



Home Office

Country Information and Guidance

Sri Lanka: Sexual Orientation and Gender Identity

Version 1.0

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Preface

This document provides country of origin information (COI) and 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 guidance contained with this document; the available COI; any applicable caselaw; and the Home Office casework guidance in relation to relevant policies.

Country Information

The COI within this document has been compiled from a wide range of external information sources (usually) published in English. Consideration has been given to the relevance, reliability, accuracy, objectivity, currency, transparency and traceability of the information and wherever possible attempts have been made to corroborate the information used across independent sources, to ensure accuracy. All sources cited have been referenced in footnotes. It has been researched and presented with reference to the [Common EU \[European Union\] Guidelines for Processing Country of Origin Information \(COI\)](#), dated April 2008, and the [European Asylum Support Office’s research guidelines, Country of Origin Information report methodology](#), dated July 2012.

Feedback

Our goal is to continuously improve the guidance and information we provide. Therefore, if you would like to comment on this document, please [e-mail us](#).

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.

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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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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 because of the person's actual or perceived:
 - (a) sexual orientation (i.e. that the person is, or is perceived to be, a lesbian, a gay man or bisexual).
 - (b) gender identity (i.e. that the person is, or is perceived to be, transgender).
 - (c) gender recognition (i.e. that the person is, or is perceived to be, transsexual).
- 1.1.2 For the purposes of this guidance, unless specified, the above are collectively referred to as 'LGBTI persons'.
- 1.1.3 In addition to the guidance in this section, decision makers should also refer to the Asylum Instructions on [Sexual Identity Issues in the Asylum Claim](#), [Gender Identity Issues in Asylum Claims](#); and [Gender Recognition in Asylum Claims](#).

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2. Consideration of Issues

2.1 Is the person's account a credible one?

- 2.1.1 For information on assessing credibility, see sections 4 and 5 of the [Asylum Instruction on Assessing Credibility and Refugee Status](#).
- 2.1.2 Decision makers must also check if there has been a previous application for a UK visa or an application for 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 Do LGBTI persons from Sri Lanka constitute a particular social group (PSG)?

- 2.2.1 The Upper Tribunal (UT) in [LH and IP \(gay men: risk\) Sri Lanka CG \[2015\] UKUT 00073 \(IAC\)](#) (18 February 2015), having regarded the provisions of articles 365 and 365A of the Sri Lankan [Penal Code](#), recognised that gay men in Sri Lanka do constitute a particular social group (PSG) within the meaning of the Refugee Convention (para 123 (1)).
- 2.2.2 Whilst [LH and IP](#) found specifically that gay men constitute a PSG, all LGBTI persons in Sri Lanka should be regarded as forming a PSG because they share a common characteristic that cannot be changed and have a distinct

identity in Sri Lanka which is perceived as being different by the surrounding society.

- 2.2.3 Although LGBTI persons in Sri Lanka form a PSG, this does not mean that establishing such membership will be sufficient to make out a case to be recognised as a refugee. The question to be addressed in each case will be whether the particular person will face a real risk of persecution on account of their membership of such a group.
- 2.2.4 For further information on particular social groups, see section 7.6 of the [Asylum Instruction on Assessing Credibility and Refugee Status](#).

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2.3 Are LGBTI persons at risk of persecution or serious harm in Sri Lanka?

- 2.3.1 Although same-sex sexual activity is criminalised in Sri Lanka there have been no successful prosecutions and very few charges during the 50 years of the Sri Lankan state.
- 2.3.2 In general the level of discrimination and abuse faced by LGBTI persons in Sri Lanka is not such that it will reach the level of being persecutory or otherwise inhuman or degrading treatment. This was confirmed for gay men in the country guidance case of [LH and IP \(gay men: risk\) Sri Lanka CG \[2015\] UKUT 00073 \(IAC\)](#) where the Upper Tribunal found that in general the treatment of gay men in Sri Lanka does not reach the standard of persecution or serious harm (para 123(3)).
- 2.3.3 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 'While 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))
- 2.3.4 LGBTI persons frequently face discrimination in accessing employment, housing and health services. Sexual harassment at work and hate speech and vilification of LGBTI communities by media and public officials is reported to be common (see [Attitudes of the state](#)).
- 2.3.5 Male-to-female transgender women and masculine-looking women of lower economic status report that police used the Vagrants Ordinance of the Sri Lanka Penal Code that prohibits loitering in public to detain them (see [Legislation and Implementation of legislation](#) and [Attitudes of the state](#)).
- 2.3.6 There are reports that some LGBTI Sri Lankans can suffer sexual violence, emotional violence and physical violence at home and in public spaces. Examples of such incidents include: death threats, sexual assault, rape, physical attacks, kidnappings, as well as emotional and psychological abuse by public and private actors including, verbal humiliation, threats of family abandonment and being forced to end same-sex relationships (see [Societal attitudes](#)).

2.3.7 For further information on assessing risk, see section 6 of the [Asylum Instruction on Assessing Credibility and Refugee Status](#).

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2.4 Is the person open about their sexual orientation/gender identity/gender recognition?

2.4.1 Although all LGBTI persons have a right to live openly or discreetly based on their personal choice, decision makers should be mindful that often such decisions will be influenced by the treatment of the persons in the country of origin.

2.4.2 If a person is not openly LGBTI and lives discreetly because they fear that if they were open about their sexual orientation they would face mistreatment, and that fear is well-founded, they will have a well founded fear of persecution. However if the reason for choosing to live discreetly is because of personal choice or because the person believes being open about their sexuality may cause embarrassment to friends or family, then they may not have a well-founded fear of persecution. This is because such social pressures to conceal their sexual orientation are not sufficiently detrimental to constitute 'persecution'.

2.4.3 For further information on this issue see section 6.2 of the Asylum Instruction on [Gender Identity Issues in Asylum Claims](#).

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2.5 Are those at risk able to seek effective protection?

2.5.1 There are no legal safeguards to prevent discrimination based on sexual orientation or gender identity. Incidents of homophobia go unreported due to individuals 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 LGBTI individuals with impunity, particularly in Colombo as well as other areas (See [Attitudes of state officials](#), [Societal attitudes](#) and [State protection](#)).

2.5.2 The lack of anti-discrimination legislation to protect the rights of LGBTI individuals has meant that they have no recourse to a remedy when particular laws are used against LGBTI persons in a discriminatory manner. Such discrimination is further enabled and promoted by the continued criminalisation, and therefore stigmatisation, of LGBTI persons. LGBTI individuals who are the victims of violence or hate crimes cannot 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, in theory, to prosecution under articles 365 and 365A of the Constitution. LGBTI people who experience physical violence rarely seek compensation, redress or counselling from service providers who work with women who have experienced violence (See [State protection](#)).

2.5.3 There is a general perception in the LGBTI community that police officers used blackmail and violence against persons they perceived to be homosexual, bisexual, or transgender. If the person's fear is of serious

harm/persecution at the hands of the state, it is unreasonable to consider they would be able to avail themselves of the protection of the authorities.

2.5.4 If the person's fear is of serious harm/persecution at the hands of non state agents or rogue state agents then effective state protection is unlikely to be available. The evidence is that the state is unwilling to provide protection to those subject to serious harm/persecution on grounds that they are LGBTI. 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.

2.5.5 For further information on assessing the availability or not of state protection, see section 8.1 of the [Asylum Instruction on Assessing Credibility and Refugee Status](#).

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2.6 Are those at risk able to internally relocate?

2.6.1 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).

2.6.2 Decision makers must give careful consideration to the relevance and reasonableness of internal relocation on a case-by-case basis taking full account of the individual circumstances of the particular person.

2.6.3 For further guidance on considering internal relocation and the factors to be taken into account, see section 8.2 of the [Asylum Instruction on Assessing Credibility and Refugee Status](#).

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2.7 If refused, is the claim likely to be certifiable as 'clearly unfounded'?

2.7.1 Where a claim falls to be refused, it is unlikely to be certifiable as 'clearly unfounded' under section 94 of the Nationality, Immigration and Asylum Act 2002.

2.7.2 For further information on certification, see the [Asylum Instruction on Non-Suspensive Appeals: Certification Under Section 94 of the NIA Act 2002](#).

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3. Legal Context

3.1 Penal code

3.1.1 As noted by the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA), May 2015 report, same-sex sexual acts are illegal in Sri Lanka.¹

3.1.2 Article 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.'²

3.1.3 Article 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.'³

3.1.4 Article 12 of the Constitution states:

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

¹ International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA), A World Survey of Laws: Criminalisation, Protection and recognition of same-sex love, May 2015, by Aengus Carroll and Lucas Paoli Itaborahy, p.82
http://old.ilga.org/Statehomophobia/ILGA_State_Sponsored_Homophobia_2015.pdf, Date accessed 16 June 2015.

² National Legislative Bodies / National Authorities, Sri Lanka: Penal Code [Sri Lanka], Chapter 19, 1 January 1885, (Article 365), <http://www.refworld.org/docid/4c03e2af2.html>, date accessed 7 July 2015

³ National Legislative Bodies / National Authorities, Sri Lanka: Penal Code [Sri Lanka], Chapter 19, 1 January 1885, (Article 365), <http://www.refworld.org/docid/4c03e2af2.html>, date accessed 7 July 2015

‘(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...

‘(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.’⁴

- 3.1.5 At the United Nations Human Rights Committee on 7-8 October in Geneva during a review of its record on civil and political rights the government of Sri Lanka repeatedly stated that lesbian, gay, bisexual and transgender (LGBT) persons in Sri Lanka are constitutionally protected from discrimination, claiming that Article 12 of the Constitution protects persons from stigmatization and discrimination on the basis of sexual orientation and gender identities.⁵ However, according to the International Gay and Lesbian Human Rights Commission (IGLHRC), ‘the Sri Lankan Constitution’s lack of specific anti-discrimination language on sexual orientation and gender identity places LGBT people at a disadvantage in accessing rights, protections and legal guarantees.’⁶
- 3.1.6 The US State Department’s 2014 Country Report on Human Rights Practices (USSD Report 2014), Sri Lanka, published on 25 June 2015, noted that: ‘Same-sex sexual activity is punishable by a prison sentence of up to 10 years, and there were no legal safeguards to prevent discrimination based on sexual orientation or gender identity.’⁷

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3.2 Implementation of legislation

- 3.2.1 Evidence submitted by Equal Ground - an organisation in Sri Lanka which supports LGBTI persons – in the case of [LH and IP \(gay men: risk\) Sri Lanka CG \[2015\] UKUT 00073 \(IAC\)](#) acknowledged that there have been no successful prosecutions and indeed, in 50 years of the Sri Lankan state, hardly anyone has been charged.⁸

⁴ The Constitution of the Democratic Socialist Republic of Sri Lanka (as amended up to 9th September 2010), Revised Edition – 2011, <http://www.parliament.lk/files/pdf/constitution.pdf>, date accessed 7 July 2015

⁵ International Gay & Lesbian Human Rights Commission, Sri Lanka Government Says LGBT Rights Are Constitutionally Protected, 20 October 2014, <http://iglhrc.org/content/sri-lanka-government-says-lgbt-rights-are-constitutionally-protected>, date accessed 8 June 2015

⁶ International Gay & Lesbian Human Rights Commission, Sri Lanka Government Says LGBT Rights Are Constitutionally Protected, 20 October 2014, <http://iglhrc.org/content/sri-lanka-government-says-lgbt-rights-are-constitutionally-protected>, date accessed 8 June 2015

⁷ US Department of State, Country Reports on Human Rights Practices for 2014: Sri Lanka, 27 February 2015, (Section 6 - Acts of Violence, Discrimination, and Other Abuses Based on Sexual Orientation and Gender Identity), <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2014&dliid=236650#wrapper>, date accessed 7 July 2015

⁸ UK Upper Tribunal (Immigration and Asylum Chamber). [LH and IP \(gay men: risk\) Sri Lanka CG \[2015\] UKUT 00073 \(IAC\)](#). 18 February 2015. (Paragraph 29), <http://www.bailii.org/uk/cases/UKUT/IAC/2015/73.html> Date accessed 21 July 2015.

- 3.2.2 The International Gay & Lesbian Human Rights Commission (IGLHRC), shadow report, dated October 2014, showed research had concluded that LBT Sri Lankans suffered ‘high levels of sexual violence, emotional violence and physical violence at home and in public spaces with no legal recourse because of existing laws, which exposed victims of violence to the risk of being charged by police for homosexuality, lesbianism or gender non-conformity.’ The report highlighted the following key concerns:
- ‘LBT persons are not protected from sexual harassment in the workplace and are unable to access formal redress without incurring additional further abuse and harassment from employers.
 - ‘LBT individuals face job discrimination and some have lost employment because their identity cards did not match their appearance.
 - ‘Family members use physical and emotional violence to punish LBT individuals and force them to conform to gender norms.
 - ‘Although the Domestic Violence Act allows cohabiting couples to seek redress, the risk of penalties under the anti-sodomy law (Section 365A) and gender impersonation law (Section 399) of the Penal Code deters LBT persons from filing complaints and seeking protection orders.
 - ‘In a context where LBT people are already stigmatized and public officials express hostility towards gays and lesbians, the presence of discriminatory laws such as Section 365A and Section 399 of the Penal Code, and the Vagrancy Ordinance of 1842 paves the way for police and anti-gay groups to brand all LGBT people as perverts and criminals.’⁹
- 3.2.3 The UN High Commissioner for Refugees, Guidelines for assessing international protection needs of asylum seekers from Sri Lanka, published on 21 December 2012, noted that: ‘While few cases have ever been prosecuted, blackmail, violent threats, employment discrimination, rejection by friends, family, the police and society at large are regularly reported.’¹⁰

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3.3 Recognition of gender identity

- 3.3.1 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, September 2014, stated:

⁹ International Gay & Lesbian Human Rights Commission (IGLHRC), Sri Lanka Government Says LGBT Rights Are Constitutionally Protected, 20 October 2014, <http://iglhrc.org/content/sri-lanka-government-says-lgbt-rights-are-constitutionally-protected>, date accessed 22 June 2015.

¹⁰ UN High Commissioner for Refugees, Guidelines for assessing international protection needs of asylum seekers from Sri Lanka, 21 December 2012, (A.8 Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) Individuals in certain circumstances, p35), http://www.ecoi.net/file_upload/1930_1357559584_50d1a08e2.pdf, date accessed 23 June 2015

'There is no policy that provides for individuals to alter their sex classification on official documents or for individuals to identify as anything but male or female, nor is there an adequate legal framework for sex reassignment surgery. There is no legal process by which a person can change their sex on a birth certificate or national identity card. In practice, people appear to need to change their sex first on official documents (for which there is no process) before they can undergo sex reassignment surgery and a medical practitioner risks losing their license if they perform surgery on someone who has not altered their sex on official documents. This makes it difficult and effectively impossible for transgendered or intersex individuals to be legally recognised according to their gender identity, and therefore equal recognition before the law. This lack of recognition has also created problems for transgendered or transsexual individuals in situations where their gender appearance does not correspond to the sex on documentation (for example, at immigration departments).'

- 3.3.2 The USSD Report 2014, concurred, recording that, 'There were reports that persons undergoing gender-reassignment procedures had difficulty amending government documents to reflect those changes.'

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4. Attitudes of the state

- 4.1.1 The US State Department's 2014 Country Report on Human Rights Practices (USSD Report 2014), Sri Lanka, published on 25 June 2015, noted that, 'Authorities very rarely enforced the criminal provisions. In recent years human rights organizations reported that, while not actively arresting and prosecuting members of the LGBT community, police harassed and extorted money or sexual favors from LGBT individuals with impunity and assaulted gay men and lesbians in Colombo and other areas. ...'

- 4.1.2 The same source further noted that:

'A civil society group that worked to advance LGBT rights reported close monitoring by security and intelligence forces. In a March report by the Women's Support Group, "Sri Lanka: Not Gonna Take it Lying Down," 13 of 33 LGBT persons interviewed in the country between 2010 and 2012

¹¹ 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, September 2014, (p5), <http://www.kaleidoscopeaustralia.com/wp-content/uploads/2014/09/Sri-Lanka-Report-Final.pdf>, date accessed 22 June 2015

¹² US Department of State, Country Reports on Human Rights Practices for 2014: Sri Lanka, 27 February 2015, (Section 6 - Acts of Violence, Discrimination, and Other Abuses Based on Sexual Orientation and Gender Identity), <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2014&dclid=236650#wrapper>, date accessed 7 July 2015

¹³ US Department of State, Country Reports on Human Rights Practices for 2014: Sri Lanka, 27 February 2015, (Section 6 - Acts of Violence, Discrimination, and Other Abuses Based on Sexual Orientation and Gender Identity), <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2014&dclid=236650#wrapper>, date accessed 7 July 2015

admitted to having been the victim of some kind of violence at the hands of state agents. Interviewees noted police often utilized existing laws, such as the 1842 Vagrants Ordinance, to detain any individual deemed to be “loitering,” which generally led to detention and at times physical and sexual abuse. Interviewees also noted that police and antigay groups also used penal code sections on “gross indecency” and “cheating by personation” to brand LGBT persons as “perverts and criminals.” There was also a general perception in the LGBT community that police officers used blackmail and violence against persons they perceived to be homosexual, bisexual, or transgender.’¹⁴

4.1.3 A report by the Kaleidoscope trust, Speaking Out, The rights of LGBTI citizens from across the Commonwealth, 2014, stated that, ‘Although the law is rarely enforced it continues to be used to threaten and harass LGBTI people. A recent study by human rights organisation EQUAL GROUND found that 90 [percent] of trans people and 65 [percent] of gay men reported experiencing police violence based on their sexuality and/or gender identity. The law still retains widespread support amongst lawyers and the police.’¹⁵

4.1.4 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:

‘There have been reports of arbitrary arrests and detention by law enforcement officials and violent and abusive police behaviour. Although arrested LGBTI individuals have thus far not been charged or prosecuted, there have been reports of subsequent blackmail, extortion, violence or coerced sexual acts of individuals by police officers. For example, in one reported cases two gay men were arrested by police in a public restroom in Colombo and taken to a police station. At the station, the police officers used derogatory terminology and accused the two men of having sex in the restroom. The police then drove the men to another location where the men were forced to pay a bribe to the police before being released. The transgender nachchi community is especially vulnerable to such victimisation, abuse and exploitation. The awareness that most LGBTI individuals will be unwilling and fearful to report such incidents and the

¹⁴ US Department of State, Country Reports on Human Rights Practices for 2014: Sri Lanka, 27 February 2015, (Section 6 - Acts of Violence, Discrimination, and Other Abuses Based on Sexual Orientation and Gender Identity), <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2014&dliid=236650#wrapper>, date accessed 7 July 2015

¹⁵ Kaleidoscope trust, Speaking Out, The rights of LGBTI citizens from across the Commonwealth, 2014, (p55), <http://kaleidoscopetrust.com/usr/library/documents/main/speaking-out-lgbti-rights-in-the-cw.pdf>, date accessed 19

subsequent lack of action by the State gives police officers the license to continue such practices.’¹⁶

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

‘Section 365A of the Penal Code Amendment Act No 22 of 1995 prohibits “any act of gross indecency” in public or in private. The law is used to criminalize adult consensual same-sex relations. Section 399 of the Penal Code penalizes “cheating by personation” and is used to criminalize transgender men and women, masculine-appearing lesbians, and individuals who cross-dress. The Vagrancy Ordinance of 1842 that prohibits loitering in public is used to detain transgender women and men because they look different...

‘The State grants police officers broad authority to interpret and enforce these 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.’¹⁷

4.1.6 On 10 June 2015 Gay Star News reported that Member of Parliament (MP), Wimal Weerawansa, leader of the National Freedom Front, had said that Foreign Minister Mangala Samaraweera should be arrested for voting in favour of gay rights at the UN as he had violated the country’s penal code by voting against a Russian resolution calling for the withdrawal of partner benefits to gay and lesbian UN employees. “Being gay and lesbian-friendly has become our foreign policy today. This will result in negative consequences in the long run for Sri Lanka,” he told reporters on Tuesday (9 June). “It will affect our culture. Therefore, the minister should be arrested for violating the penal code.”¹⁸

¹⁶ 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, September 2014, (Failure to protect from harassment, abuse and assault, p8), <http://www.kaleidoscopeaustralia.com/wp-content/uploads/2014/09/Sri-Lanka-Report-Final.pdf>, date accessed 22 June 2015

¹⁷ 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), October 2014, Geneva, (LBT Persons are Targeted by Police Under Discriminatory Laws,p3), <http://iglhrc.org/sites/iglhrc.org/files/SriLanka1014WCover.pdf>. date accessed 22 June 2015

¹⁸ Gay Star News, Sri Lanka’s foreign minister threatened with arrest after voting for gay rights at UN,

4.1.7 The article further reported:

'UN Secretary-General Ban Ki-moon extended marital benefits to lesbian and gay employees last year, without consulting member states. Russia then brought its resolution, which was defeated by a majority vote – including that of Sri Lanka. Deputy Foreign Affairs Minister Ajith P Perera categorically denied that Sri Lanka had voted to promote gay rights and said the circular was an administrative matter. Udaya Gammanpila, general secretary of the Pivithuru Hela Urumaya party, said equality did not mean all groups should be recognized as equals. "Right for equality is something considered before the law. It means a person's sexual orientation, religion or language should not be considered when making a legal decision on that person," he said. "It doesn't mean all groups are equally recognized. It's a wrong interpretation."¹⁹

4.1.8 A Shadow Report Submitted for consideration at the 110th Session of the Human Rights Committee March 2014, Geneva Prepared by: EQUAL GROUND, Sri Lanka, on Human Rights Violations Against Lesbian, Gay, Bisexual, and Transgender (LGBT) People in Sri Lanka, stated:

'Individuals in Sri Lanka suffer arbitrary arrest and detention because of their sexual orientation and gender identity. For example, in 2012 a lesbian was arrested and charged with vagrancy when the police found her walking back to her motorcycle on a beach near Colombo. The police commented on her masculine appearance and the fact that she was wearing pants, and she was heavily questioned for her decision to ride a motorcycle. The lesbian was detained for approximately five hours before the police released her...

'LGBT individuals are also subjected to acts of police abuse and violence in violation of Articles 7, 9 and 10. Although §§ 365 and 365A of the Penal Code permit arrests only when there is evidence of the commission of "carnal intercourse" or "gross indecency," Sri Lankan police conduct arbitrary arrests of LGBT individuals without such evidence on the purported grounds that the arrested individuals, being lesbian, gay, bisexual or transgender, will commit such acts in the future. Most of these arrests lead not to the filing of charges, but to bribery, blackmail, extortion, violence or coerced sexual favors. For example, Saman, a graduate student in Galle, was accosted by police officers dressed in civilian clothing while he was conducting an interview of several men and one transgender woman for his thesis on safer sex. The men he was interviewing were arrested and beaten, and the transgender woman was sodomized by three police officers who inserted a wooden stick into her anus. The police accused Saman himself of promoting

10 June 2015, <http://www.gaystarnews.com/article/sri-lankas-foreign-minister-threatened-arrest-after-voting-gay-rights-un100615>, date accessed 22 June 2015

¹⁹ Gay Star News, Sri Lanka's foreign minister threatened with arrest after voting for gay rights at UN, 10 June 2015, <http://www.gaystarnews.com/article/sri-lankas-foreign-minister-threatened-arrest-after-voting-gay-rights-un100615>, date accessed 22 June 2015

homosexuality, and he was slapped by the police and thrown into a jail cell with such force that his ankle was injured.’²⁰

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5. Societal attitudes

5.1.1 The US State Department’s 2014 Country Report on Human Rights Practices (USSD Report 2014), Sri Lanka, published on 25 June 2015, noted that: ‘Crimes and harassment against LGBT individuals were a problem, although such incidents often went unreported. Social stigma against LGBT persons remained a problem.’²¹

5.1.2 In October 2014, the International Gay & Lesbian Human Rights Commission (IGLHRC) published a shadow report in which research concluded that LBT Sri Lankans suffered ‘high levels of sexual violence, emotional violence and physical violence at home and in public spaces.’²²

5.1.3 The October 2014 IGLHRC Shadow report highlighted that:

‘The more visible a person’s non-conforming sexual orientation and gender identity, the greater the likelihood they would be hit, sexually groped, verbally assaulted, and become targets of public threats. This included individuals who were affiliated with organizations or groups involved in LGBT activism. A lesbian couple lived in constant fear and was forced to move out of their rented home because neighbors threatened to rape them, when the neighbors realized that the women were a lesbian couple. A radio talk show featured Buddhist, Christian and Muslim leaders who compared homosexuality to rape and murder, accusing homosexuals of spreading sexually transmitted diseases and being pedophiles. The leaders warned parents to protect their children from homosexuals and condemned NGOs [Non-Governmental Organisations] working to abolish homophobic and transphobic laws.’²³

²⁰ Equal Ground, Human Rights Violations Against Lesbian, Gay, Bisexual, and Transgender (LGBT) People in Sri Lanka: A Shadow Report, Submitted for consideration at the 110th Session of the Human Rights Committee March 2014, December 2013 (p5), <http://www.heartlandalliance.org/gishr/publications/sri-lanka-lgbt-shadow-report-1.pdf>, date accessed 19 June 2015

²¹ US Department of State, Country Reports on Human Rights Practices for 2014: Sri Lanka, 27 February 2015, (Section 6 - Acts of Violence, Discrimination, and Other Abuses Based on Sexual Orientation and Gender Identity), <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2014&dliid=236650#wrapper>, date accessed 7 July 2015

²² 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), October 2014, Geneva, (LBT Persons are Targeted by Police Under Discriminatory Laws,p3), <http://iglhrc.org/sites/iglhrc.org/files/SriLanka1014WCover.pdf>, date accessed 22 June 2015

²³ 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

- 5.1.4 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 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.'²⁴

- 5.1.5 A Shadow Report Submitted for consideration at the 110th Session of the Human Rights Committee March 2014, Geneva Prepared by: EQUAL GROUND, Sri Lanka, on Human Rights Violations Against Lesbian, Gay, Bisexual, and Transgender (LGBT) People in Sri Lanka, stated:

'... physical and verbal violence against LGBT individuals is pervasive in Sri Lanka. These crimes include death threats, sexual harassment, rape, and other physical attacks. Over the four month period between July and October 2013, EQUAL GROUND's Field Officers met with three transgender men who had received death threats as a result of their gender identity. Additionally, results from the 2011 Study indicate that approximately 37% of LGBT respondents were victims of physical abuse, threats, assault, harassment, rape, or battery, the majority of whom experienced such abuse more than once in the past two years. Of the respondents who had suffered physical abuse, 50% stated that it was due to their gender identity or expression, and another 41% of respondents who had suffered physical abuse reported that their physical abuse was due to both their sexual orientation and gender identity or expression. EQUAL GROUND has received reports from LGBT individuals who recounted having been raped, assaulted, kidnapped or threatened with death.'²⁵

(ICCPR) , October 2014, Geneva, (Violence in the Public Sphere, p6),

<http://iglhrc.org/sites/iglhrc.org/files/SriLanka1014WCover.pdf>. date accessed 22 June 2015

²⁴ 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, September 2014, (Executive Summary, p.1 & Failure to protect against discrimination on the basis of sexual orientation or gender identity p.4), <http://www.kaleidoscopeaustralia.com/wp-content/uploads/2014/09/Sri-Lanka-Report-Final.pdf>, date accessed 22 June 2015

²⁵ Equal Ground, Human Rights Violations Against Lesbian, Gay, Bisexual, and Transgender (LGBT) People in Sri Lanka: A Shadow Report Submitted for consideration at the 110th Session of the

5.1.6 The Shadow Report to the UN Human Rights compiled by the Kaleidoscope Human Rights Foundation, stated:

‘Reports from local LGBTI groups indicate that hate crimes are a common occurrence in Sri Lanka, where the victims have been targeted on account of their sexual orientation, gender identity or expression. Examples of such incidents include death threats, sexual assault, rape, physical attacks, as well as emotional and psychological abuse by public and private actors. It must be noted that there is an absence of reported data which has resulted in the invisibility of the nature and forms of violence that can affect these communities.’²⁶

5.1.7 The same Shadow Report by Kaleidoscope further stated:

‘There have been reports of abuse by health professionals towards LGBTI individuals through mechanisms such as forced institutionalisation or therapy, which has serious implications under the right to be free from arbitrary detention and also torture, cruel, inhuman and degrading treatment or punishment

‘There is also a lack of awareness and information relating to the specific needs of LGBTI groups, such as sex reassignment operations. There is no legal framework within which [sic] sex reassignment surgery can be legally conducted by medical practitioners. The criminalisation of sexual activity between same sex consenting adults can impede public health and education programmes with respect to HIV/AIDS prevention by discouraging many high-risk individuals (such as MSMs and transgendered people) from accessing treatment due to fear of disclosure or sanctions... Hate speech and vilification of LGBTI communities by media and public officials is unfortunately common. There have also been articles directing hostility towards local LGBTI groups and organisers’.²⁷

5.1.8 The March 2014 Shadow Report prepared by: EQUAL GROUND, also recorded:

‘Individuals are frequently discriminated against within the workplace due to their sexual orientation or gender identity. EQUAL GROUND receives two to three complaints per month on this issue alone... LGBT individuals also

Human Rights Committee, March 2014, December 2013 (p 10),
<http://www.heartlandalliance.org/gishr/publications/sri-lanka-lgbt-shadow-report-1.pdf>, date accessed 19 June 2015, date accessed 22 June 2015

²⁶ 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, September 2014, (Failure to protect from harassment, abuse and assault, p 8),
<http://www.kaleidoscopeaustralia.com/wp-content/uploads/2014/09/Sri-Lanka-Report-Final.pdf>, date accessed 22 June 2015

²⁷ 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, September 2014, (Discrimination in health care, p6),
<http://www.kaleidoscopeaustralia.com/wp-content/uploads/2014/09/Sri-Lanka-Report-Final.pdf>, date accessed 22 June 2015

often experience discrimination with respect to housing. First, landlords have refused to rent units to persons because of their real or perceived sexual orientation or gender identity. Landlords who learn that a tenant is an LGBT person after a lease has been signed have several ways to displace their tenants. Once a lease expires – typically in six months or one year – landlords have increased rent by up to 200% for their LGBT tenants because they know the renter cannot pay the higher rent and will have no choice but to move out. Alternatively, landlords will report, or threaten to report, the tenant’s sexual orientation or gender identity to the police. As a consequence of discriminatory treatment by landlords, LGBT individuals often are forced to repeatedly change their place of residence. Due to fear of the repercussions of exposing their sexual orientation or gender identity, LGBT individuals have no real recourse through the justice system. They move from place to place rather than challenging their landlords in court.’²⁸

- 5.1.9 In a June 2014 study documenting ‘Experiences of Violence and Discrimination as Told by LBT Persons in Sri Lanka’, the Sri Lanka Women’s Support Group reported that ‘One key research finding is that Sri Lankan lesbians, bisexual women and transgender people most commonly experience emotional violence as a result of their sexual orientation, gender identity or gender expression (SOGIE). All 33 LBT interviewees had experienced some form of emotional violence, including: non-verbalized/silent contempt, invisibilization, emotional manipulation, gender norm enforcement, religious condemnation, invasion of privacy, restrictions on socialization, neglect, severing of relationships between family and friends and controlling behaviour. A second key finding is that, as almost all interviewees admitted, family members are the main perpetrators of emotional violence. ...

In addition to emotional violence, over two-thirds of interviewees (26 out of 33) reported physical violence. ... The interviews also revealed that more than half (18 out of 33) had experienced sexual violence. Both forms of violence (physical and sexual), were linked to their sexual orientation, gender identity or gender expression.’²⁹

- 5.1.10 An NGO Shadow Report to the Committee on the Elimination of All Forms of Discrimination Against Women from January 2011 prepared by the Women’s Support Group, Sri Lanka, observed:

‘Criminalization renders lesbian, bisexual and transgender women and men vulnerable to a range of violations of their human rights to health. There have been cases reported where members of these communities have been exploited and have faced abuse by unscrupulous health professionals who

²⁸ Equal Ground, Human Rights Violations Against Lesbian, Gay, Bisexual, and Transgender (LGBT) People in Sri Lanka: A Shadow Report Submitted for consideration at the 110th Session of the Human Rights Committee, March 2014, December 2013 (p8-9), <http://www.heartlandalliance.org/gishr/publications/sri-lanka-lgbt-shadow-report-1.pdf>, date accessed 19 June 2015

²⁹ Women’s Support Group, “Not Gonna Take It Lying Down”: Experiences of Violence and Discrimination as Told by LBT Persons in Sri Lanka, 5 June 2014, Introduction p.7 <http://iglhrc.org/content/violence-through-lens-lbt-people-asia> date accessed 3 August 2015

take advantage of the discriminatory laws that are in place. Although most higher level health care professionals have been trained on standards of confidentiality, there is little information available on whether lab technicians and assisting nurses and other minor staff are bound to protect the confidentiality of the patient concerned. For example, a woman whose husband tested positive to HIV/AIDS complained that lab technicians had revealed her HIV status to people in her home town who in turn destroyed her house.’³⁰

- 5.1.11 A report by the Kaleidoscope trust, Speaking Out, The rights of LGBTI citizens from across the Commonwealth, 2014, stated that, ‘Until 2012 there were several NGOs [Non-Governmental Organisations] in Sri Lanka that advocated for the rights of LGBT Sri Lankans. These included the Women’s Support Group (WSG), EQUAL GROUND and Companions on a Journey. Of these, however, only EQUAL GROUND is still operational.’³¹
- 5.1.12 The Kaleidoscope trust report cited that: ‘In early 2013..., a Nationalist Facebook page published damaging and violence-inciting articles about EQUAL GROUND and the LGBT community. The owners of the page published pictures of the Executive Director of EQUAL GROUND Ms. Rosanna Flamer- Caldera, claiming that she and the organisation were attempting to convert Sinhala Buddhists to homosexuality.’³²
- 5.1.13 Reporting on social attitudes, the UN High Commissioner for Refugees, Guidelines for assessing international protection needs of asylum seekers from Sri Lanka, published on 21 December 2012, noted that: ‘Negative societal attitudes are reported to affect Sinhala, Muslim and Tamil members of the LGBTI community. Cases of physical assault, harassment, detention and police violence are reportedly not uncommon. LGBT activists raised concerns over increased negative media coverage.’³³
- 5.1.14 The UNHCR Guidelines further stated that:
- ‘In autumn 2011, a Sinhala newspaper published a series of articles accusing a gay rights group involved in HIV/AIDS prevention activities, “Companions on a Journey” (CoJ), of promoting homosexuality. The articles

³⁰ Women's Support Group (WSG). January 2011. The Status of Lesbians, Bisexual, Women and Transgendered Persons in Sri Lanka: NGO Shadow Report to the, Committee on the Elimination of All Forms of Discrimination Against Women. (CEDAW), (Article 12: Healthcare, p6), http://www2.ohchr.org/english/bodies/cedaw/docs/ngos/WSG_SriLanka48.pdf, date accessed 23 June 2015

³¹ Kaleidoscope trust, Speaking Out, The rights of LGBTI citizens from across the Commonwealth, 2014, (p55), <http://kaleidoscopetrust.com/usr/library/documents/main/speaking-out-lgbti-rights-in-the-cw.pdf>, date accessed 19 June 2015

³² Kaleidoscope trust, Speaking Out, The rights of LGBTI citizens from across the Commonwealth, 2014, (p55), <http://kaleidoscopetrust.com/usr/library/documents/main/speaking-out-lgbti-rights-in-the-cw.pdf>, date accessed 19 June 2015

³³ UN High Commissioner for Refugees, Guidelines for assessing international protection needs of asylum seekers from Sri Lanka, 21 December 2012, (A.8 Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) Individuals in certain circumstances, p35), http://www.ecoi.net/file_upload/1930_1357559584_50d1a08e2.pdf, date accessed 23 June 2015

also reportedly published pictures and personal details of gay rights activists, including of a man working in a counseling centre in Colombo operated by the organization. In a subsequent interview with another newspaper, the man indicated that, as a result of this exposure, his landlord made him leave his boarding house and he has been ostracized by his extended family. After the publication of the articles, it was reported that the office premises of CoJ had been searched by the police. Persons present in the office were reportedly questioned for several hours and intimidated. It was furthermore reported that, as a result of threats and harassment, the organization is no longer functioning. There are two other organizations reported to be working on LGBT rights: Equal Ground and the Women's Support Group. In addition, there are reportedly two smaller groups which were established in the last few years: the Diversity and Solidarity Trust (DAST) and Sakhi Collective. These groups are described as an LGBT rights movement "in a nascent stage".

'Unsanctioned societal discrimination and violence against lesbians and bisexual women in rural Sri Lanka were documented in the period April 2010 – May 2011. A 2011 publication based on interviews with 17 "queer" women in Sri Lanka described that all participants reported "facing homophobic violence of differing intensities: verbal, psychological and/or physical. Some of the abusive behaviours experienced were verbal abuse in public spheres, harassment by police and armed forces personnel, and physical violence faced in public places.'" ³⁴

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5.2 Family attitudes and gender based violence

5.2.1 The October 2014 IGLHRC shadow report, recorded that:

'Article 26 of the ICCPR [International Covenant on Civil and Political Rights] defends the right to equal protection under the law. Articles 6 and 7, which guarantee right to life and prohibition of torture are applicable to gender-based violence, which many women experience, ranging from intimate violence in their homes to violence on the streets and by institutions.' ³⁵

5.2.2 However, the report also recorded that:

'LBT persons in Sri Lanka reported violence in the family and domestic space for being lesbian or gender non-conforming (women with boyish appearance or behavior, and transgender men). Perpetrators included immediate family members who used physical and emotional violence as

³⁴ UN High Commissioner for Refugees, Guidelines for assessing international protection needs of asylum seekers from Sri Lanka, 21 December 2012, (A.8 Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) Individuals in certain circumstances, p35-36), http://www.ecoi.net/file_upload/1930_1357559584_50d1a08e2.pdf, date accessed 23 June 2015

³⁵ 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) , October 2014, Geneva, (Violence in the Private Sphere, p5), <http://iglhrc.org/sites/iglhrc.org/files/SriLanka1014WCover.pdf>. date accessed 22 June 2015

punishment to force gender conformity. Violence included beating, verbal humiliation, threats of family abandonment, family neglect, prolonged silent treatment, being denied human contact, and forced to end same-sex relationships. Violence from family members occurred when LBT women revealed their sexual orientation or gender identity, were discovered in same-sex relationships, and/or did not conform to gender norms of the family or community. LBT persons also reported being taken forcibly, often by their parents... to religious institutions, hospitals, and mental health services to be "cured." Lesbians reported physical, emotional and sexual violence by same-sex partners, which in some instances was chronic and long-term. Some bisexual women experienced sexual violence, including rape, and verbal abuse from their opposite-sex partners, who used the victims' past homosexual experiences to justify violence to prohibit current friendships with women.'³⁶

5.2.3 The IGLHRC shadow report added:

'Although Section 23 of the Prevention of Domestic Violence Act allows for cohabiting partners to seek redress, the risk for penalties under sections 365A (anti-sodomy law) or 399 (gender personation law) of the Penal Code deters lesbians, bisexual women, and trans persons experiencing violence in their relationships from filing complaints or seeking protection orders. Court hearings are open to the public, which further deters LBT persons from reporting violence to police to avoid having the reasons for the violence revealed in open court.'³⁷

5.2.4 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:

'LBT women have come forward with accounts of blackmail, rape and physical abuse once their sexual orientation or gender identity has been discovered by others within their community or family. Several women have been forced into heterosexual marriages. There have also been reports of suicides committed by women when they have been separated from their same-sex partners.'³⁸

³⁶ 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), October 2014, Geneva, (Violence in the Private Sphere, p5), <http://iglhrc.org/sites/iglhrc.org/files/SriLanka1014WCover.pdf>. date accessed 22 June 2015

³⁷ 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), October 2014, Geneva, (Violence in the Private Sphere,p5), <http://iglhrc.org/sites/iglhrc.org/files/SriLanka1014WCover.pdf>. date accessed 22 June 2015

³⁸ 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

- 5.2.5 Similarly, the Shadow Report Submitted for consideration at the 110th Session of the Human Rights Committee March 2014, Geneva Prepared by: EQUAL GROUND, Sri Lanka, on Human Rights Violations Against Lesbian, Gay, Bisexual, and Transgender (LGBT) People in Sri Lanka, stated 'In recent years, EQUAL GROUND has received reports from a number of lesbians who were forced into heterosexual marriages'.³⁹

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6. State protection

- 6.1.1 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:

'There is currently no anti-discrimination legislation that protects the right of LGBTI individuals from discrimination on the basis of sexual orientation or gender identity. Although the Constitution protects equality in section 12, sexual orientation or gender identity is not explicitly covered by that provision...

'The failure to protect against discrimination has meant that individuals have no recourse to a remedy when particularly laws are utilised against LGBTI persons in a discriminatory manner. Such discrimination is further enabled and promoted by the continued criminalisation, and therefore stigmatisation, of LGBTI persons.

'For example, section 399 of the Penal Code makes it an offence to cheat the public by impersonation. This has been used to charge women or men who do not conform to gender norms. Transgendered individuals have been arrested for 'misleading the public'. The Vagrants Ordinance 1842 empowers authorities to detain people loitering in public; although this law is generally used to arrest sex workers, it has also been used to harass, arrest and detain individuals on the basis of their appearance or gender identity, particularly transgendered persons from lower socioeconomic backgrounds. The transgender nachchi community has often been charged under this provision, especially as members of the community are often engaged in sex work.'⁴⁰

Advocacy Groups, September 2014, (8. VIOLENCE AGAINST WOMEN (ARTICLES 2, 3, 6, 7 AND 26) p.10), <http://www.kaleidoscopeaustralia.com/wp-content/uploads/2014/09/Sri-Lanka-Report-Final.pdf>, date accessed 22 June 2015

³⁹ [Equal Ground, Human Rights Violations Against Lesbian, Gay, Bisexual, and Transgender \(LGBT\) People in Sri Lanka: A Shadow Report Submitted for consideration at the 110th Session of the Human Rights Committee, March 2014, December 2013 \(p 11\), http://www.heartlandalliance.org/gishr/publications/sri-lanka-lgbt-shadow-report-1.pdf](#), date accessed 19 June 2015

⁴⁰ 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, September 2014, (Failure to protect against discrimination on the basis of sexual

6.1.2 A Shadow Report Submitted for consideration at the 110th Session of the Human Rights Committee March 2014, Geneva Prepared by: EQUAL GROUND, Sri Lanka, on Human Rights Violations Against Lesbian, Gay, Bisexual, and Transgender (LGBT) People in Sri Lanka, stated:

‘Sections 365 and 365A violate Articles 2(1) and 26 for the additional reason that they deny LGBT individuals the equal protection of a wide range of laws, both criminal and civil. LGBT individuals who are the victims of assault, rape, or other hate crimes cannot 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, to prosecution under §§ 365 and 365A. For the same reason, although Sri Lankan law provides significant protection to people who have been fired from their jobs or displaced from their housing, victims of discrimination in employment or housing on grounds of their sexual orientation or gender identity cannot avail themselves of these protections without risking further violations of their rights.’⁴¹

6.1.3 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, September 2014, stated:

‘The criminalisation of consensual same-sex sexual conduct also contributes to violations of other rights under the ICCPR... The criminalisation of such conduct fuels stigmatisation and renders it difficult for LGBTI individuals to go to the authorities for legal protection under other legislation (such as the laws against domestic violence and rape) and effectively excludes LGBTI individuals from the right to rights and protection under other legislation, which is contrary to the right to equality before the law (article 26).’⁴²

6.1.4 The International Gay & Lesbian Human Rights Commission (IGLHRC) October 2014 shadow report highlighted that:

‘Many LBT people said that they are afraid of being identified as non-heterosexual and/or transgender, leaving sexual minorities vulnerable to a range of human rights violations, including intimidation, arbitrary arrest and

orientation or gender identity (articles 2 and 26) p.4 and Discriminatory application of criminal laws, p5 and Criminalisation of consensual same-sex sexual conduct p.7), <http://www.kaleidoscopeaustralia.com/wp-content/uploads/2014/09/Sri-Lanka-Report-Final.pdf>, date accessed 22 June 2015

⁴¹ Equal Ground, Human Rights Violations Against Lesbian, Gay, Bisexual, and Transgender (LGBT) People in Sri Lanka: A Shadow Report Submitted for consideration at the 110th Session of the Human Rights Committee, March 2014, December 2013 (p3-4), <http://www.heartlandalliance.org/gishr/publications/sri-lanka-lgbt-shadow-report-1.pdf>, date accessed 19 June 2015

⁴² 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, September 2014, (p7), <http://www.kaleidoscopeaustralia.com/wp-content/uploads/2014/09/Sri-Lanka-Report-Final.pdf>, date accessed 22 June 2015

detention, and extortion. Even when LBT persons were victims of violence in public spaces such as on the street, at community gatherings, in public transport, or at the workplace, there was reluctance to report to avoid being ridiculed, shamed, charged with homosexuality or gender impersonation, and/or exposed to other reprisals. LBT people revealed that they “doubted the possibility of getting redress for violence by police.”⁴³

6.1.5 The UN High Commissioner for Refugees’ Guidelines for assessing international protection needs of asylum seekers from Sri Lanka, published on 21 December 2012, noted that: ‘In its Concluding Observations, the CEDAW expressed concern that the criminalization of same sex relationships results in women being completely excluded from legal protection.’⁴⁴

6.1.6 The June 2014 Sri Lanka Women’s Support Group study documenting ‘Experiences of Violence and Discrimination as Told by LBT Persons in Sri Lanka’ reported with regards to access to redress:

This research thus suggests 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... Some interviewees said that they were reluctant to report violence in the home to police because this would entail placing a family member in the hands of the law. Similarly, interviewees did not want the risk of unwelcome publicity or the likelihood of exposing the family to shame and ridicule.... When they were the victims of violence in a public space, such as on the street, at community gatherings, in public transport, or at the workplace – and targeted for their gender non-conformity or sexual orientation – there was reluctance to report the violence for fear of being personally exposed as LBT.... Police in Sri Lanka are generally perceived by the LBT community as dangerous. A reason for this perception is that police officers use blackmail and violence against people who they perceive to be homosexual, bisexual or transgender. In this context, interviews revealed that LBT persons doubted the possibility of getting redress for violence by police.⁴⁵

⁴³ 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), October 2014, Geneva, (Discrimination and Stigmatization Prevent Reporting and Redress, p3), <http://iglhrc.org/sites/iglhrc.org/files/SriLanka1014WCover.pdf>. date accessed 22 June 2015

⁴⁴ UN High Commissioner for Refugees, Guidelines for assessing international protection needs of asylum seekers from Sri Lanka, 21 December 2012, (A.8 Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) Individuals in certain circumstances, p35), http://www.ecoi.net/file_upload/1930_1357559584_50d1a08e2.pdf, date accessed 23 June 2015

⁴⁵ Women’s Support Group, “Not Gonna Take It Lying Down”: Experiences of Violence and Discrimination as Told by LBT Persons in Sri Lanka, 5 June 2014, Access to redress p.25 <http://iglhrc.org/content/violence-through-lens-lbt-people-asia> date accessed 3 August 2015

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Version Control and Contacts

Contacts

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

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

Clearance

Below is information on when this version of the guidance was cleared:

- version **1.0**
- valid from **16 September 2015**
- this version approved by **Sally Weston, Deputy Director, Head of Legal Strategy, Immigration and Border Policy Directorate**
- approved on: **9 September 2015**

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