



Home Office

# **Country Policy and Information Note**

## **Sri Lanka: Sexual orientation and gender identity**

**Version 2.0**

**July 2017**

# Preface

This note provides country of origin information (COI) and policy guidance to Home Office decision makers on handling particular types of protection and human rights claims. This includes whether claims are likely to justify the granting of asylum, humanitarian protection or discretionary leave and whether – in the event of a claim being refused – it is likely to be certifiable as ‘clearly unfounded’ under s94 of the Nationality, Immigration and Asylum Act 2002.

Decision makers must consider claims on an individual basis, taking into account the case specific facts and all relevant evidence, including: the policy guidance contained with this note; the available COI; any applicable caselaw; and the Home Office casework guidance in relation to relevant policies.

## Country information

COI in this note has been researched in accordance with principles set out in the [Common EU \[European Union\] Guidelines for Processing Country of Origin Information \(COI\)](#) and the [European Asylum Support Office’s research guidelines, Country of Origin Information report methodology](#), namely taking into account its relevance, reliability, accuracy, objectivity, currency, transparency and traceability.

All information is carefully selected from generally reliable, publicly accessible sources or is information that can be made publicly available. Full publication details of supporting documentation are provided in footnotes. Multiple sourcing is normally used to ensure that the information is accurate, balanced and corroborated, and that a comprehensive and up-to-date picture at the time of publication is provided. Information is compared and contrasted, whenever possible, to provide a range of views and opinions. The inclusion of a source is not an endorsement of it or any views expressed.

## Feedback

Our goal is to continuously improve our material. Therefore, if you would like to comment on this note, please email [the Country Policy and Information Team](#).

## Independent Advisory Group on Country Information

The Independent Advisory Group on Country Information (IAGCI) was set up in March 2009 by the Independent Chief Inspector of Borders and Immigration to make recommendations to him about the content of the Home Office’s COI material. The IAGCI welcomes feedback on the Home Office’s COI material. It is not the function of the IAGCI to endorse any Home Office material, procedures or policy. IAGCI may be contacted at:

Independent Chief Inspector of Borders and Immigration,

5th Floor, Globe House, 89 Eccleston Square, London, SW1V 1PN.

Email: [chiefinspector@icinspector.gsi.gov.uk](mailto:chiefinspector@icinspector.gsi.gov.uk)

Information about the IAGCI’s work and a list of the COI documents which have been reviewed by the IAGCI can be found on the Independent Chief Inspector’s website at <http://icinspector.independent.gov.uk/country-information-reviews/>

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# Policy guidance

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## 1. Introduction

### 1.1 Basis of claim

1.1.1 Fear of persecution or serious harm by the state and/or non-state actors due to the person's actual or perceived sexual orientation and/or gender identity.

### 1.2 Points to note

1.2.1 This note provides policy guidance on the general situation of gay men, lesbians, bisexuals, transgender and intersex persons. They are referred hereafter collectively as 'LGBTI persons', though the experiences of each group may differ.

1.2.2 Decision makers must also refer to the Asylum Instructions on [Sexual identity issues in the asylum claim](#) and [Gender identity issues in the asylum claim](#).

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## 2. Consideration of issues

### 2.1 Credibility

2.1.1 For information on assessing credibility, see the Asylum Instructions on [Assessing Credibility and Refugee Status](#), [Sexual identity issues in the asylum claim](#) and [Gender identity issues in the asylum claim](#).

2.1.2 Decision makers must also check if there has been a previous application for a UK visa or another form of leave. Asylum applications matched to visas should be investigated prior to the asylum interview (see the [Asylum Instruction on Visa Matches, Asylum Claims from UK Visa Applicants](#)).

2.1.3 Decision makers should also consider the need to conduct language analysis testing (see the [Asylum Instruction on Language Analysis](#)).

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### 2.2 Particular social group

2.2.1 LGBT persons in Sri Lanka form a particular social group (PSG) within the meaning of the Refugee Convention because they share an innate characteristic or a common background that cannot be changed, or share a characteristic or belief that is so fundamental to their identity or conscience that they should not be forced to renounce it, and have a distinct identity which is perceived as being different by the surrounding society.

2.2.2 Although LGBT persons in Sri Lanka form a PSG, establishing such membership is not sufficient to be recognised as a refugee. The question to be addressed is whether the particular person will face a real risk of persecution on account of their membership of such a group.

2.2.3 For further guidance on particular social groups, see the [Asylum Instruction on Assessing Credibility and Refugee Status](#).

## 2.3 Assessment of risk

### a. General points

- 2.3.1 Decision makers must establish whether or not the person, if returned to their country of origin, will live freely and openly as a LGBT person. This involves a wide spectrum of conduct which goes beyond merely attracting partners and maintaining relationships with them. If it is found that the person will in fact conceal aspects of his or her sexual orientation/identity if returned, decision makers must consider why the person will do so.
- 2.3.2 If this will simply be in response to social pressures or for cultural or religious reasons of their own choosing and not because of a fear of persecution, then they may not have a well-founded fear of persecution. Decision makers should also consider if there are individual or country specific factors that could put the person at risk even if they choose to live discreetly because of social or religious pressures.
- 2.3.3 But if a material reason why the person will live discreetly is that they genuinely fear that otherwise they will be persecuted, it will be necessary to consider whether that fear is well founded.
- 2.3.4 For further guidance, see the [Asylum Instruction on Sexual Identity Issues in the Asylum Claim](#)

### b. State treatment

- 2.3.5 Although consensual same-sex sexual activity is criminalised in Sri Lanka, cases are rarely prosecuted. No laws specifically criminalise transgender or intersex people in Sri Lanka. However, there are reports of the police using other laws to criminalise and harass LGBT persons, particularly transgender women and men who have sex with men involved in sex work (see [Legal rights](#) and [State attitudes and treatment](#)).
- 2.3.6 Transgender women and masculine women of lower economic status report that police have sometimes used the Vagrants Ordinance of the Sri Lanka Penal Code (that prohibits loitering in public) to detain them (see [Legal rights](#) and [State attitudes and treatment – Arrests and detention](#)).
- 2.3.7 In the country guidance case of [LH and IP \(gay men: risk\) Sri Lanka CG \[2015\] UKUT 00073 \(IAC\)](#), promulgated on 8 February 2015 (heard on 6–8 August 2014) the Upper Tribunal found that in general the treatment of gay men in Sri Lanka does not amount to persecution or serious harm (para 123(3)).
- 2.3.8 The evidence does not indicate any significant change in that position since the country guidance case was handed down (see [Country information](#)).
- 2.3.9 The Upper Tribunal in [LH and IP](#) found that there is a ‘significant population of homosexuals and other LGBT individuals in Sri Lanka, in particular in Colombo’ and that ‘[w]hile there is more risk for lesbian and bisexual women in rural areas, because of the control exercised by families on unmarried women, and for transgender individuals and sex workers in the cities, it will be a question of fact whether for a particular individual the risk reaches the international protection standard, and in particular, whether it extends beyond their home area.’ (Para 123(4)).

- 2.3.10 In general there is no real risk of state persecution as the authorities do not actively seek to prosecute LGBT persons and there is no real risk of prosecution even when the authorities become aware of such behaviour. Although there have been some reported incidents of police harassment of some members of the LGBT community, in particular transgender and men who have sex with men engaged in sex work, these are not in general sufficiently serious by their nature and repetition as to amount to persecution or serious harm.
- 2.3.11 However, decision makers must consider whether there are particular factors relevant to the person which might make the treatment serious by its nature and if there is a risk of repetition as to amount to persecution. Each case must be considered on its facts with the onus on the person to demonstrate that they would be at real risk on return.

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#### c. Societal treatment

- 2.3.12 LGBT persons frequently face discrimination in accessing employment, housing and health services. Sexual harassment at work and hate speech and vilification of LGBT communities by media and public officials is reported to be common (see [Access to services](#) and [State attitudes and treatment](#)).
- 2.3.13 There are also reports that some LGBT persons experience sexual, emotional and physical violence, particularly in the home environment but also in public spaces (see [Societal treatment and attitudes](#)).
- 2.3.14 However in general, the level of societal discrimination and abuse faced by LGBT persons in Sri Lanka is not sufficiently serious by its nature and repetition as to amount to persecution or serious harm.
- 2.3.15 However, decision makers must consider whether there are particular factors relevant to the person which might make the treatment serious by its nature and if there is a risk of repetition.
- 2.3.16 Each case must however be considered on its facts with the onus on the person to demonstrate that they would be at real risk on return.
- 2.3.17 For further guidance on assessing risk, see the [Asylum Instruction on Assessing Credibility and Refugee Status](#).
- 2.3.18 Decision makers must also refer to the Asylum Instructions on [Sexual identity issues in the asylum claim](#) and [Gender identity issues in the asylum claim](#).

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#### 2.4 Protection

- 2.4.1 If the person's fear is of persecution or serious harm by the state, they will not be able to avail themselves of the protection of the authorities.
- 2.4.2 If the person's fear is of serious harm or persecution at the hands of non state agents or rogue state agents, although the state is able to provide protection, in practice it is not always willing.

- 2.4.3 There are no legal safeguards to prevent discrimination based on sexual orientation or gender identity. Incidents of homophobia go unreported due to people wanting to protect their identities. Police often misinterpret the laws on the basis of a person's appearance or behaviour and there have been reports of police assaulting, harassing and extorting money or sexual favours from LGBT persons, particularly in Colombo as well as other areas (see [State attitudes and treatment](#) and [Societal treatment and attitudes](#)).
- 2.4.4 The lack of anti-discrimination legislation to protect the rights of LGBT persons has meant that they have no recourse to a remedy when particular laws are used against them in a discriminatory manner. Such discrimination is further enabled and promoted by the continued criminalisation and, therefore, stigmatisation of LGBT persons. LGBT persons who are the victims of violence or hate crimes will often not report these crimes to the police without fear that their sexual orientation or gender identity will be exposed or highlighted, leading to further discrimination and marginalization and potentially prosecution under articles 365 and 365A of the Penal Code (see [Law in practice](#)).
- 2.4.5 Whilst there is some evidence of police providing a degree of protection at public events, such as LGBT marches, in general effective protection in individual cases is very limited (see [Law in practice](#) and [Pro-LGBT marches/gay pride](#)).
- 2.4.6 A person's reluctance to seek protection does not mean that it is not available. Decision makers need to consider each case on its facts. The onus is on the person to demonstrate why they would not be able to seek and obtain state protection.
- 2.4.7 For further guidance on assessing the availability or not of state protection, see the [Asylum Instruction on Assessing Credibility and Refugee Status](#).

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## 2.5 Internal relocation

- 2.5.1 Where the threat is from the state, internal relocation is not a reasonable option.
- 2.5.2 Where the threat is from a non-state actor, decision makers should consider each case on its individual circumstances to ascertain if the threat is local and could be removed by internal relocation.
- 2.5.3 The Upper Tribunal in [LH and IP \(gay men: risk\) Sri Lanka CG \[2015\] UKUT 00073 \(IAC\)](#) found that internal relocation would normally be sufficient to enable an individual to avoid the risk of serious harm/persecution since risks are usually from family, friends or neighbours especially for gay men, particularly if they relocated to the more 'gay-friendly' cities such as Colombo (paragraph 119).
- 2.5.4 The onus will be on the person to demonstrate why they are unable to internally relocate to another part of the country.
- 2.5.5 Internal relocation will not be an option if it depends on the person concealing their sexual orientation and / or gender identity in the proposed new location for fear of persecution.



- 2.5.6 For further guidance on considering internal relocation and the factors to be taken into account, see the [Asylum Instruction on Assessing Credibility and Refugee Status](#), [Sexual identity issues in the asylum claim](#) and [Gender identity issues in the asylum claim](#).

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## 2.6 Certification

- 2.6.1 Where a claim is refused, it is unlikely to be certifiable as 'clearly unfounded' under section 94 of the Nationality, Immigration and Asylum Act 2002.
- 2.6.2 For further guidance on certification, see [Certification of Protection and Human Rights claims under section 94 of the Nationality, Immigration and Asylum Act 2002 \(clearly unfounded claims\)](#).

## 3. Policy summary

- 3.1.1 Consensual same-sex sexual activity is a criminal offence in Sri Lanka; however prosecutions are rare. Some laws are also used to harass and criminalise LGBT persons particularly LGBT sex workers.
- 3.1.2 Sri Lankans have conservative views about sexual orientation and gender identity, and LGBT persons are sometimes subject to sexual and emotional violence from both family and society, forcing many to hide their sexual identities and in some cases live a heterosexual life.
- 3.1.3 There is no legal recognition or protection of the rights of LGBT individuals. If the person's fear is of serious harm/persecution at the hands of non state agents or rogue state agents then the availability of effective state protection is likely to be very limited. The onus will be on the person to demonstrate why they would not be able to obtain such protection.
- 3.1.4 Internal relocation will not be reasonable if the threat is from state actors. It may be reasonable if the threat is from non-state agents.
- 3.1.5 Claims are unlikely to be certifiable as clearly unfounded.

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# Country information

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## 4. Legal rights

### 4.1 Constitution

#### 4.1.1 Article 12 of the Constitution states:

'(1) All persons are equal before the law and are entitled to the equal protection of the law.

'(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 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.

'(3) No person shall, on the grounds of race, religion, language, caste, sex or any one of such grounds, be subject to any disability, liability, restriction or condition with regard to access to shops, public restaurants, hotels, places of public entertainment and places of public worship of his own religion.'<sup>1</sup>

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### 4.2 Legislation

4.2.1 As noted by the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA), May 2017 report, same-sex sexual acts are illegal in Sri Lanka.<sup>2</sup>

4.2.2 The Human Rights Watch report, "All Five Fingers Are Not the Same" - Discrimination on Grounds of Gender Identity and Sexual Orientation in Sri Lanka, 15 August 2016, stated:

'No laws specifically criminalize transgender or intersex people in Sri Lanka. But no laws ensure that their rights are protected, and police have used

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<sup>1</sup> The Parliament of Sri Lanka, 'The Constitution of the Democratic Socialist Republic of Sri Lanka, (As amended up to 15th May 2015) Revised Edition – 2015', (Article 11 Freedom from torture), <https://www.parliament.lk/files/pdf/constitution.pdf>. Accessed: 11 May 2017

<sup>2</sup> International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA), 'A World Survey of Laws: Criminalisation, Protection and recognition of same-sex love', by Aengus Carroll and Lucas Ramón Mendos, (p.39), 2017, [http://ilga.org/downloads/2017/ILGA\\_State\\_Sponsored\\_Homophobia\\_2017\\_WEB.pdf](http://ilga.org/downloads/2017/ILGA_State_Sponsored_Homophobia_2017_WEB.pdf). Accessed: 24 May 2017

several criminal offenses and regulations to target LGBTI people, particularly transgender women and MSM [men who have sex with men] involved in sex work. These include a law against “cheat[ing] by personation,” and the vaguely worded Vagrants’ Ordinance that prohibits soliciting or committing acts of “gross indecency,” or being “incorrigible rogues” procuring “illicit or unnatural intercourse”.<sup>3</sup>

- 4.2.3 The US State Department’s 2016 Country Report on Human Rights Practices (USSD Report 2016), published on 3 March 2017, stated: ‘UN human rights officials noted that police used the Vagrancy Ordinance to detain transgender individuals on suspicion they were engaging in prostitution. Police used Section 399 to harass persons who expressed themselves in gender nonconforming ways on grounds of “impersonation.” Criminal prosecutions under these statutes were rare, however.’<sup>4</sup>
- 4.2.4 In January 2017 the government voted to keep homosexuality illegal<sup>5</sup>. Logo, an online societal news website reported that, ‘Despite the decision, cabinet members did agree to update their Human Rights Action Plan with an addendum that bans discrimination against someone based on his or her sexual orientation.’<sup>6</sup>

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### 4.3 Penal Code

4.3.1 A copy of the Sri Lankan [penal code](#) can be accessed via the [UNHCR Refworld website](#).

4.3.2 The 2016 Country USSD report stated:

‘Three legal statutes constitute the architecture for discrimination against lesbian, gay, bisexual, transgender, and intersex (LGBTI) persons in the country: Section 365(A) of the penal code, which criminalizes acts “against the order of nature”; Section 399 of this code regarding “Cheating by Personation”; and the Vagrancy Ordinance. Section 365(A), although lacking clear legal definition, puts those convicted of engaging in same-sex sexual activity in private or in public at risk of 10 years’ imprisonment. Antidiscrimination laws prohibited discrimination based on sex but did not prohibit discrimination based on sexual orientation and gender identity.’<sup>7</sup>

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<sup>3</sup> Human Rights Watch, “All Five Fingers Are Not the Same” - Discrimination on Grounds of Gender Identity and Sexual Orientation in Sri Lanka’, (Unprotected in Law), 15 August 2016, [https://www.hrw.org/sites/default/files/report\\_pdf/srilanka0816web.pdf](https://www.hrw.org/sites/default/files/report_pdf/srilanka0816web.pdf). Accessed: 7 June 2017

<sup>4</sup> US State Department, ‘Country Report on Human Rights Practices for 2016’ (USSD Report 2016), Sri Lanka, (Section 6. Discrimination, Societal Abuses, and Trafficking in Persons - Acts of Violence, Discrimination, and Other Abuses Based on Sexual Orientation and Gender Identity), 3 March 2017, <https://www.state.gov/documents/organization/265760.pdf>. Accessed: 10 April 2017

<sup>5</sup> Logo, ‘Sri Lanka Keeps Homosexuality A Crime, But Bans Anti-LGBT Discrimination’, 19 January 2017, <http://www.newnownext.com/sri-lanka-ban-homosexuality/01/2017/>. Accessed: 12 June 2017

<sup>6</sup> Logo, ‘Sri Lanka Keeps Homosexuality A Crime, But Bans Anti-LGBT Discrimination’, 19 January 2017, <http://www.newnownext.com/sri-lanka-ban-homosexuality/01/2017/>. Accessed: 15 June 2017

<sup>7</sup> US State Department, ‘Country Report on Human Rights Practices for 2016’ (USSD Report 2016), Sri Lanka, (Section 6. Discrimination, Societal Abuses, and Trafficking in Persons - Acts of Violence, Discrimination, and Other Abuses Based on Sexual Orientation and Gender Identity), 3 March 2017, <https://www.state.gov/documents/organization/265760.pdf>. Accessed: 10 April 2017

4.3.3 Section 365 (unnatural offences) of the [Penal Code](#) states:

'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 [sic] 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.'<sup>8</sup>

4.3.4 Section 365A of the [Penal Code](#) states:

'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 he [sic] 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>9</sup>

4.3.5 Section 399 of the [Penal Code](#) states:

'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.

'Explanation

'The offence is committed whether the individual personated is a real or imaginary person.

'Illustrations

'(a)A cheats 'by pretending to be a certain rich merchant of the same name. A cheats by personation.

'(b)A cheats by pretending to be B, a person who is deceased. A cheats by personation.'<sup>10</sup>

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<sup>8</sup> National Legislative Bodies/National Authorities, Sri Lanka: Penal Code, Chapter 19, (Article 365), 1 January 1885, <http://www.refworld.org/docid/4c03e2af2.html>. Accessed: 27 April 2017

<sup>9</sup> National Legislative Bodies/National Authorities, Sri Lanka: Penal Code, Chapter 19, (Article 365A), 1 January 1885, <http://www.refworld.org/docid/4c03e2af2.html>. Accessed: 27 April 2017

<sup>10</sup> National Legislative Bodies / National Authorities, Sri Lanka: Penal Code, Chapter 19, (Article 399), 1 January 1885, <http://www.refworld.org/docid/4c03e2af2.html>. Accessed: 27 April 2017

#### 4.4 Rights to change legal gender

- 4.4.1 A joint Parallel Report to the UN Committee on the Elimination of Discrimination Against Women Regarding Sri Lanka's Protection of the Rights of LGBTI Persons report by Kaleidoscope Human Rights Foundation and Equal Ground, Sri Lanka, observed: '[T]ransgender persons in Sri Lanka often have a difficult time obtaining official documentation that reflects their preferred name and gender. This means that transgender persons are effectively prevented from accessing an accurate national identity card or passport.'<sup>11</sup>
- 4.4.2 In July 2016, delegates from a UK Home Office Fact Finding (FFM) mission to Sri Lanka met with a representative from Equal Ground (EG), a non-profit organisation seeking human and political rights for LGBT community of Sri Lanka. The FFM delegates asked whether transgender persons were recognised by the state and were informed that 'Up until about 2013 Transgenders could have their papers changed with the registrar without too much of a hassle. Then more and more transgenders wanted to change their papers, and the Registrar decided that they were going to put a stop to this, and basically said that if the government does not rule on this then they are not going to do any more name changes on documents.'<sup>12</sup>
- 4.4.3 The source added:  
'Currently EG are working with the Sri Lanka Human Rights Commission (SLHRC) to produce a certificate that transgenders can have access to, which will be issued by psychiatrists to say that the person is indeed a transgender person and in need of documentation changes, such as birth certificates, national ID cards and passports. However, EG are at loggerheads because they are trying to certify that people have indeed gone through gender confirming surgeries. But EG maintain that it shouldn't depend on that only, because it is forcing sterilisation on somebody – that is number one. Number two, is that the surgeries are very expensive in Sri Lanka and most transgender persons cannot afford it. It is available, but it is easier for female to male transgender because these are routine operations; mastectomies and hysterectomies, those are just the basic operations. But phalloplasty operations for female to male transgender is not available.'<sup>13</sup>
- 4.4.4 The Human Rights Watch report, "All Five Fingers Are Not the Same" - Discrimination on Grounds of Gender Identity and Sexual Orientation in Sri Lanka, 15 August 2016, stated 'While it is not impossible to change one's

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<sup>11</sup> Kaleidoscope Human Rights Foundation (Kaleidoscope) and Equal Ground, Sri Lanka 'Parallel Report to the UN Committee on the Elimination of Discrimination Against Women Regarding Sri Lanka's Protection of the Rights of LGBTI Persons' (Joint report), (Nationality (ARTICLE 9), Para 6.2, p9), [http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/LKA/INT\\_CEDAW\\_NGO\\_LKA\\_26326\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/LKA/INT_CEDAW_NGO_LKA_26326_E.pdf). Accessed: 12 June 2017

<sup>12</sup> UK Home Office's 'Fact Finding Mission to Sri Lanka', 11 – 23 July 2016, Section 16: Meeting with Equal Ground (EG), <https://www.gov.uk/government/publications/sri-lanka-country-policy-and-information-notes>. Accessed: 13 June 2017

<sup>13</sup> UK Home Office's 'Fact Finding Mission to Sri Lanka', 11 – 23 July 2016, Section 16: Meeting with Equal Ground (EG), <https://www.gov.uk/government/publications/sri-lanka-country-policy-and-information-notes>. Accessed: 13 June 2017

legal gender in Sri Lanka, there is no clear and simple procedure. Dr. Chithramalee de Silva, director of Mental Health at the Ministry of Health, was not aware of any existing standard process by which people may change their legal gender. Dr. de Silva is collaborating with the National Human Rights Commission to develop a gender recognition certificate.<sup>14</sup>

#### 4.4.5 The 2016 Country USSD report stated:

'In August [2016] the government approved the issuance of gender recognition certificates by consultant psychiatrists, which would enable transgender individuals at various stages in the gender reassignment process to amend their gender on government issued identity documents. One transgender individual alleged persons from her community could apply for new government issued identity documents only after having undergone a full course of sexual reassignment surgery.'<sup>15</sup>

#### 4.4.6 The Australian Government Department of Foreign Affairs and Trade (DFAT) Country Information Report on Sri Lanka (DFAT Report), dated 24 January 2017, noted:

'Until recently it has not been possible to self-select one's legal gender in Sri Lanka. Proof of full reassignment surgery was required to change one's gender on the national identity card. Gender reassignment is prohibitively expensive and of poor quality. A 'gender recognition certificate' not requiring such a high level of proof was proposed by the Human Rights Commission of Sri Lanka and the Ministry of Health issued Administrative Circular 01-34/2016 in June 2016 to assist in changing gender on a birth certificate. The uptake of this directive across health providers is not yet clear. DFAT assesses that transgender individuals face a high level of official and societal discrimination and are at moderate risk of violence.'<sup>16</sup>

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## 5. Law in practice

### 5.1.1 A Shadow Report to the UN Human Rights Committee regarding Sri Lanka's protection of the Rights of LGBTI Persons (Response to List of Issues) Compiled by the Kaleidoscope Human Rights Foundation with the assistance of DLA Piper International LLP and Sri Lankan LGBTI Advocacy Groups, dated September 2014, stated:

'While there has been social traction in Sri Lanka towards recognition of the rights of sexual minorities, there has been a lack of Government support or

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<sup>14</sup> Human Rights Watch, "'All Five Fingers Are Not the Same" - Discrimination on Grounds of Gender Identity and Sexual Orientation in Sri Lanka', (II. Legal Gender Recognition – Difficult Process, p21-22), 15 August 2016, [https://www.hrw.org/sites/default/files/report\\_pdf/srilanka0816web.pdf](https://www.hrw.org/sites/default/files/report_pdf/srilanka0816web.pdf). Accessed: 7 June 2017

<sup>15</sup> US State Department, 'Country Report on Human Rights Practices for 2016' (USSD Report 2016), Sri Lanka, (Section 6. Discrimination, Societal Abuses, and Trafficking in Persons - Acts of Violence, Discrimination, and Other Abuses Based on Sexual Orientation and Gender Identity), 3 March 2017, <https://www.state.gov/documents/organization/265760.pdf>. Accessed: 10 April 2017

<sup>16</sup> Australian Government, Department of Foreign Affairs and Trade, 'DFAT Country Information Report Sri Lanka', (paragraph 3.82, p24), 24 January 2017, <http://dfat.gov.au/about-us/publications/Pages/country-information-reports.aspx>. Accessed: 11 July 2017

action. Consequently, there is no legal recognition and protection of the rights of LGBTI individuals and there continue to be reports of widespread discrimination, harassment and violence directed towards members of the LGBTI communities within Sri Lanka...

'Discrimination, among other things, limits access to employment, housing and health services. There have been reports of LGBTI individuals being fired from jobs, refused accommodation or forced to leave, because of their real or perceived sexual orientation or gender identity.'<sup>17</sup>

- 5.1.2 A joint Parallel Report to the UN Committee on the Elimination of Discrimination Against Women Regarding Sri Lanka's Protection of the Rights of LGBTI Persons report by Kaleidoscope Human Rights Foundation and Equal Ground, Sri Lanka, observed:

'Sri Lanka has made limited progress towards recognising the rights of LGBTI persons. Although the Additional Solicitor General with the Attorney General's Department of Sri Lanka has noted that 'laws discriminating on the grounds of sexual orientation and gender identity are unconstitutional', in reality, LGBTI persons face significant discrimination in society, culture and the economy and have limited recourse to legal protection from such discrimination.'<sup>18</sup>

- 5.1.3 Local Lesbian, Gay, Bisexual and Transgender (LGBT) activists and the non-governmental organisation Human Rights Watch (HRW), have petitioned for the government to decriminalise homosexuality<sup>19</sup>.
- 5.1.4 LGBT Advocacy Director of Human Rights Watch, Boris O. Dittrich told The Sunday Leader that 'the LGBT community in Sri Lanka continues to face harassment, especially in the hands of the police.'<sup>20</sup>

## 6. State attitudes and treatment

### 6.1 Police violence

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<sup>17</sup> Kaleidoscope, Shadow Report to the UN Human Rights Committee regarding Sri Lanka's protection of the Rights of LGBTI Persons (Response to List of Issues) Compiled by the Kaleidoscope Human Rights Foundation with the assistance of DLA Piper International LLP and Sri Lankan LGBTI Advocacy Groups, (Executive Summary, p.1 & Failure to protect against discrimination on the basis of sexual orientation or gender identity p.4), September 2014, <http://www.kaleidoscopeaustralia.com/wp-content/uploads/2014/09/Sri-Lanka-Report-Final.pdf>. Accessed: 20 June 2017

<sup>18</sup> Kaleidoscope Human Rights Foundation (Kaleidoscope) and Equal Ground, Sri Lanka Parallel Report to the UN Committee on the Elimination of Discrimination Against Women Regarding Sri Lanka's Protection of the Rights of LGBTI Persons' (Joint report), (Executive Summary), undated, [http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/LKA/INT\\_CEDAW\\_NGO\\_LKA\\_26326\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/LKA/INT_CEDAW_NGO_LKA_26326_E.pdf). Accessed: 12 June 2017

<sup>19</sup> The Sunday Leader, 'A Push To Decriminalize Homosexuality', undated, <http://www.thesundayleader.lk/2016/09/05/a-push-to-decriminalize-homosexuality/>. Accessed: 10 April 2017

<sup>20</sup> The Sunday Leader, 'A Push To Decriminalize Homosexuality', undated, <http://www.thesundayleader.lk/2016/09/05/a-push-to-decriminalize-homosexuality/>. Accessed: 10 April 2017

- 6.1.1 The Human Rights Watch report, "All Five Fingers Are Not the Same" - Discrimination on Grounds of Gender Identity and Sexual Orientation in Sri Lanka, 15 August 2016, stated:

'[N]early two dozen of the LGBTI people whom Human Rights Watch interviewed said they had suffered sexual, physical, or severe verbal abuse by the Sri Lankan police – nearly all of those reporting police abuse being transgender people or men who have sex with men (MSM). More than half of this group said that police had detained them without cause at least once. Sri Lankan nongovernmental organizations, including EQUAL GROUND and Women's Support Group, have also documented cases of police abuse against LGBTI people and expressed similar concerns.'<sup>21</sup>

- 6.1.2 DFAT noted in its report on Sri Lanka, dated 24 January 2017, that it assessed that LGBTI individuals in Sri Lanka faced 'a moderate risk of official discrimination... on a day-to-day basis.'<sup>22</sup>

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## 6.2 Arrests and detention

- 6.2.1 As noted in the International Gay & Lesbian Human Rights Commission (IGLHRC) shadow report of October 2014:

'The State grants police officers broad authority to interpret and enforce... [the] laws, often leading to discriminatory application and often also wrongful application on the basis of a person's appearance or behavior. Masculine-looking lesbians reported being targeted by police under Section 399 of the Sri Lanka Penal Code for "cheating by personation." Several misrepresentation cases have been brought to court because women were "discovered to be disguised as men" and their "true" sexual identity was exposed to the public. Male-to-female transgender women and masculine-looking women of lower economic status also reported that police used the Vagrants Ordinance of the Sri Lanka Penal Code to detain them. Detention and release was often conditional on paying a bribe. Same-sex couples in Sri Lanka spoke of difficulties obtaining pension schemes and bank loans on the basis of shared income with their same-sex partners.'<sup>23</sup>

- 6.2.2 The HRW report added 'Some trans women and MSM said that repeated harassment by police, including instances of arbitrary detention and mistreatment documented by Human Rights Watch, had eroded their trust in Sri Lankan authorities, and made it unlikely that they would report a crime. "They won't protect someone like me," said Fathima, a 25-year-old

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<sup>21</sup> Human Rights Watch, "'All Five Fingers Are Not the Same" - Discrimination on Grounds of Gender Identity and Sexual Orientation in Sri Lanka', (III. Police Abuses, p30), 15 August 2016, [https://www.hrw.org/sites/default/files/report\\_pdf/srilanka0816web.pdf](https://www.hrw.org/sites/default/files/report_pdf/srilanka0816web.pdf). Accessed: 7 June 2017

<sup>22</sup> Australian Government, Department of Foreign Affairs and Trade, 'DFAT Country Information Report Sri Lanka', (Transgender individuals, para 3.83), 24 January 2017. <http://dfat.gov.au/about-us/publications/Pages/country-information-reports.aspx>. Accessed: 11 July 2017

<sup>23</sup> International Gay & Lesbian Human Rights Commission (IGLHRC), 'Violence Against Lesbians, Bisexual Women and Transgender Persons in Sri Lanka, Presented to the 112th Session of The Human Rights Committee of the United Nations International Covenant on Civil and Political Rights (ICCPR), (LBT Persons are Targeted by Police Under Discriminatory Laws,p3), October 2014, <http://www.refworld.org/pdfid/58c2b6444.pdf>. Accessed: 22 June 2015



transgender woman in Colombo who does sex work and did not involve police after thugs beat her in 2012.<sup>24</sup>

- 6.2.3 HRW also reported: ‘LGBTI people arrested based on their gender expression, gender identity, or sexual orientation are typically detained without proper cause or evidence, and consequently are rarely detained for extended periods of time. As a result, they may have less overall exposure to police officials in detention and may experience less abuse than Sri Lankans arrested for other crimes.’<sup>25</sup>
- 6.2.4 The DFAT report dated 24 January 2017, noted ‘Local NGO [Non-Governmental Organisation] contacts reported that, as transgender individuals are visibly identifiable, it is difficult for them to obtain regular employment and some become prostitutes. Police officers have been known to arrest transgender individuals under the Vagrancy Ordinance or Section 399 of the Penal Code which criminalises ‘cheating by personation’. In some instances, these arrests constitute harassment.’<sup>26</sup>
- 6.2.5 The 2016 Country USSD report stated:  
‘UN human rights officials noted that police used the [Vagrancy Ordinance](#) to detain transgender individuals on suspicion they were engaging in prostitution. Police used Section 399 to harass persons who expressed themselves in gender nonconforming ways on grounds of “impersonation.” Criminal prosecutions under these statutes were rare, however. Human rights organizations reported that police targeted LGBTI individuals for assault, harassment, and monetary and sexual extortion.’<sup>27</sup>

See also [Legal rights](#)

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### 6.3 Avenues of redress

- 6.3.1 In 2014 the International Gay and Lesbian Human Rights Commission (IGLHRC) published the findings of research by the Women’s Support Group (WSG), a Colombo-based non-governmental organisation providing support and advocacy for LBT people. The WSG carried out 33 qualitative interviews with LBT people and 51 qualitative interviews with related stakeholders, including lawyers, doctors, mental health professionals, media representatives, employers, religious leaders, representatives of educational institutions, NGOs, and state employees. The report revealed:

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<sup>24</sup> Human Rights Watch, “All Five Fingers Are Not the Same” - Discrimination on Grounds of Gender Identity and Sexual Orientation in Sri Lanka’, (Summary - Unprotected in Law, p3), 15 August 2016, [https://www.hrw.org/sites/default/files/report\\_pdf/srilanka0816web.pdf](https://www.hrw.org/sites/default/files/report_pdf/srilanka0816web.pdf). Accessed: 7 June 2017

<sup>25</sup> Human Rights Watch, “All Five Fingers Are Not the Same” - Discrimination on Grounds of Gender Identity and Sexual Orientation in Sri Lanka’, (III. Police Abuses, p30), 15 August 2016, [https://www.hrw.org/sites/default/files/report\\_pdf/srilanka0816web.pdf](https://www.hrw.org/sites/default/files/report_pdf/srilanka0816web.pdf). Accessed: 7 June 2017

<sup>26</sup> Australian Government, Department of Foreign Affairs and Trade, ‘DFAT Country Information Report Sri Lanka’, (Transgender individuals, para 3.81), 24 January 2017, <http://dfat.gov.au/about-us/publications/Pages/country-information-reports.aspx>. Accessed: 11 July 2017

<sup>27</sup> US State Department, ‘Country Report on Human Rights Practices for 2016’ (USSD Report 2016), Sri Lanka, (Section 6. Discrimination, Societal Abuses, and Trafficking in Persons - Acts of Violence, Discrimination, and Other Abuses Based on Sexual Orientation and Gender Identity), 3 March 2017, <https://www.state.gov/documents/organization/265760.pdf>. Accessed: 10 April 2017

‘... that incidents of physical violence, both in the public and private spheres, remain under-reported and undocumented, and that LBT people who experience physical violence rarely seek compensation, redress or even counselling from mental health service providers who work with women who have experienced violence – such as domestic violence programs or support groups.’<sup>28</sup>

6.3.2 A submission made by Equal Ground to the Committee on the Elimination of Discrimination against Women (the "Committee") on Human Rights Violations against Lesbian and Bisexual Women in Sri Lanka: A Shadow Report, July 2016, stated:

‘Lesbians and bisexual women feel there is a complete lack of redress for physical violence committed against them and this exacerbates violence faced by the LGBTI community. Where the perpetrator is a family member, or an intimate partner, women can be reluctant to report the violence, especially if it took place in the private space of the family home. Even if the violence has taken place in a public area, women will often not report it out of fear of being exposed as lesbian or bisexual. Individuals interviewed by the Women's Support Group "were reluctant to report violence in the home to police because this would entail placing a family member in the hands of the law" and "some interviewees did not want the risk of unwelcome publicity".’<sup>29</sup>

6.3.3 Further adding:

‘Lesbians and bisexual women often do not believe that the police will investigate crime if it is reported and fear the consequences of engaging with the police. For instance, an individual interviewed by the Women's Support Group stated "[I] couldn't go to the police...it was just going to get me into more trouble” Adding, “[T]here are reports of police officers using blackmail and violence against LGBTI persons. In addition, the court system is open to the public, which deters many lesbians and bisexual women from reporting violence, as they are likely to face exposure of their sexuality in open court.’<sup>30</sup>

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<sup>28</sup> The International Gay and Lesbian Human Rights Commission IGLHRC, “Not Gonna Take It Lying Down” Experiences of Violence and Discrimination as Told by LBT Persons in Sri Lanka, (Access to Redress, p25), 13 May 2014, <https://www.outrightinternational.org/content/violence-through-lens-lbt-people-asia>. Accessed: 16 June 2017

<sup>29</sup> Equal Ground, Human Rights Violations against Lesbian and Bisexual Women in Sri Lanka: A Shadow Report, Submitted for consideration at the Committee on the Elimination Of Discrimination Against Women (CEDAW) Pre-sessional Working Group for the 66th session (25 – 29 July 2016), (B. Violence Against Lesbians and Bisexual Women, para 4.19), June 2016, [http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/LKA/INT\\_CEDAW\\_NGO\\_LKA\\_24\\_294\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/LKA/INT_CEDAW_NGO_LKA_24_294_E.pdf). Accessed: 21 June 2017

<sup>30</sup> Equal Ground, Human Rights Violations against Lesbian and Bisexual Women in Sri Lanka: A Shadow Report, Submitted for consideration at the Committee on the Elimination Of Discrimination Against Women (CEDAW) Pre-sessional Working Group for the 66th session (25 – 29 July 2016), (B. Violence Against Lesbians and Bisexual Women, para 4.20), June 2016, [http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/LKA/INT\\_CEDAW\\_NGO\\_LKA\\_24\\_294\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/LKA/INT_CEDAW_NGO_LKA_24_294_E.pdf). Accessed: 21 June 2017

## 7. Societal treatment and attitudes

### 7.1 Societal norms

7.1.1 The DFAT report dated 24 January 2017, noted: 'Overall, DFAT assesses that the vast majority of Sri Lankans have conservative views about sexual orientation and gender identity. On a societal level, collective values are prioritised over individual rights and anecdotally, sexual orientation and gender identity can be seen as shameful.'<sup>31</sup>

7.1.2 The report further noted:

'DFAT assesses that LGBTI individuals in Sri Lanka face... a moderate level of societal discrimination, on a day-to-day basis. The level and frequency of discrimination faced by the LGBTI community differs, depending on the socio-economic status, the religion and the geographic location of the individual. For instance, many middle and upper class, educated and urban Sri Lankans can be open about their sexuality within their family and community circles. Many LGBTI individuals, especially Muslims, continue to hide their identity to avoid harassment.'<sup>32</sup>

7.1.3 The Women and Media Collective, 'Discrimination of Lesbians, Bisexual Women and Transgender Persons in Sri Lanka Shadow Report, Presented to the 66th Session of the Committee for the Elimination of All Forms of Discrimination Against Women (CEDAW) 13 February–03 March 2017, stated:

'The State has not undertaken any studies to determine the levels of underrepresentation or disadvantages faced by LBT [lesbian, bisexual, and transgender] persons in areas of decision-making. No political party has actively engaged with the LBT community to increase their representation in politics. Women in general have been historically under-represented at all levels of government and LBT women have been completely invisible in the political arena. No affirmative action has been taken to redress this situation for women of diverse gender identities and sexual orientation.'<sup>33</sup>

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### 7.2 Violence and discrimination

7.2.1 The 2016 Country USSD report stated that: 'Crimes and harassment against LGBT individuals were a problem, although such incidents often went

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<sup>31</sup> Australian Government, Department of Foreign Affairs and Trade, 'DFAT Country Information Report Sri Lanka', (Transgender individuals, para 3.83), 24 January 2017, <http://dfat.gov.au/about-us/publications/Pages/country-information-reports.aspx>. Accessed: 11 July 2017

<sup>32</sup> Australian Government, Department of Foreign Affairs and Trade, 'DFAT Country Information Report Sri Lanka', (Transgender individuals, para 3.83, p24), 24 January 2017, <http://dfat.gov.au/about-us/publications/Pages/country-information-reports.aspx>. Accessed: 11 July 2017

<sup>33</sup> Women and Media Collective, 'Discrimination of Lesbians, Bisexual Women and Transgender Persons in Sri Lanka Shadow Report', Presented to the 66th Session of the Committee for the Elimination of All Forms of Discrimination Against Women (CEDAW) 13 February–03 March 2017, (p6), [http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/LKA/INT\\_CEDAW\\_NGO\\_LKA\\_26\\_252\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/LKA/INT_CEDAW_NGO_LKA_26_252_E.pdf). Accessed: 24 May 2017

unreported. Social stigma against LGBT persons remained a problem.<sup>34</sup> The USSD Report 2016 noted that: 'Transgender persons continued to face... discrimination accessing employment, housing, and health care.'<sup>35</sup>

- 7.2.2 In October 2014, the International Gay & Lesbian Human Rights Commission (IGLHRC) published a shadow report in which research concluded that LBT [lesbian, bisexual, and transgender] Sri Lankans suffered 'high levels of sexual violence, emotional violence and physical violence at home and in public spaces.'<sup>36</sup>
- 7.2.3 The findings of the Women's Support Group (WSG) research involving 33 qualitative interviews with LBT people and 51 qualitative interviews with related stakeholders, including lawyers, doctors, mental health professionals, media representatives, employers, religious leaders, representatives of educational institutions, NGOs, and state employees, revealed:
- 'A staggeringly high number of interviewees (31 out of 33) reported the impact of the violence on their mental health; amongst the mental health issues cited were depression, anxiety, anger, frustration, and fear arising from actual experiences of violence and anticipation of further violence. Nearly two-thirds of the interviewees (20 out of 33) chose not to disclose their sexual orientation to anyone for fear of rejection from society, friends and family. Self-harming behaviour was reported by 20 respondents, including an alarming one third of the interviewees (11 out of 33) reporting attempted suicide... In addition to emotional violence, over two-thirds of interviewees (26 out of 33) reported physical violence.'<sup>37</sup>
- 7.2.4 The same report added: 'Twenty of those interviewed chose to hide their sexual orientation for fear of rejection from society, friends and family. A further 18 felt resigned to their fate, minimized the severity of the violence, normalized the violence, or internalized the violence. Almost two-thirds of the interviewees blamed themselves for the violence they had experienced.'<sup>38</sup>

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<sup>34</sup> US Department of State, Country Reports on Human Rights Practices for 2014: Sri Lanka, (Section 6), 27 February 2015,

<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2014&dliid=236650#wrapper>.

Accessed: 21 June 2017

<sup>35</sup> US State Department, 'Country Report on Human Rights Practices for 2016' (USSD Report 2016), Sri Lanka, (Section 6. Discrimination, Societal Abuses, and Trafficking in Persons - Acts of Violence, Discrimination, and Other Abuses Based on Sexual Orientation and Gender Identity), 3 March 2017, <https://www.state.gov/documents/organization/265760.pdf>. Accessed: 10 April 2017

<sup>36</sup> International Gay & Lesbian Human Rights Commission (IGLHRC), 'Violence Against Lesbians, Bisexual Women and Transgender Persons in Sri Lanka', Presented to the 112th Session of The Human Rights Committee of the United Nations International Covenant on Civil and Political Rights (ICCPR), (LBT Persons are Targeted by Police Under Discriminatory Laws,p3), October 2014, <http://www.refworld.org/pdfid/58c2b6444.pdf>. Accessed: 22 June 2015

<sup>37</sup> The International Gay and Lesbian Human Rights Commission IGLHRC, "Not Gonn a Take It Lying Down" Experiences of Violence and Discrimination as Told by LBT Persons in Sri Lanka, (p8), 13 May 2014, <https://www.outrightinternational.org/content/violence-through-lens-lbt-people-asia>. Accessed: 16 June 2017

<sup>38</sup> The International Gay and Lesbian Human Rights Commission IGLHRC, "Not Gonn a Take It Lying Down" Experiences of Violence and Discrimination as Told by LBT Persons in Sri Lanka, (Impact of Violence, Responding and Coping, p26), 13 May 2014, <https://www.outrightinternational.org/content/violence-through-lens-lbt-people-asia>. Accessed: 16 June 2017

- 7.2.5 In July 2016, delegates from a UK Home Office Fact Finding (FFM) mission to Sri Lanka met with a representative from Equal Ground, a non-profit organisation seeking human and political rights for LGBT community of Sri Lanka. The FFM delegates asked whether LGBTI persons were able to live openly and were told: 'Not everybody. It depends on who they are and where they are. In urban settings some people might choose to live openly but they are actually few and far between.'<sup>39</sup>
- 7.2.6 The Freedom House report, Freedom in the World 2017 - Sri Lanka, 12 June 2017, stated: 'LGBT... people face societal discrimination, occasional instances of violence and some official harassment, though government officials have stated that LGBT people are constitutionally protected from discrimination. Sex "against the order of nature" is a criminal offense, but cases are rarely prosecuted. An August 2016 report by Human Rights Watch found that transgender people in particular face discrimination, including the inability to update their identity documentation with their preferred gender and police harassment at checkpoints.'<sup>40</sup>

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### 7.3 Pro-LGBT marches/gay pride

- 7.3.1 The FFM delegates asked Equal Ground whether the government, police or judiciary provided LGBTI persons with security and justice, but were told: 'No they do not. But during the 2016 Pride celebration there were a lot of threats from Sinhala Buddhist nationalists particularly towards a public event Equal Ground (EG) was planning to hold to publicise Colombo Pride 2016. EG made a complaint to a police station about the threats, and plain clothes police officers were sent to protect them. The police took no action against the Buddhist nationalists. The Buddhist nationalists never turned up, but all threats are taken seriously... On an individual basis police do not protect. In fact, they are the main perpetrators of violence and discrimination against LGBTI persons.'<sup>41</sup> (See [Police violence](#)).
- 7.3.2 As reported on the Equal Ground website, 'Colombo PRIDE is one of the oldest PRIDE Festivals in South Asia launching in 2005 with a modest Pride Party. In 2006, for the first time, a week long schedule of events was planned to great success. Since then Colombo PRIDE has grown in strength, not only in numbers attending but also the number of varied events that have been presented over the years.'<sup>42</sup>
- 7.3.3 Rosanna Flamer-Caldera, executive director of Equal Ground, the non-profit LGBT rights organisation, informed the Daily Xtra, an online gay and lesbian

<sup>39</sup> UK Home Office's 'Fact Finding Mission to Sri Lanka', 11 – 23 July 2016, Section 16: Meeting with Equal Ground (EG), <https://www.gov.uk/government/publications/sri-lanka-country-policy-and-information-notes>. Accessed: 13 June 2017

<sup>40</sup> Freedom House: 'Freedom in the World 2017' - Sri Lanka, 12 June 2017, (Civil Liberties - F. Rule of Law), <https://freedomhouse.org/report/freedom-world/2017/sri-lanka>. Accessed: 13 June 2017

<sup>41</sup> UK Home Office's 'Fact Finding Mission to Sri Lanka', 11 – 23 July 2016, Section 16: Meeting with Equal Ground (EG), <https://www.gov.uk/government/publications/sri-lanka-country-policy-and-information-notes>. Accessed: 13 June 2017

<sup>42</sup> Equal Ground, 'Colombo Pride 2017', 13 June 2017, <http://www.equal-ground.org/>. Accessed: 16 June 2017

media news platform, that ‘organizers skip the parade to keep people safe.’ Adding, ‘we hold different events such as fashion drag shows, dramas, workshops, art and photo exhibitions, film festivals, parties and rainbow kite festivals on the beach. Strangely, no government has yet shut Pride down. This, I believe, is because we have a strategy to include foreign diplomats and heterosexual allies in all our events, thus making it difficult for the government to shut us down or cause disruption.’<sup>43</sup>

#### 7.3.4 The DFAT report dated 24 January 2017, noted:

‘In 2016, the Twelfth Annual Gay Pride Festival was targeted by critics (in particular, Sinhala-le, an extremist, nationalist Buddhist group) publishing threatening comments on social media. Some public events were cancelled or police attended to provide protection for participants. Sri Lanka has no dedicated ‘gay bars’ but Colombo does have a few ‘LGBTI friendly spaces’, including in some tourist hotels. Discrimination also happens at an institutional level. Approval paperwork for one public event celebrating International Day against Homophobia and Transphobia (IDAHOT) in 2016 was “misplaced” by the relevant authorising authority and the event could not proceed.’<sup>44</sup>

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### 7.4 Gay ‘scene’ and community

7.4.1 An article in Gscene magazine published online in October 2013, reported on the gay scene in Sri Lanka including the exclusively gay boutique hotel called Dickman Resort, just a 20 minute drive from Colombo airport. The article added: ‘For nightlife there are several gay friendly bars in the area such as Tastees Banana, and especially Serendib on Fridays and Saturdays after 11 pm.’<sup>45</sup>

7.4.2 On 20 December 2016 Equal Ground, the only LGBTIQ advocacy organisation in Sri Lanka, launched the LGBTIQ lifestyle magazine in Colombo. The first magazine of its kind to be published in Sri Lanka<sup>46</sup>.

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### 7.5 Family treatment

7.5.1 The findings of the Women’s Support Group (WSG) noted:

‘These findings suggest that Sri Lankan women, while achieving high on development indicators like literacy and education, are still subjects of a conservative social environment where patriarchal authority and

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<sup>43</sup> Daily Xtra, ‘Still a crime to be gay in Sri Lanka’, 27 October 2015, <http://www.dailyxtra.com/world/news-and-ideas/news/still-crime-gay-in-sri-lanka-179434?m=/terms-of-usterns-of-use>. Accessed: 16 June 2017

<sup>44</sup> Australian Government, Department of Foreign Affairs and Trade, ‘DFAT Country Information Report Sri Lanka’, (paragraph 3.83, p24), 24 January 2017, <http://dfat.gov.au/about-us/publications/Pages/country-information-reports.aspx>. Accessed: 11 July 2017

<sup>45</sup> Gscene magazine, ‘Spice and everything that’s nice. That’s what Sri Lanka is made of’ : By Alan Stables, 8 October 2013, <http://gscene.com/features/spice-and-everything-thats-nice-thats-what-sri-lanka-is-made-of/>. Accessed: 16 June 2017

<sup>46</sup> Equal Ground, Press Release, 20 December 2016, <http://www.equal-ground.org/>. Accessed: 16 June 2017

heteropatriarchal norms are reinforced. In this society, heterosexual marriage is encouraged, divorce and separation discouraged, and family violence as well as partner violence is invisibilized. Given that this environment actively discourages female independence, especially sexual autonomy and gender difference, and limits women's access to and exposure in the public sphere, the private space of the family is a primary locus of the control of women – perhaps the most oppressive institution for them. For LBT persons, these circumstances are compounded by the fact that they have no other forms of support. For example, they may not be able to request help from friends and colleagues, and cannot approach religious communities or government institutions such as the police and even women's sheltering services.<sup>47</sup>

- 7.5.2 A submission made by Equal Ground to the Committee on the Elimination of Discrimination against Women (the “Committee”) on Human Rights Violations against Lesbian and Bisexual Women in Sri Lanka: A Shadow Report, July 2016, stated: ‘Sri Lankan law does not protect LGBTI individuals from being forced into heterosexual marriages. Lesbian and bisexual women's sexuality is generally not recognised by their families, and they are expected to marry men. Individuals are often coerced and threatened, and this has a significant impact on their wellbeing.’<sup>48</sup>

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## 8. Access to services

### 8.1 Healthcare

- 8.1.1 The Women and Media Collective -Shadow Report, Discrimination of Lesbians, Bisexual Women and Transgender Persons in Sri Lanka Shadow Report, Presented to the 66th Session of the Committee for the Elimination of All Forms of Discrimination Against Women (CEDAW) 13 February – 03 March 2017: observed:

‘While the basic health needs of LGBT people and the general population are the same, their sexual orientation and gender identity and expression is a barrier to LGBT individuals accessing health related entitlements. LBT women in Sri Lanka continue to face challenges in exercising their basic right of access to health care, including reproductive health and avoid or delay receiving health care or receive inappropriate or inferior care in general and health care settings. The high visibility of LGBT persons in HIV prevention intervention programmes is considered to pose a barrier to

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<sup>47</sup> The International Gay and Lesbian Human Rights Commission IGLHRC, “Not Gonn a Take It Lying Down” Experiences of Violence and Discrimination as Told by LBT Persons in Sri Lanka, (p8), 13 May 2014, <https://www.outrightinternational.org/content/violence-through-lens-lbt-people-asia>. Accessed: 16 June 2017

<sup>48</sup> Equal Ground, ‘Human Rights Violations against Lesbian and Bisexual Women in Sri Lanka: A Shadow Report, Submitted for consideration at the Committee on the Elimination Of Discrimination Against Women (CEDAW) Pre-sessional Working Group for the 66th session (25 – 29 July 2016)’, (C. Forced Marriage, para 4.24), June 2016, [http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/LKA/INT\\_CEDAW\\_NGO\\_LKA\\_24\\_294\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/LKA/INT_CEDAW_NGO_LKA_24_294_E.pdf). Accessed: 21 June 2017

recognizing their need for services for general and reproductive health problems as for the general population.<sup>49</sup>

#### 8.1.2 Further adding:

'Members of the transgender community report complete disregard and lack of concern for protecting the confidential details of their medical histories by State run healthcare facilities. Information has been shared with non-medical hospital personnel such as cleaners and security staff. Some transgender persons report intimidation and harassment by hospital staff. In one case, a doctor sexually harassed a transwoman seeking medical assistance at a government hospital. In another incident a transgender man reported having his genitals examined when he was under sedation for surgery not related to his sexual organs. There are also reports indicating that transwomen who go to government healthcare facilities have faced discrimination, such as their cases being delayed and their appointments being pushed to the back of the queue. Transmen (female to male) are often left out of HIV awareness programmes since often only transwomen are categorised as men having sex with men by HIV service providers.'<sup>50</sup>

8.1.3 Human Rights Watch conducted interviews in four Sri Lankan cities between October 2015 and January 2016 with 61 LGBTI people, which identified that transgender people faced discrimination when accessing health care. They were labelled mentally ill and medical staff disregarded privacy for patients.<sup>51</sup>

8.1.4 For example, one of the transgender women interviewed by HRW, regarding difficulties experienced within the healthcare sector that "They just want to know about what happened to me, why I'm growing my hair, why I dress like a woman. They don't care about my sickness, just these other things".<sup>52</sup>

8.1.5 The HRW published a report in August 2016 of their findings from the interviews, which stated:

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<sup>49</sup> Women and Media Collective, 'Discrimination of Lesbians, Bisexual Women and Transgender Persons in Sri Lanka' Shadow Report (Joint report), Presented to the 66th Session of the Committee for the Elimination of All Forms of Discrimination Against Women (CEDAW), 13 February – 03 March 2017, (V. HEALTH (Articles 11, 12; General Recommendation 19, 24), p9), [http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/LKA/INT\\_CEDAW\\_NGO\\_LKA\\_26252\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/LKA/INT_CEDAW_NGO_LKA_26252_E.pdf). Accessed: 12 June 2017

<sup>50</sup> Women and Media Collective, 'Discrimination of Lesbians, Bisexual Women and Transgender Persons in Sri Lanka', Shadow Report (Joint report), Presented to the 66th Session of the Committee for the Elimination of All Forms of Discrimination Against Women (CEDAW), 13 February – 03 March 2017', (Joint report), (V. HEALTH (Articles 11, 12; General Recommendation 19, 24), p10), [http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/LKA/INT\\_CEDAW\\_NGO\\_LKA\\_26252\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/LKA/INT_CEDAW_NGO_LKA_26252_E.pdf). Accessed: 12 June 2017

<sup>51</sup> Human Rights Watch, "All Five Fingers Are Not the Same" - Discrimination on Grounds of Gender Identity and Sexual Orientation in Sri Lanka', (IV. Public and Private Sector Discrimination, p39), 15 August 2016, [https://www.hrw.org/sites/default/files/report\\_pdf/srilanka0816web.pdf](https://www.hrw.org/sites/default/files/report_pdf/srilanka0816web.pdf). Accessed: 11 May 2017

<sup>52</sup> Human Rights Watch, "All Five Fingers Are Not the Same" - Discrimination on Grounds of Gender Identity and Sexual Orientation in Sri Lanka', (Discrimination in Health Care, p39-40), 15 August 2016, [https://www.hrw.org/sites/default/files/report\\_pdf/srilanka0816web.pdf](https://www.hrw.org/sites/default/files/report_pdf/srilanka0816web.pdf). Accessed: 11 May 2017



'Sri Lanka has an extensive network of public clinics and hospitals across the island. However, doctors and other medical staff are often unaware of, and insensitive to, the health needs of LGBTI people.

'Transgender people, in particular, told Human Rights Watch that medical professionals in Sri Lanka tend to consider them as mentally ill. They reported that very few doctors address transgender health issues such as access to hormones or sex reassignment surgery, and most of them are in large cities, like Colombo and Kandy. Identifying a doctor who is able and willing to work with transgender people is a significant barrier to health, some said.

'A transgender man in Colombo said that in his experience there was no privacy in government clinics, so that everyone can hear when doctors examine patients, a concern relevant to all patients, but particularly significant for transgender patients given the humiliation and inquisitiveness to which they are frequently subjected. Worse, he added, doctors and other staff sometimes showed his body to others.'<sup>53</sup>

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## 8.2 Employment

8.2.1 A submission made by Equal Ground to the Committee on the Elimination of Discrimination against Women (the "Committee") on Human Rights Violations against Lesbian and Bisexual Women in Sri Lanka: A Shadow Report, July 2016, stated: 'Lesbians and bisexual women in Sri Lanka are often subject to significant discrimination in the course of their employment. Non-heterosexual sexual orientation is not readily accepted or recognised in the Sri Lankan workplace, making it extremely difficult for individuals to express their sexual identity without fear of abuse or persecution.'<sup>54</sup>

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## 8.3 Education

8.3.1 A joint Parallel Report to the UN Committee on the Elimination of Discrimination Against Women Regarding Sri Lanka's Protection of the Rights of LGBTI Persons report by Kaleidoscope Human Rights Foundation and Equal Ground, Sri Lanka, observed:

'The IGLHRC has reported that women in Sri Lanka perform relatively well on development indicators such as literacy and education, however they are still affected by a heteronormative and patriarchal society that places inordinate value on the role of women in the home.

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<sup>53</sup> Human Rights Watch, "'All Five Fingers Are Not the Same" - Discrimination on Grounds of Gender Identity and Sexual Orientation in Sri Lanka', (Discrimination in Health Care, p39), 15 August 2016, [https://www.hrw.org/sites/default/files/report\\_pdf/srilanka0816web.pdf](https://www.hrw.org/sites/default/files/report_pdf/srilanka0816web.pdf). Accessed: 11 May 2017

<sup>54</sup> Equal Ground, Human Rights Violations against Lesbian and Bisexual Women in Sri Lanka: A Shadow Report, Submitted for consideration at the Committee on the Elimination Of Discrimination Against Women (CEDAW) Pre-sessional Working Group for the 66th session (25 – 29 July 2016), (D. Discrimination in Employment, para 4.30), June 2016, [http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/LKA/INT\\_CEDAW\\_NGO\\_LKA\\_24\\_294\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/LKA/INT_CEDAW_NGO_LKA_24_294_E.pdf). Accessed: 21 June 2017

'Further, in order to access education, accurate national identity documents are required, raising problems for transgender persons in accessing identity documentation that reflects their accurate identity... Such social and cultural prejudice is compounded again by the broader problem of inadequate sexual education in schools in Sri Lanka. Human Rights Watch has previously highlighted that school sex education programs do not contain LGBTI issues in the curriculum.'<sup>55</sup>

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## 9. LGBT groups, civil society and human rights NGOs

### 9.1 LGBT NGOs

- 9.1.1 The DFAT report dated 24 January 2017, noted: '[T]he LGBTI community in Sri Lanka faces numerous societal, cultural and legislative barriers. Few support mechanisms for LGBTI individuals exist. Only a small number of NGOs work in support of LGBTI rights; they undertake advocacy work and provide some support services. However, these groups report that it can be more difficult to operate openly in rural areas.'<sup>56</sup>
- 9.1.2 Reporting on the use of hate speech and hate campaigns, the Report of the Office of the United Nations High Commissioner for Human Rights on Sri Lanka, 10 February 2017, stated: 'Organizations working on LGBT rights have also reported threats and attacks on social media against groups and individuals on the basis of sexual orientation.'<sup>57</sup>
- 9.1.3 The Women's Support Group (WSG), a Colombo-based non- governmental organization (NGO) provided support for lesbians, bisexual women and transgender people.<sup>58</sup>

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<sup>55</sup> Kaleidoscope Human Rights Foundation (Kaleidoscope) and Equal Ground, Sri Lanka 'Parallel Report to the UN Committee on the Elimination of Discrimination Against Women Regarding Sri Lanka's Protection of the Rights of LGBTI Persons' (Joint report), (Education, Para 7.4-7.5, p8), [http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/LKA/INT\\_CEDAW\\_NGO\\_LKA\\_26326\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/LKA/INT_CEDAW_NGO_LKA_26326_E.pdf). Accessed: 12 June 2017

<sup>56</sup> Australian Government, Department of Foreign Affairs and Trade, 'DFAT Country Information Report Sri Lanka', (paragraph 3.79, p23), 24 January 2017, . <http://dfat.gov.au/about-us/publications/Pages/country-information-reports.aspx>. Accessed: 11 July 2017

<sup>57</sup> UN Human Rights Council (formerly UN Commission on Human Rights), 'Report of the Office of the United Nations High Commissioner for Human Rights on Sri Lanka', 10 February 2017, [http://www.ecoi.net/file\\_upload/1930\\_1488988521\\_g1703056.pdf](http://www.ecoi.net/file_upload/1930_1488988521_g1703056.pdf), Accessed: 21 June 2017

<sup>58</sup> Women's Support Group, "Not Gonna Take it Lying Down: Experiences of Violence and Discrimination as Told by LBT Persons in Sri Lanka", (2014), <https://www.outrightinternational.org/content/violence-through-lens-lbt-people-asia>. Accessed: 15 June 2017

# Version control and contacts

## Contacts

If you have any questions about this note and your line manager, senior caseworker or technical specialist cannot help you, or you think that this note has factual errors then [email the Country Policy and Information Team](#).

If you notice any formatting errors in this note (broken links, spelling mistakes and so on) or have any comments about the layout or navigability, you can [email the Guidance, Rules and Forms Team](#).

## Clearance

Below is information on when this note was cleared:

- version **2.0**
- valid from **12 July 2017**

## Changes from last version of this note

Updated country information and revised guidance.

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