penal Code criminalizes same-sex relationships, due to the rather ambiguous nature of the definition provided. In addition to the lack of collateral for those who may be unfairly victimized, it leaves room for law enforcement officers to arbitrarily arrest individuals without proper recourse.<sup>11</sup>

There have been instances of judicial acceptance, as in the instance where the Supreme Court has noted in the case of **Channa Pieris v. Attorney-General**,<sup>12</sup> personal fulfillment is a right afforded to everyone and sexuality is one such expression of self.

Despite this, the law remains a constant source and reminder of the second-class nature of treatment and acceptance that the LGBTIQ community in Sri Lanka is subject to.

## The Constitution of the Democratic Socialist Republic of Sri Lanka

On 22 October 2020, the 20th Amendment to the Constitution was passed into law. The Amendment undoes most of the reforms brought about by the 19th Amendment, and it introduces judicial appointment procedures which are incompatible with principles of the justice.<sup>13</sup>

Article 12 of the Constitution<sup>14</sup> recognizes non-

<sup>9</sup> *Ibid.*

<sup>10</sup> "No citizen shall be discriminated against on the grounds of race, religion, language, caste, sex, political opinion, place of birth or any one of such grounds"

<sup>11</sup> Some aspects of criminal law discriminatory of women (*Daily News*, 14 December 2015),

<http://www.dailynews.lk/?q=2015/12/14/features/some-aspects-criminal-law-discriminatory-women>

<sup>12</sup> *Channa Pieris v. Attorney-General*, 1 S.L.R. 1, p. 131., 1994

<sup>13</sup> Sri Lanka: newly adopted 20th Amendment to the Constitution is blow to the rule of law (ICJ, 27 October 2020), [icj.org/sri-lanka-newly-adopted-20th-amendment-to-the-constitution-is-blow-to-the-rule-of-law/](http://icj.org/sri-lanka-newly-adopted-20th-amendment-to-the-constitution-is-blow-to-the-rule-of-law/).

<sup>14</sup> Article 12 (2) - No citizen shall be discriminated against on the grounds of race, religion, language, caste, sex, political opinion, place of birth or any one of such grounds :

Provided that it shall be lawful to require a person to acquire within a reasonable time sufficient knowledge of any language as a qualification for any employment or office in the Public, Judicial or Local Government Service or in the service of any Public Corporation, where such knowledge is reasonably necessary for the discharge of the duties



discrimination based on the grounds of race, religion, language, caste, sex, political opinion, place of birth or any one of such grounds as a Fundamental Right. This measure should ideally protect persons from stigmatization and discrimination on the basis of sexual orientation and gender identities, although it does not expressly state so.. However, due to the deep-rooted heteronormative values ingrained within the Sri Lankan culture and community, the interpretation of laws in line with such values will inevitably and prejudicially affect any person who fails to conform.

### **Use of Article 12**

Sri Lanka has displayed a consistent failure to adopt laws or policies to combat discrimination. Despite having stated in the past that the equality provision in Art. 12 of the Constitution does protect against discrimination based on sexual orientation and gender identity although those grounds are not expressly mentioned, it is evident - owing to the aforementioned Article 16 and also other provisions of the Constitution - that the effectiveness of this provision is nullified.<sup>15</sup>

#### **Example -**

Article 15 provides that the fundamental rights provisions of the Constitution can be made subject to restrictions in the name of "morality." Religion often plays a central role in Sri Lanka as Buddhism plays a major role in the country's civil and political stance, and often it is religion that influences behavioral patterns of an intimate nature such as sexuality. Hence the continued stigmatization of homosexuality can be attributed to the derivation of moral legitimacy from religious authorities, and therefore a major contributor to the continued discrimination against LGBTIQ persons can be attributed to this consideration of a morality clause.<sup>16</sup>

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of such employment or office :

Provided further that it shall be lawful to require a person to have a sufficient knowledge of any language as a qualification for any such employment or office where no function of that employment or office can be discharged otherwise than with a knowledge of that language.

<sup>15</sup> Sri Lanka Shadow Report- To the Committee on the Elimination of All Forms of Discrimination against Women (CEDAW), (Women and Media Collective, January 2017), [https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/LKA/INT\\_CEDAW\\_NGO\\_LKA\\_26306\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/LKA/INT_CEDAW_NGO_LKA_26306_E.pdf).

<sup>16</sup> Aditya Bondyopadhyay (n 8).

## Penal Code of Sri Lanka as amended by Penal Code (Amendment) Act, No. 10 of 2018

The government has long resisted removing discriminatory Penal Code provisions that prohibit same-sex relations, and it rejected recommendations made via the 3rd Cycle UPR of Sri Lanka to repeal articles 365 and 365A, claiming it does not allow the discriminatory application of laws. But in practice, the Penal Code and other criminal law provisions are regularly used to discriminate against transgender people and have a pernicious impact on others due to their actual or perceived sexual orientation.<sup>17</sup>

An example can be seen in the commentary on the December 2011 Sri Lanka Operational Guidance Note for the 'Still Human Still Here' coalition where they feature a transcript of a video submitted anonymously by a Sri Lankan individual who shares his experience in having been "arrested and put in jail two times in Sri Lanka for being a gay person".<sup>18</sup>

It must be noted that human rights violations committed against members of the LGBTIQ community are underreported due to the fear of being further victimized by police.<sup>19</sup>

A number of other instances were documented in the 'Human Rights Violations Against Lesbian, Gay, Bisexual, and Transgender (LGBT) People in Sri Lanka: A Shadow Report' in 2014; an anonymous call to the EQUAL GROUND Hotline in 2008 reported that the police arrested two men staying at a guest house and were made to pay a fine.<sup>20</sup> Another example involves two gay men who were arrested by police at a public restroom in Colombo and taken to a police station, where they were forced to pay a bribe to the

<sup>17</sup> Women and Media Collective (n 15).

<sup>18</sup> LGBT Asylum News/Anonymous, Video: Sri Lankan gay activist speaks out, 26/11/2011 "I am recording this video because I was arrested and put in jail two times in Sri Lanka for being a gay person. I am not mentioning my name here or showing my face because I have to go back and forth to Sri Lanka to visit my parents. My parents do not allow my sexuality and I am not out to them about it. I am safe and living my gay life happily because now I live in outside of my country. I know lot of my fellow gay brothers and sisters are suffering in Sri Lanka because they were persecuted by Sri Lankan police and not getting any help from the Sri Lankan government either. Not only that, they were not accepted by the traditionally thinking society in Sri Lanka..."

<sup>19</sup> RESPONSES TO INFORMATION REQUESTS (RIRs) (*Immigration and Refugee Board of Canada*, 13 January 2012), <https://www.justice.gov/sites/default/files/eoir/legacy/2014/03/06/LKA103948.E.pdf>

police in order to be released.<sup>21</sup>

The Sri Lanka Police Performance Report 2018 describes the act of 'Homosexuality' under 'Vice and Statutory Offences'; vice is described as offences that impact adversely on morality and well-being which is expected from the society. Offences that were considered as a 'vice' have been reported under six categories, one of which was 'Homosexuality' and has been included in the offences reported from 2016 to 2018 regarding homosexuality; the report provides that 17 cases have been reported in 2016 and it has decreased to four incidents by 76% in 2017. In 2018, five offences have been reported and it is an increase of 25%. Prosecutions regarding homosexuality were at 100% in 2016 and it has reduced to 75% in 2017. The rate has gone up to 100% in 2018.<sup>22</sup>

**Table on raids on Vice from 2016 to 2018**

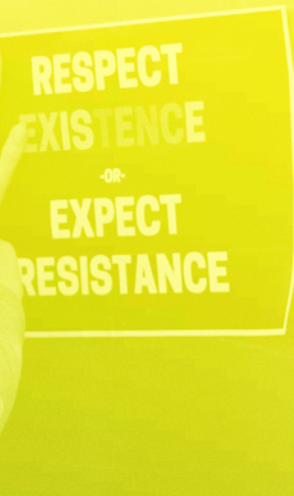
Offense	2016				2017				2018						
	Reported	Number of cases filed	percentage of prosecution	Number of persons who have been prosecuted		Reported	Number of cases filed	percentage of prosecution	Number of persons who have been prosecuted		Reported	Number of cases filed	percentage of prosecution	Number of persons who have been prosecuted	
				Male	Female				Male	Female				Male	Female
1 Prostitution	628	627	100%	10	662	522	516	99%	183	495	441	414	94%	15	456
2 Brothels	118	114	97%	79	281	262	255	97%	181	606	278	261	94%	141	725
3 Seduction (a child below 18 years for sexual abuse)	14	9	64%	3	6	0	0		0	0	4	4	100%	6	5
4 Homosexuality	17	17	100%	33	0	4	3	75%	6	0	5	5	100%	9	0
5 Exhibitionism, voyeurism & outrage of Modesty	130	111	85%	100	0	61	51	84%	36	0	89	55	62%	67	0
6 Selling pornographic cards, photographs and leaflets	348	339	97%	333	3	206	200	97%	205	0	137	129	94%	118	7
<b>TOTAL</b>	<b>1255</b>	<b>1217</b>	<b>97%</b>	<b>558</b>	<b>1055</b>	<b>1055</b>	<b>1025</b>	<b>97%</b>	<b>611</b>	<b>1101</b>	<b>954</b>	<b>868</b>	<b>91%</b>	<b>356</b>	<b>1193</b>

Source: Police Statistics Unit

<sup>20</sup> "While staying in the area, he and a Belgian male friend shared a room just outside Colombo in a guest house known to be a place where gay men commonly stay. One evening, after the two men had returned from dinner, the police broke down the door of their room and arrested both men under § 365A. The police forced the Sri Lankan man's fingers onto unused condoms and planted the condoms at the scene before taking both men to the police lock-up. To obtain release from detention, the men were forced to agree to a settlement under which the Sri Lankan man had to agree to be identified as the State's witness against his friend, and the Belgian man had to pay a fine."

<sup>21</sup> Colombo Fort Incident in 2006, Sri Lanka- "...At the station, the police officers explained their reason for the arrest using derogatory terminology for gay individuals and accused the two men of having sex in the restroom. The police then drove the two men to another location, where the men were forced to pay the police a bribe to be released" (You Tube, 12 September 2011), <https://www.youtube.com/watch?v=uGnw5KuELhk&feature=related>

<sup>22</sup> Performance Report, 2018 (Sri Lanka Police, 2018), <https://www.parliament.lk/uploads/documents/paperspresented/performance-report-srilanka-police-2018.pdf>.





The Grave Crimes Abstract of the police lumps together cases of “unnatural sex” or cases of same-sex sexual relations with cases of grave sexual abuse. In 2019, the report recorded 710 cases of “unnatural offences/grave sexual abuse”, but it is difficult to discern how many of these cases are consensual same sex relations among adults and how many are cases of sexual abuse. This also shows that the legal system does not take consent, nor the age of consent, into account when considering sexual relations among same sex adults.

### **Penal Code, Section 365 Unnatural Offences**

*“Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be punished with fine [...]”*

Explanation:penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this Section.

### **Penal Code, Section 365A Acts of gross indecency between persons**

“Any person who, in public or private, commits, or is a party to the commission of, or procures or attempts to procure the commission by any person of any act of gross indecency with another person, shall be guilty of an offence and shall be punished with imprisonment of either description for a term which may extend to two years or with a fine, or with both...”

***Wimalasiri v. Maradana OIC and AG*** is a notable Case law where the accused was charged for engaging in an “indecent act” under Section 365A. When the matter was taken up in Court, it noted that “sodomy” and “buggery” are still considered “indecent activity” and continues to be a crime in Sri Lanka.<sup>23</sup>

<sup>23</sup> SC SPL LA NO.304/2009.

**Penal Code, Section 399 Cheating by Personation<sup>24</sup>**

This Section is oftentimes used by the police to further discriminate and arrest members of the transgender community who undergo medical transition and their identity documents may bear a different gender. However, it must be noted that as of 2016, after several representations being made to the President, transgender certificates are now being issued by the Registrar General's Department.<sup>25</sup>

**The Vagrants Ordinance, No. 20 of 1947**

Section 7 of the Vagrants Ordinance No. 20 of 1847 is used against, mainly transgender persons and gay men, to charge for soliciting and acts of indecency in public places.<sup>26</sup>

Therefore, community members are at the risk of being arrested for walking from point A to B, or simply waiting for a bus.

<sup>24</sup> S. 399- "A person is said to 'cheat by personation' if he cheats by pretending to be some other person, or by knowingly substituting one person for another, or representing that he or any other person is a person other than he or such other person really is"; S. 402- "Whoever cheats by personation shall be punished with imprisonment of either description for a term which may extend to three years or with fine or with both."

<sup>25</sup> General Circular No: 01-34/2016 on Issuing of Gender Recognition Certificate for transgender Community (Ministry of Health, 16 June 2016); Circular No 06/2016 (The Registrar-General, 28 June 2016).

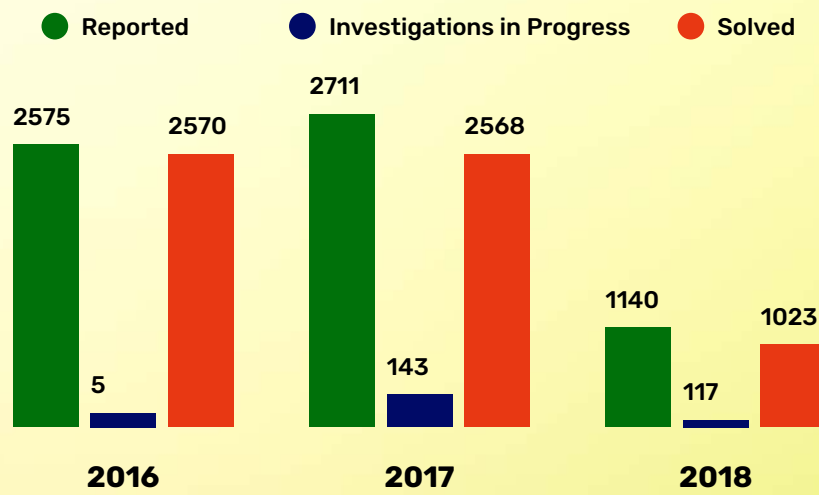
<sup>26</sup> S 7(1) The following persons, that is to say-

- (a) any person in or about any public place soliciting any person for the purpose of the commission of any act of illicit sexual intercourse or indecency, whether with the person soliciting or with any other person, whether specified or not;
- (b) any person found committing any act of gross indecency, or found behaving with gross indecency, in or about any public place ;
- (c) any person found -
  - (i) in any public enclosure contrary to any local by-laws or regulations prescribing the use of such enclosures ; or
  - (ii) in any enclosure belonging to the State , without the permission of the person in charge thereof; or
  - (iii) within any private enclosure attached to any dwelling house, except upon the invitation of any inmate of the premises, under such circumstances that it is reasonable to infer that he is there present for immoral purposes, unless he is able to explain his presence to the satisfaction of the court by which he is tried, shall be guilty of an offence, and shall be liable on summary conviction to imprisonment of either description for a period not exceeding six months, or to a fine not exceeding one hundred rupees, or to both.

(2) In any case in which any person who has been convicted of an offence under paragraph (a) of the last preceding subsection shall subsequently be convicted of another such offence, he shall, if a male, in addition to any other punishment to which he may be sentenced by the court, be liable, at the discretion of the court to be whipped.

Offences under the Vagrants Ordinance have also decreased in 2018. In 2016, the reported number of cases was 2575 and it has gone up by 5% in 2017 and reached 2711. Cases reported in 2018 amount to 1140 and compared to 2017, it shows a 58% decrease. Offences under Vagrant Ordinance which have been resolved by prosecution are at 99% in 2016, 95% in 2017 and 90% in 2018.<sup>27</sup>

## Offences under the Vagrants Ordinance



The Vagrancy Ordinance of 1847 remains in place and continues to give authorities the power to detain people who they consider to be loitering in public; this provision allows for the arrest and prosecution of sex workers. The police have the power to determine and interpret the law, and many times the Vagrancy Ordinance is used to wrongfully detain transgender people, and people of sexual minorities because they appear to look different. In most cases it is those of the lower socioeconomic status who are the most vulnerable to this form of harassment; women, including transwomen, are particularly vulnerable to sexual harassment, abuse and mistreatment while in police custody.<sup>28</sup>

<sup>27</sup> Sri Lanka Police (n 22).

<sup>28</sup> Vagrants Ordinance 1847, Section S3(1)(b) every common prostitute wandering in the public street or highway, or in any place of public resort, and behaving in a riotous or indecent manner...; Status of Women Sex Workers in Sri Lanka (Abhimani Women Collective & Others, January 2017), The Status of Lesbian, Bisexual Women in Sri Lanka, NGO Shadow Report to the CEDAW, Women Support Group, January 2011, [https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/LKA/INT\\_CEDAW\\_NGO\\_LKA\\_26289\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/LKA/INT_CEDAW_NGO_LKA_26289_E.pdf); <https://outrightinternational.org/sites/default/files/498-1.pdf>.



In 2016, there was an incident reported in Avissaella, a city in the Colombo District, Western province of Sri Lanka where “a suspected lesbian couple had been arrested by Police, after a trishaw driver tipped off the Police station. The couple, according to reports, were waiting near the bus station. Police had detained and interrogated the couple on their alleged ‘lesbian relationship.’”<sup>29</sup> The arrest took place as action against those who behave “indecently” in public provided for by the liberal and arbitrary interpretation of provisions in the Vagrancy Ordinance.

## Laws and interpretations that are used to protect transgender persons in Sri Lanka

LGBTIQ persons in Sri Lanka have to face a range of abuse at home, schools, public spaces, workplaces, financial institutions, and healthcare establishments. To this end, the following laws hold potential in the protection of community members:

1. Penal Code (Amendment) Act, No. 10 of 2018 Section 345 (sexual harassment)<sup>30</sup>
2. Prevention of Domestic Violence Act, No. 34 of 2005.
3. Prohibition of Ragging and Other Forms of Violence in Educational Institutions Act, No. 20 of 1998

The aforementioned provisions are all gender neutral in their protection. The Penal Code (Amendment) Act, No. 10 of 2018, Section 345 (sexual harassment) which previously provided protection only for women has since been amended to be gender neutral in its application; therefore, the above laws maintain potential to assist those of the LGBTIQ community and possibly provide solace in their application due to their wider appeal.<sup>31</sup>

<sup>29</sup> Sri Lankan Police has justified the arrest (Sri Lankan Brief, 2016), <https://srilankabrief.org/2016/01/sri-lankan-police-arrest-a-lesbian-couple-police-has-justified-the-arrest/>

<sup>30</sup> S345 : Sexual Harassment- “Whoever, by assault or use of criminal force, sexually harasses another person, or by the use of words or actions, causes sexual annoyance or harassment to such other person commits the offence of sexual harassment and shall on conviction be punished with imprisonment of either description for a term which may extend to five years or with fine or with both and may also be ordered to pay compensation of an amount determined by court to the person in respect of whom the offence was committed for the injuries caused to such person.”

<sup>31</sup> The following provisions in their Sections do not specify perpetrators nor victims gender and is therefore gender neutral in their application – Penal Code (Amendment) Act, No. 10 of 2018 Section 345 (sexual harassment), Prevention of Domestic Violence Act, No. 34 of 2005 and Prohibition of Ragging and Other Forms of Violence in Educational Institutions Act, No. 20 of 1998.

## United Nations Human Rights Instruments

The international community have long been pressuring the government of Sri Lanka to take affirmative action in decriminalizing and legalising of same-sex relations. It is significant to note that the closest Sri Lanka has come to decriminalising homosexuality was in 2017 amidst the mounting pressure by the European Union. However, the decision was made to the disappointment of many, including the members of the LGBTIQ community, who had casted their votes in favour of the Yahapalana Government, when the Cabinet's decision was made to reject any move made in the direction of decriminalization.<sup>32</sup>

Following this distasteful development, the LGBTIQ community in Sri Lanka took a toll when the Sri Lankan President at the time, Hon Maithripala Sirisena, made some offensive comments and leveled some queer innuendo, "samanalaya" (butterfly) on the Country's Prime Minister in November 2018 in a deliberate attempt to discredit the Prime Minister and their political party, the United National Party (UNP).<sup>33,34</sup> The road to equality consists of three steps: decriminalization, non-discrimination and finally, provision for same-sex marriages. Sri Lanka, however, is still grappling with the first step of decriminalization.<sup>35</sup>

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<sup>32</sup> Cabinet rejects moves to decriminalize homosexuality (Daily Mirror, 11 January, 2017), <http://www.dailymirror.lk/article/Cabinet-rejects-moves-to-decriminalize-homosexuality-122311.html>. Having urged by the EU to comply with the 27 conventions on civil and political rights, human rights and labour regulations, including decriminalization of homosexuality and several other international instruments, Sri Lanka in 2017 declared that the country is not in a position to decriminalize homosexuality as it may cause "social problems" in the country. It was elaborated that this decision was a result of the overwhelming opposition from the "Buddhist clergy", that is an integral part of governance in the country. The Minister of Health at the time exclaimed that this decision is in line with several European Union nations where the Catholic Church has opposed this decision.

<sup>33</sup> Understood contextually as a Sinhala language slur for an effeminate gay man. When called out for openly discriminating against sexualities and genders, government spokespersons issued denials that his statements were aimed at any particular group of people; Shermal Wijewardene\* and Nehama Jayewardene, Law and LGBT people in Sri Lanka: Developments and Narrative Possibilities Australian Journal of Asian Law, 2020, Vol 20 No 2, Article 11: 1-16 1

<sup>34</sup> These controversial comments were intended to clarify the events leading up to the unconstitutional removal of the Prime Minister from office. While this led to a mocking laughter from various politicians and most members of the public.

<sup>35</sup> MAN Chandratilaka and P Mahanamahewa, Sexual Orientation and Human Rights; Applicable Laws of Sri Lanka and UK, Proceedings of 8th International Research Conference, KDU, 2015.

## Sexual abuse and domestic violence laws under Sri Lankan Jurisdiction

Rape and sexual violence in Sri Lanka gained a spotlight following the post-war conflicts. The main legal instrument governing these offences is the Penal Code and the Prevention of Domestic Violence Act, No. 34 of 2005, which oversees offences that fall within the realm of marital relationships.

Any offence conducted against women under the purview of Section 363 of the Penal Code can be used in favor of queer women. Studies show that lesbian, gay, bisexual and transgender people are subjected to sexual violence by family members and healthcare workers including acts such as forced marriages and corrective rape.<sup>36</sup> The domestic law of the country does not protect LGBTIQ individuals from being forced into heterosexual marriages, and lesbian and bisexual women are often compelled into marriage, and threatened with physical and sexual violence or removal of their property if they refuse.<sup>37</sup>

### Rape and grave sexual abuse of LGBTIQ persons

Section 363 specifically provides that rape can only be committed against a woman and if a man has sexual intercourse with another man under the same criteria described in this Section, omitting sexual violence that may be conducted by men on other men or those whom are not recognized as women in the eyes of the law.

As a result, the rape of boys and or men does not fall under this official legal definition, and instead gets tried under 365B as 'grave sexual abuse'. The punishment for the two offences under the act is quite similar, however, the euphemism used to describe rape when it occurs to boys demonstrates superior social attitudes towards gender stereotypes and who they consider to be victims. In a recent article with the local media, the director of the Child Protection Force, Milani Salpitikorala, declared that 90% of sexual abuse cases handled by them surround young boys.<sup>38</sup>

<sup>36</sup> Sri Lanka: Treatment of sexual minorities, including legislation, state protection, and support services (Refworld, 13 January 2012), <https://www.refworld.org/docid/4f435fa52.html>

<sup>37</sup> Country Profile- Sri Lanka (Human Dignity Trust), <https://www.humandignitytrust.org/country-profile/sri-lanka/>.

<sup>38</sup> 'Grave Sexual Abuse': When the Word Rape Doesn't Apply To Boys (Roar Media, 27 September 2020), <https://roar.media/english/life/features/grave-sexual-abuse-when-rape-does-not-apply-to-boys>



There have been several instances reported by the media where young boys have been abused continuously or otherwise by close family members; however, these cases do not reach courts due to various restrictions faced by the victims.

Sri Lanka faced a great deal of scrutiny on sexual abuse and gender-based violence following the 30-year civil war between the Sinhala and Tamil communities. A report on survivors of sexual violence released by the International Truth and Justice Project (ITJP) in September 2018 titled *unsilenced* uncovered 121 testimonials by Tamil men from Sri Lanka who survived sexual violence.<sup>39</sup>

In 2015 there was a reported case of the rape of an autistic 23 year old boy who was raped by four men in Green Cabin. This was a case that was prosecuted in the high court under grave sexual abuse.<sup>40</sup> However, reports of sexual violence on men and LGBTIQ persons go unreported due to the social stigmas on the victimization of men. Men who report these offences are often shunned by society as it is not considered masculine to be sexually violated or talk about it.

### **Sexual harassment**

Section 345 of the Penal Code prohibits sexual harassment which includes assault or use of criminal force to sexually harass another person, or by the use of words or actions, to cause sexual annoyance or harassment.

### **Prevention of Domestic Violence Act (PODV), No. 34 Of 2005**

The PODV defines domestic violence as acts of *physical violence*, which are already constituted as offences against the body under the Penal Code. However, the PODV further includes *emotional abuse*, defined as *a pattern of cruel, inhuman, degrading or humiliating conduct of a serious nature directed towards an aggrieved person*. The Act further provides for the issue of Protection Orders by a Magistrate's Court against perpetrators of 'domestic violence'.

<sup>39</sup> Dr. Heleen Touquet, *Unsilence: Male Survivors speak of conflict related sexual violence in Sri Lanka*, International Truth and Justice Project, September 2018, [https://itjpsl.com/assets/ITJP\\_unsilenced\\_report-final.pdf](https://itjpsl.com/assets/ITJP_unsilenced_report-final.pdf)

<sup>40</sup> The Green Cabin Rape (Colombo Telegraph, 18 September 2015), <https://www.colombotelegraph.com/index.php/the-green-cabin-rape/>.

While there is no specific provision in reference to LGBTIQ persons living in civil partnership under this act, it remains gender neutral allowing men or women abused by their same-sex partner to rely on this provision and seek protection orders by the Magistrate Court. However, reports provide that in the event that women in same-sex relationships do attempt to report violations of this law, the reports are not taken seriously, thus it cannot be relied upon by them.<sup>41</sup>

## Recent developments

The continued prosecution of consensual same-sex conduct and transgender persons is evident in how Judicial Medical Officers (JMOs) and the Sri Lanka Police have conducted coerced medical examinations, vaginal examinations and anal probing on LGBTIQ persons.<sup>42</sup>

“Sri Lankan authorities have subjected at least seven people to forced physical examinations since 2017 in an attempt to provide proof of homosexual conduct, said Human Rights Watch and EQUAL GROUND”.<sup>43</sup>

Sri Lanka’s Justice Minister Ali Sabry has been made aware of the existing reports alleging such matters and has expressed that “the exams, which include forced anal examinations and a forced vaginal examination, are a form of sexual violence as well as cruel, inhuman, and degrading treatment that can rise to torture”.<sup>44</sup>

Regardless of persistent reports of such acts and the continued prosecution of LGBTIQ persons, no real action has been adopted to prevent or bring perpetrators to justice.

<sup>41</sup> Human Rights Violations Against Lesbian And Bisexual Women In Sri Lanka: A Shadow Report (Equal Ground, June 2016), [https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/LKA/INT\\_CEDAW\\_NGO\\_LKA\\_26253\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/LKA/INT_CEDAW_NGO_LKA_26253_E.pdf).

<sup>42</sup> Sri Lanka: Forced Anal Exams in Homosexuality Prosecutions (Human Rights Watch, 20 October 2020), <https://www.hrw.org/news/2020/10/20/sri-lanka-forced-anal-exams-homosexuality-prosecutions>; EQUAL GROUND Voices Concerns over Forced Anal/Vaginal Examinations on LGBTIQ Community in Sri Lanka (Equal Ground), <https://www.equal-ground.org/equal-ground-voices-concerns-over-forced-anal-vaginal-examinations-on-LGBT-community-in-sri-lanka/>

<sup>43</sup> JMOs and Police conducting forced anal and vaginal examinations on LGBT people (Daily Mirror, 30 October 2020), <http://www.dailymirror.lk/news-features/JMOs-and-Police-conducting-forced-anal-and-vaginal-examinations-on-LGBT-people/131-198911>

<sup>44</sup> Forced anal probe on LGBT people: Justice Minister disturbed (Daily Mirror, 31 October 2020), [http://www.dailymirror.lk/print/front\\_page/Forced-anal-probe-on-LGBT-people:-Justice-Minister-disturbed/238-198969](http://www.dailymirror.lk/print/front_page/Forced-anal-probe-on-LGBT-people:-Justice-Minister-disturbed/238-198969)



# Political situation of the country

On the 5 August 2020, a general election was held and the party that supports the current Executive President won two thirds of the parliament. A new Executive President was elected and sworn in office in November 2019. The current regime is considered as not “very human rights friendly”.<sup>45</sup> The current government also expressed its consideration to withdraw from the UN Human Rights Council. The 20th Amendment to the constitution passed by the parliament in October 2020 allows the Executive President to appoint members and commissioners to independent commissions such as the Election Commission, Public Service Commission, National Police Commission, Human Rights Commission, Commission to Investigate Allegations of Bribery or Corruption, Finance Commission and Delimitation Commission. The critics are concerned that this ability to appoint members without seeking recommendations will significantly compromise the independence of these commissions. The UN Human Rights Council has expressed concerns over secretaries of ministries being replaced with military officials.<sup>46</sup>

The current political regime has not expressed any concerns over the LGBTIQ rights arguments ever since the appointment of the Executive President and parliament. The Minister of Justice met a group of human rights advocates in November 2020 and has expressed the need to redefine archaic articles in the Sri Lankan Penal Code and the importance of protecting the right to privacy of consenting adults. However, like the previous governments, there is the possibility that this government will use nationalistic, cultural and religious arguments if it does not want to support the human rights course in general.

<sup>45</sup> Sri Lanka: Human Rights Under Attack -Lawyers, Human Rights Defenders, and Journalists Arrested, Threatened, Intimidated (Human Rights Watch, July 2019), <https://www.hrw.org/news/2020/07/29/sri-lanka-human-rights-under-attack>

<sup>46</sup> Sri Lanka: newly adopted 20th Amendment to the Constitution is blow to the rule of law (International Commission of Jurists, 27 October 2020), <https://www.icj.org/sri-lanka-newly-adopted-20th-amendment-to-the-constitution-is-blow-to-the-rule-of-law/>



## Achievements and milestones of the LGBTIQ movement

1

### Establishment of LGBTIQ organizations and more individuals joining the movement as activists and advocates

Majority of the KII and FGD participants mentioned that the number of LGBTIQ organizations in the country is an achievement. These organizations are registered and operate with some level of funding and donor support. The existence of these organizations prove that the community is aware of the need to formally organize and operate through formal structures. At the same time, they also indicate the need of the community to have formal organizations supporting them. Since the establishment of the first LGBTIQ organization in the country in 1995, over ten organizations have been established in the country.<sup>47</sup>

2

### The Gender Recognition Certificate for transgender people

In 2015, through the engagement with the LGBTIQ sub-committee of the Human Rights Commission in Sri Lanka the LGBTIQ movement has been able to establish the Gender Recognition Certificate for the transgender people which formalized the process for transgender people to access identity documents that reflect their preferred gender and also change the names in their other documents such as education certificates.<sup>48</sup>

3

### Positive statements from the Attorney General

On a number of occasions, consecutive Attorney Generals in Sri Lanka have issued statements supporting the rights claims of the LGBTIQ movement. These statements in detail are mentioned in the literature review section of this report. The fact the Attorney Generals are recognizing the rights of LGBTIQ people to equality and non-discrimination and to be protected under the constitution of Sri Lanka is reflective of the success of the advocacy done by the LGBTIQ movement in the country.<sup>49</sup>

<sup>47</sup> ILGA Asia interview, online, 19 October 2020

<sup>48</sup> "Issuing Gender Recognition certificate for Transgender Community", Ministry of Health Sri Lanka., 16 June 2016, <http://www.health.gov.lk/CMS/cmsmoh1/viewcircular.php?cno=01-34/2016&med=english>

<sup>49</sup> "Sri lanka Government Says LGBT Rights Are Constitutionally Protected", OutRight Action International, 20 October 2014, <https://outrightinternational.org/content/sri-lanka-government-says-lgbt-rights-are-constitutionally-protected>

#### 4 Activists becoming more open to the media

Some activists in the movement have become more open to the media which has provided an opportunity for them to reach out to the public and communities who are not generally reached through traditional communication. This opening up has created dialogues in public platforms which are now gradually becoming positive conversations. Bhoomi Harendran, Executive Director of National Transgender Network Sri Lanka and an ardent trans rights activist in the country, was the first ever transgender individual to host a political show during the latest general election period. All these exposures have helped disassociate the LGBTIQ community from the typical stigma and discrimination associated with it.

#### 5 LGBTIQ rights and dialogue gaining space in mainstream politics

In 2020, Janatha Vimukthi Peramuna, one of the leftist political parties in the country publicly recognized that LGBTIQ people should be protected under the constitution of Sri Lanka and for the 2020 general election included protection of equal rights for LGBTIQ people in the country in their election manifesto. Further information on this is provided on the literature review included in this report.<sup>50</sup>





# Challenges of the LGBTIQ movement

## Most pressing needs and challenges of the LGBTIQ community

Across the KIIs and the FGDS, several themes were identified in terms of the most pressing needs and challenges of the LGBTIQ community in Sri Lanka. These themes are:

1. Protection and promotion of economic, social and cultural rights
2. Lack of awareness and raising awareness on SOGIESC among the LGBTIQ community and the public
3. Psychosocial support, and mental health and well-being

1

### Protection and promotion of economic, social and cultural rights

Most of the KII and FGD participants who are not from a legal background invariably insisted on the protection and promotion of the social, cultural and economic rights of the LGBTIQ community as more important than decriminalization. Most participants agreed that for the majority of the LGBTIQ community outside the immediate activists or advocates circles, they do not understand the complexities of decriminalization and consider the ability to enjoy their social, cultural and economic rights as more important. The lack of social support structures and mechanisms that include LGBTIQ individuals was identified as a significant gap. The existing midwife, grama nildhari (village officer is the first tier of government officials in Sri Lanka) and Samurdhi (state sponsored benefits to those who live below the poverty line) systems do not include any benefits to LGBTIQ individuals and most often discriminate against persons with diverse SOGIESC.



## 2

**Lack of awareness and raising awareness on SOGIESC among the LGBTIQ community and the public**

The participants identified that despite the availability of different avenues to access information, many LGBTIQ individuals still lack information in terms of SOGIESC (i.e negotiating identities, interpersonal relationships as LGBTIQ persons, negotiating with families, etc.) which leads to a complex mix of personal and social issues. Most of the information on the LGBTIQ community in Sri Lanka and SOGIESC issues are available only in English. For most of the LGBTIQ individuals living outside Colombo, the capital of Sri Lanka, access to context-specific information in local languages is still very scarce. Information that reaches the public surrounding the LGBTIQ community and their rights in the context of equality and non-discrimination is significantly lagging behind and this leads to sustained stigma and discrimination and violence towards the LGBTIQ community.

## 3

**Psychosocial support, and mental health and well-being**

FGD participants and KII participants identified psychosocial support, mental health and mental well-being as a critical need of the community. However, the participants also recognized that the support and services available to the LGBTIQ community on these issues are scarce and more interventions need to be done. Many non-profit organizations that provide counselling services also lack capacity to provide comprehensive psychological support to LGBTIQ individuals. Most LGBTIQ individuals who require professional psychological or psychiatric services lack financial resources to access those services, and prolonged periods without these professional services lead to severe physiological conditions. The LGBTIQ movement needs to engage in more proactive advocacy with the Psychological Association of Sri Lanka in order to establish monitoring systems for psychological and psychiatric services provided in the country to LGBTIQ individuals and to stop services that provide a “cure” for homosexuality (also known as ‘conversion therapy’).

## Most pressing needs and challenges of the LGBTIQ activism

The predominant theme in terms of the needs and challenges of the LGBTIQ activism in Sri Lanka is the lack of unity and the urgency to establish unity among the community organizations and community actors. The prominent themes on the needs and the challenges of the community movement include:

1. Lack of trust and unity among LGBTIQ organizations and LGBTIQ community actors, leading to a fractured community and community movement
2. Lack of explicit common goals among LGBTIQ organizations and LGBTIQ community actors
3. The lack of focus on decriminalization and jurisprudence
4. Lack of innovation in terms of community mobilization and activism
5. Lack of solidarity, collaboration and engagement with other human rights movements

1

### **Lack of trust and unity among LGBTIQ organizations and LGBTIQ community actors leading to a fractured community and community movement**

Majority of the participants recognized that the local LGBTIQ movement, LGBTIQ organizations and the LGBTIQ community are fragmented due to many reasons including lack of trust, competition, personal egos and agendas. This fracturing of community actors has also provided an opportunity for many other parties to take advantage of the community and has significantly compromised the effectiveness of community mobilization and advocacy. It is important that all LGBTIQ community actors come together and establish a system/mechanism that would facilitate reconciliation among all the community actors, leading to more effective and concerted advocacy and mobilization efforts.

2

### **Lack of explicit common goals among LGBTIQ organizations and LGBTIQ community actors**

As a result of the lack of unity and fracturing within the

community and community actors, there is an obvious lack of an explicit shared agenda, a common set of goals that brings all community mobilization and advocacy together. The participants recognized the urgent need to establish a mechanism that would facilitate a process to identify a common set of goals and a shared set of objectives that would unify the community organizations, community actors, community mobilization and activism.

**3****The lack of focus on decriminalization and jurisprudence**

Some of the participants highlighted that the lack of focus on decriminalization and jurisprudence has significantly compromised the growth of the LGBTIQ community movement. While the LGBTIQ movement in Sri Lanka is considered to have begun in late 90's, the movement has not taken any significant steps towards engaging in the legal system of the country to decriminalize same-sex sexual relations among consenting adults through filing fundamental human rights violation cases at the supreme court of Sri Lanka. The movement has also not capitalized on any of the supportive statements provided by consecutive Attorney Generals and Judges. The participants recognized the importance of the community organizations and community actors developing and implementing a plan collaboratively to fast-track decriminalisation and jurisprudence.

**4****Lack of innovation in terms of community mobilization and activism**

Participants recognized that LGBTIQ activism in Sri Lanka is slow to adopt and adapt innovations. While the fundamental issues faced by the LGBTIQ community remain the same, the form of these issues have changed over time. For example, while drop-in-centres were a priority about a decade ago, they have now been replaced by virtual platforms. It is important that the LGBTIQ movement in Sri Lanka recognizes the new issues' faced by the community as motivation to mobilize the community for advocacy and activism. The LGBTIQ movement in Sri Lanka needs to be supported to identify new issues' and innovative advocacy techniques in order to make its activism more effective and contemporary.



## 5

**Lack of solidarity, collaboration and engagement with other human rights movements**

The participants identified that the LGBTIQ movement in Sri Lanka does not have ongoing strong relationships and engagements with other human rights movements in the country. Even if such relationships exist, they are ad hoc or contingent on a specific time period; for example, the engagement of the LGBTIQ movement with the democracy movement in 2017.<sup>51</sup> As a result, the LGBTIQ movement lacks support from the larger human rights movements in the country.

**Lack of lesbian, bisexual and queer women in the LGBTIQ movement and upcoming young leaders**

During the FGD conducted with lesbian, bisexual and queer women and during the KIIs with queer-identified women, it was highlighted that the LGBTIQ movement in the country is dominated by mostly gay, bisexual and queer cis-men identities. The hetero-patriarchal values that discriminate against LGBTIQ identities in the broader social context also play a discriminatory role within the LGBTIQ movement and sideline those who do not fit certain identities. As a result, lesbian, bisexual and queer women have been made absent in the movement and mobilizing. It was suggested that the LGBTIQ movement should adopt a feminist approach to inclusion and diversity and make spaces for those who are from identities other than cis identities. At the same time, it was noted that while we encourage women and non-cisgender individuals to be at the centre of the LGBTIQ movement, those individuals can also uphold hetero-patriarchal value systems and power structures. As such the LGBTIQ movement needs to be vigilant and cognisant at all times of these realities.

Lack of a specific organization or organizations that represent lesbian, bisexual and queer women in Sri Lanka was also identified as a significant gap in the movement. Since the closing of Women's Support Group (WSG), no organization has been established to specifically and explicitly represent lesbian, bisexual and queer women.

<sup>51</sup> Butterflies For Democracy Street-in Against the Homophobic President (Lanka News Web, 8 December 2018) <https://lankanewsweb.net/news/67-general-news/36271-%E2%80%98butterflies-for-democracy%E2%80%99-street-in-against-homophobic-president>.

Even though other LGBTIQ-identified organizations do work with and for lesbian, bisexual and queer women, the mobilization is not as effective as done by a specific organization for lesbian, bisexual and queer women. It is recommended that support is provided to establish a specific organization for lesbian, bisexual and queer women in the country.

### **Lack of linkages with the community and relevance**

There are a number of LGBTIQ organizations that work with the LGBTIQ community in the country. EQUAL GROUND remains the organization with the longest history established in 2005. However, the first LGBTIQ organization in the country, Companions On A Journey (COJ) which was established in 1995, closed down in 2010. The most recently established organization is Trans Equality Trust (TET) established in 2019. The key themes that emerged for this topic include:

1. The lack of linkages and connections of organizations with the beneficiary groups
2. Hetero-patriarchal organization structures, lack of queerness and the ideological struggle
3. Relevance of organizations in the “new normal”

**1**

#### **The lack of linkages and connections of organizations with the beneficiary groups**

Majority of the participants recognized that the LGBTIQ organizations are not having meaningful engagements with the communities that they expect to serve. While consultations are happening, they are most often conducted through a top-bottom approach which notably undermines the credibility of the consultations. Most often, the community exclusively consisted of those who live in urban centres and those who are connected with the organizations. Those who live outside urban centres and in rural locations are not meaningfully approached and engaged in consultations, mobilizations and activities. Those communities living outside the urban centres are also academically fetishized which again compromises meaningful engagement. They have become the centre of focus for many research studies, given their perceived or actual distinction from those based in urban centres.

2

### **Hetero-patriarchal organization structures, lack of queerness and the ideological struggle**

Despite being queer organizations, majority of the LGBTIQ organizations maintain hetero-patriarchal power structures. A majority of them operate with an executive director, a position vested with absolute power in terms of the organization's decision making. Lack of collaborative mechanisms to hold these positions accountable has also contributed to the problem. As a queer movement, Sri Lanka's LGBTIQ organizations have been too lazy to be creative in terms of how queer organizations should be structured and operated. Most often the funders have been used as a scapegoat to justify these structures.

3

### **Relevance of organizations in the "new normal"**

For a considerable amount of time, the relevance of LGBTIQ organizations as they are now has been a question discussed in many platforms. As mobilization and socializing have been gradually shifting to online and virtual platforms, the community has been questioning the need for organizations to operate with "drop-in-centres", which a decade ago was extremely important for community mobilization and socializing. However, many participants recognized that the physical spaces of these organizations are still extremely relevant as online and virtual platforms cannot replace the physical coming together of individuals. These LGBTIQ organizations need to significantly re-strategize the use of organizations and organization spaces to meaningfully engage with communities and more collaborations should take place among and between LGBTIQ organizations for community mobilization.

### **Decriminalization**

Decriminalization was the most recurring theme in all KIIs and FGDs. However, there was a clear distinction in terms of the perception of decriminalization. One party identified decriminalization as the most important strategic move for the LGBTIQ community in Sri Lanka as criminalizing laws undermine the LGBTIQ community's ability to enjoy human rights in full. Another party identified that decriminalization should be a second step as without addressing social stigma and discrimination, the LGBTIQ community may not be able to enjoy human rights in full,



even if decriminalization takes place. However, both parties agreed that the advocacy towards decriminalization should be accompanied by advocacy to protect and promote the economic, social and cultural rights of LGBTIQ individuals in the country. The following themes were identified on decriminalization:

1. Decriminalization as the only solution
2. Economic, social and cultural rights Vs decriminalization
3. Decriminalization disconnected with the community
4. Reluctance from community members to engage in decriminalization
5. Lack of support structures for decriminalization

### **1 Decriminalization as the only solution**

Some KII and FGD participants identified decriminalization as the only and most important goal of the LGBTIQ community movement in the country. This conclusion was arrived at due to several reasons. They recognized the overarching effect of criminalizing laws on all aspects of the lives of the LGBTIQ community in the country. The criminalizing laws provide impunity to perpetrators who commit violence against LGBTIQ people and also protect personnel from law enforcement authorities who use state-sanctioned violence against LGBTIQ people. As a result of these criminalizing laws, many LGBTIQ people who experience violence do not feel safe in seeking justice. The laws criminalize the identity of an individual which is an integral aspect of the concerned person's life, which makes it even harder to realize and live with a constant sense of fear of being a criminal.

### **2 Economic, social and cultural rights vs decriminalization**

Some of the participants recognized that advocacy to protect economic, social and cultural rights of the LGBTIQ community through profoundly addressing stigma and discrimination by way of increasing awareness in the general public is more important than only working towards decriminalization. Most of the participants who raised this concern mentioned that many LGBTIQ people in the country live peaceful lives and attention to decriminalization will

make their lives unsafe and complicated. One of the key concerns raised by the supporters of this argument is that decriminalization without advocacy on protecting and promoting economic, social and cultural rights of the LGBTIQ people in the country may not have the desired results.

3

### **Decriminalization disconnected with the community**

Many supporters of the above argument highlighted that decriminalization is very disconnected with the everyday lives of LGBTIQ people in the country. Most people, due to lack of awareness of the laws, do not consider these laws as a threat to their individual autonomy or have not had any experience in their lives that they have linked with the existing criminalizing laws. For most of them, the more critical issue is exercising their economic, social and cultural rights; for instance, having access to education, employment, social life, family, property rights, etc. Hence, most of them do not understand the importance in supporting the decriminalization cause.

4

### **Reluctance from community members to engage in decriminalization**

The supporters of decriminalization noted that most LGBTIQ individuals who have had experience that could be directly linked with the existing criminalizing laws are reluctant to file fundamental human rights cases. This is mainly due to the lack of support structures for the victims and petitioners. Within the community movement, there are no established systems to support petitioners to face the outcomes of filing a fundamental human rights violation case at the supreme court, which could vary from inconvenience with media attention to death threats and physical assault. As there is no assurance of continued support to petitioners, many victims of violations avoid making complaints to police or seek the support of the Human Rights Commission of Sri Lanka.

5

### **Lack of support structures for decriminalization**

At the same time the decriminalization efforts also lack other support structures such as resources to hire and pay legal professionals, data collectors, etc. Most of the

time, lawyers commit their time pro-bono. Due to lack of resources to pay lawyers, the organizations are also unable to hire experienced lawyers. As most of the legal work for some of the rights violation cases faced by LGBTIQ individuals are done pro-bono, there is a risk of these cases being dropped by the lawyers.

### Partnership and Collaborations

Partnerships and collaborations of the LGBTIQ movement with other human rights movements were identified as a critical aspect in terms of further strengthening the effectiveness of the LGBTIQ movement in the country. However, the existing partnerships and collaborations are not adequately strong, effective or productive. The following themes were identified under this topic:

1. Exclusion of the LGBTIQ community and activists from other movements
2. The need for “flamboyant queers”
3. Lack of willingness from the LGBTIQ movement to build collaborations with other movements

1

#### Exclusion of the LGBTIQ community and activists from other movement

Homophobia and transphobia still excludes the LGBTIQ movement and activists from other human rights movements. Most participants mentioned that they have felt removed, discriminated against and stigmatized when engaging with actors from other movements and that most often this is due to homophobia and transphobia. As a result, many of the LGBTIQ advocates have avoided engaging with other movements such as the women’s rights movement, labour rights movement, internally displaced movement, etc.

2

#### The need for flamboyant queers

At the same time many LGBTIQ advocates have felt that they are expected to simply wave the rainbow flag when they engage with other movements, especially in case of demonstrations or protests. This fetishizing of queer activism has discouraged many LGBTIQ activists and advocates engaging with other human rights movements.



3

**Lack of willingness from the LGBTIQ movement to build collaborations with other movements**

Many participants also noted that there is no genuine need within the LGBTIQ movement to engage with other human rights movements. It is recommended that the LGBTIQ movement is supported to identify and implement strategies in order to build strong collaborations and partnerships with other human rights movements.





# Goals for the next five years

1

## Securing the civil society space within the system

The Human Rights Defenders in general have been able to gain space within the system to speak and advocate for human rights. Over the past few years the LGBTIQ community has gained mainstream political space, media space and public opinion space. It is crucial that in the next five years, the LGBTIQ movement works towards strengthening and expanding this space.

2

## Unity and collaborations among organizations

The LGBTIQ movement should work towards prioritizing its partnerships.. As previously mentioned, the unity and collaborations among the LGBTIQ organizations and key

activists is lacking. It is important that the movement works towards building strong collaborations within and working towards identifying common goals to unify the movement.

3

### **Building up a support system for young queer people**

The movement needs to urgently focus on grooming more young queer leaders and mobilizing young queer people through developing a support system. New leaders are crucial for the sustainability of the movement.

4

### **Establishing a support system for victims of human rights violations**

Currently there is no proper mechanism to support victims of human rights violations from the LGBTIQ community and this drives away many of them from seeking justice. Despite the positive outcomes in relation to the justice system (Attorney Generals' comments, Comments from the Minister of Justice etc), LGBTIQ individuals who seek justice for violations that they have faced still run the risk of being threatened by the public and extremists groups. Despite these positive comments by the Attorney General and Minister of Justice, none of those comments have penetrated the legal system in Sri Lanka, and no attempts have been made to repeal penal code articles that criminalize same-sex consensual sexual relations between same-sex consenting adults.<sup>52</sup> The religious extremists still challenge justice for minority communities.<sup>53</sup> Hence, a system for their safety, security and well-being will expedite community efforts towards decriminalization.

5

### **Decriminalization**

The movement should aim for decriminalization or at least redefining the criminalizing penal code articles in the next five years. This needs to be done urgently as decriminalizing will have a critical impact on the rights claims of the LGBTIQ movement.

<sup>52</sup> Sri Lanka Should take Up Challenge on LGBT Rights (Human Rights Watch, 12 September 2018), <https://www.hrw.org/news/2018/09/12/sri-lanka-should-take-challenge-lgbt-rights>.

<sup>53</sup> Sri Lanka Must Address Root Causes of Religious Extremism (The Hindu, 26 August 2019) <https://www.thehindu.com/news/international/sri-lanka-must-address-root-causes-of-religious-extremism-un-envoy/article29261867.ece>.



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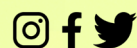


**ILGA Asia** is the Asian Region of the International Lesbian, Gay, Bisexual, Trans and Intersex Association, representing more than 170 member organizations in East Asia, South Asia, Southeast Asia and West Asia.

Our vision is a world where Asia is a safe place for all, where all can live in freedom and equality, be properly informed in the nature of sexual orientation and gender identity & expression and sex characteristic (SOGIESC) rights, have access to justice, and diversity is respected.

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