



## Violence Against Lesbians, Bisexual Women and Transgender Persons in Sri Lanka: A Shadow Report



# **Violence Against Lesbians, Bisexual Women and Transgender Persons in Sri Lanka**

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## Introduction

This submission is made by the International Gay and Lesbian Human Rights Commission (IGLHRC) in relation to concerns about the application and implementation of the International Covenant on Civil and Political Rights for lesbians, bisexual women and transgender (LBT) persons in Sri Lanka. The information we are providing supplements the information that the Human Rights Committee was presented for its 110<sup>th</sup> session in March 2014, and is pertinent to the List Of Issues adopted by the Human Rights Committee at this session.

The information in this shadow report is based on interviews carried out by the Women's Support Group (WSG), a Colombo-based non-governmental organization, as well as other Sri Lanka based partners of the International Gay and Lesbian Human Rights Commission (IGLHRC). A total of 33 qualitative interviews were conducted with lesbians, bisexual women and transgender (LBT) persons in Sri Lanka; and an additional 51 qualitative interviews were conducted with relevant stakeholders in Sri Lanka. The Sri Lanka research identified commonly experienced types of violence in the public sphere (by state and non-state actors) and violence in the private sphere (by family members and intimate partners), as well as discrimination from employers, health and medical professionals, and financial institutions. IGLHRC published the Sri Lanka findings in a five-country report, "Violence: Through The Lens of Lesbians, Bisexual Women and Trans People in Asia," which was released on May 10, 2014. The report is available at: <http://iglhrc.org/content/violence-through-lens-lbt-people-asia>

Unless otherwise indicated, the following is based on the above referenced Sri Lanka research.

## **Right to Equality, Non-Discrimination, Equality Before the Law (Arts. 2, 3 and 26)**

Articles 2 (1), 3 and 26 of the International Covenant on Civil and Political Rights protect the rights to non-discrimination, equal rights of men and women, equality before the law and equal rights under the law, respectively. In the landmark decision, *Toonen v. Australia* in 1994, the Human Rights Committee found that the reference to “sex” as a prohibited ground of discrimination in Articles 2(1) and 26 must be taken to include sexual orientation. Additionally, and importantly, the Human Rights Committee has interpreted Article 26 to include “guarantees to all persons equal and effective protection against discrimination on any ground such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”

In the List of Issues (no. 5) adopted at its 110<sup>th</sup> session, the Human Rights Committee asked the Sri Lanka government:

“Please indicate the measures taken to protect persons from stigmatization and discrimination on the basis of sexual orientation and gender identity, and indicate whether they are protected by the constitutional provisions on non-discrimination.”

### **LBT Persons are not Protected from Workplace Sexual Harassment**

LBT individuals reported sexualized verbal harassment on the basis of their sexual orientation, pressure to perform sexual acts with other women for male employer’s “viewing pleasure,” approached for sex by senior colleagues, and being “outed” (exposed as LBT without permission) to senior management.<sup>1</sup> Although the 2013 Code of Conduct and Guidelines on Sexual Harassment at the Workplace defines sexual harassment as harassment that is based on sex and/or sexuality and could include verbal harassment that refers to a person’s sexual identity, most sexual harassment policies in both public and private employment settings do not include harassment on the grounds of sexual orientation and gender identity.<sup>2</sup> Exacerbating this lack of redress is the stigma associated with homosexuality, lesbianism and gender non-conformity in Sri Lanka, which prevents LBT individuals from reporting workplace sexual harassment and accessing any formal redress without being subject to further harassment and abuse by employers.<sup>3</sup>

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<sup>1</sup> Women’s Support Group (WSG) interviews conducted 28 April, 2011, 7 October 2011, and 16 February 2011. Cited in “Sri Lanka: Not Gonna Take It Lying Down,” in *Violence: Through The Lens of Lesbians, Bisexual Women and Trans People in Asia*, International Gay and Lesbian Human Rights Commission (IGLHRC), May 2014, p. 216.

<sup>2</sup> Ibid.

<sup>3</sup> Ibid.

## **LBT Persons Face Job Discrimination**

LBT persons spoke of being denied jobs and promotions on the basis of their gender expression, specifically for “not looking feminine enough.” Some lost employment because their identity cards did not match their appearance.<sup>4</sup>

## **LBT Persons are Targeted by Police Under Discriminatory Laws**

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.<sup>5</sup> The Vagrancy Ordinance of 1842 that prohibits loitering in public is used to detain transgender women and men because they look different.<sup>6</sup> In a context where LBT people are already stigmatized and public officials routinely express hostility towards gays and lesbians, the presence of these laws paves the way for police and anti-gay groups to brand all LBT people as perverts and criminals.

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.”<sup>7</sup> 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.<sup>8</sup> 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>9</sup>

## **Discrimination and Stigmatization Prevent Reporting and Redress**

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

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<sup>4</sup> WSG research, IGLHRC report, p. 211.

<sup>5</sup> IGLHRC report, p. 226.

<sup>6</sup> References to laws in WSG research, IGLHRC report, pp. 225-226.

<sup>7</sup> WSG interview, 28 April 2011, IGLHRC report, May 2014, p. 218.

<sup>8</sup> WSG citing Andrea Nichols, “Dance Ponnay, Dance! Police Abuses Against Transgender Sex Workers in Sri Lanka,” *Feminist Criminology*, April 2010 vol. 5 no. 2 195.

<sup>9</sup> WSG research in IGLHRC report, p. 218



intimidation, arbitrary arrest and 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.”<sup>10</sup>

### **Proposed Recommendations for the State Party**

- Amend Article 12 (2) of the Constitution, which deals with non-discrimination so that it explicitly includes sexual orientation and gender identity among the prohibited grounds for discrimination.
- Ensure that the 2013 Code of Conduct and Guidelines on Sexual Harassment has explicit provisions that prohibit harassment on the basis of sexual orientation and gender identity. Encourage state and corporate employers to implement these provisions.
- Amend Section 365A so that adult consensual same sex relations between women and between men is decriminalized.
- Take measures to prevent police from unfairly, arbitrarily and disproportionately using the Vagrancy Ordinance and Section 399 (Cheating by Personation) of the Penal Code against gender variant and transgender persons.

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<sup>10</sup> WSG research in IGLHRC report, p. 219.

## **Violence against LBT Women (Arts. 2, 3, 6, 7 and 26)**

Article 26 of the ICCPR 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.

In the List of Issues (no. 6) adopted at its 110<sup>th</sup> session, the Human Rights Committee asked the Sri Lanka government:

“Please respond to concerns that despite the adoption of the Prevention of Domestic Violence Act, violence against women, including sexual and domestic violence, and impunity for such violence, remains a widespread problem that is exacerbated by significant delays in the processing of cases and barriers to bringing perpetrators of marital rape to justice. Is the State party considering criminalizing marital rape regardless of judicial acknowledgement of separation?”

### **Violence in the Private Sphere**

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 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.<sup>11</sup> LBT persons also reported being taken forcibly, often by their parents, to hospital to religious institutions, hospitals, and mental health services to be “cured.”<sup>12</sup>

Lesbians reported physical, emotional and sexual violence by same-sex partners, which in some instances was chronic and long-term.<sup>13</sup> 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.

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<sup>11</sup> WSG interviews, 18 September 2010, 17 November 2010, 19 January 2011, and 8 August 2011, IGLHRC report, pp. 208-209.

<sup>12</sup> WSG interviews, 8 August 2011, 7 October 2011, and 6 January 2012, IGLHRC report, p. 219.

<sup>13</sup> WSG interviews, 4 April 2011, 18 September 2010, and 31 May 2011 in IGLHRC report, pp. 214-215.

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.<sup>14</sup> 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.<sup>15</sup>

Sri Lankan law specifically excludes marital rape from criminal sanctions. This legal blindness on marital rape makes reporting even more difficult for LBT persons.

## **Violence in the Public Sphere**

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.<sup>16</sup> 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.<sup>17</sup> 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 working to abolish homophobic and transphobic laws.<sup>18</sup>

### **Proposed Recommendations for the State Party**

- Implement the Concluding Observations of the CEDAW Committee (48<sup>th</sup> session) in February 2011, which urges the Sri Lankan government to “decriminalize sexual relationship between consenting adults of same sex, and abide by the obligations of non-discrimination under the Convention.”
- Take measures to ensure LBT persons can safely report gender violence. This should include measures to prevent LBT victims of gender violence from being charged under laws such as sections 365A and 399 of the Penal Code that are used to criminalize

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<sup>14</sup> WSG research in IGLHRC report, p. 215

<sup>15</sup> Ibid, p.220.

<sup>16</sup> WSG interview, 28 April, 2011 in IGLHRC report, p. 214.

<sup>17</sup> WSG interview, 6 January, 2012, in IGLHRC report, p. 212.

<sup>18</sup> Balumgala Radio Talk Show, “Homosex and NGOs,” 25 September, 2013.

[https://www.youtube.com/watch?feature=player\\_embedded&v=5cUTT9UjFe0](https://www.youtube.com/watch?feature=player_embedded&v=5cUTT9UjFe0)

lesbianism and gender non-conformity.

- The Ministry of Women and Children should hold hearings on the effects of violence within the family on LBT people (e.g. how violence impacts mental health, education, poverty reduction, gender equality) as part of the Ministry's work on ending violence in the private sphere, including domestic violence.
- Prohibit marital rape for all women including for lesbians, bisexual women, and gender variant individuals.
- Denounce the vilification of LGBT people by public figures and discourage intolerance and hate towards people who do not confirm to cultural gender norms.

## **Conclusion**

The Sri Lankan Constitution's lack of specific anti-discrimination language on sexual orientation and gender identity places lesbian, gay, bisexual and transgender (LGBT) people as a whole and LBT people specifically at a disadvantage in accessing rights, protections and legal guarantees. The Sri Lanka State must exercise its due diligence and recognize those targeted because of their sexual orientation or gender identity as members of disadvantaged and marginalized groups. It must take specific steps to stop and prevent gender violence in public and private domains. Its national gender equality and poverty reduction programs must be LBT inclusive, starting with creating safe spaces for LBT people to break the cycle of silence that they grapple with while experiencing discrimination and violence.