



### **FOLLOW-UP PREVIOUS UPR CYCLE (2012)**

At the previous UPR cycle, Sri Lanka received two recommendations in relation to sexual orientation and gender identity. Both recommendations have been ‘Noted’.

1. Decriminalize consenting homosexual relationships between persons over the age of consent by repealing Section 365A of the penal code (128.24 Canada)
2. Strengthen the measures to eliminate all discriminatory treatment based on sexual orientation or gender identity (128.53 Argentina)

Since then, however, no action has been taken by the Government of Sri Lanka to address the recommendations raised by Argentina and Canada.

### **DECRIMINALIZATION**

Sri Lanka’s Penal Code criminalizes adult, consensual same-sex sexual conduct. Section 365 criminalizes “carnal intercourse against the order of nature,” which is widely understood to apply only to sexual acts between two individuals of the same sex. The penalty for violation of § 365 is up to ten years’ imprisonment and a fine.

Section 365A criminalizes “any act of gross indecency with another person”. Violations are punishable by up to two years’ imprisonment, a fine, or both. Although “gross indecency” is not defined by the law or on any Sri Lankan court decision, the current law is understood to target sexual acts and displays of romantic affection between two individuals of the same sex in public or in private. Because the term “gross indecency” is left open to interpretation by police officers, prosecutors, and judges, the breadth and ambiguity of what could constitute “gross indecency” invites abuse.

Section 399 of the Penal Code, makes it a criminal offense to “cheat by personation,” and has been used by the police to target individuals based on their perceived sexual orientation or gender identity, particularly transgender individuals and others with non-binary gender expressions. Additionally, Sri Lanka’s Vagrants Ordinance, “prohibits soliciting or committing acts of ‘gross indecency,’ or being ‘incorrigible rogues’ procuring ‘illicit or unnatural intercourse’, has been used to arrest and harass individuals on the basis of their sexual orientation, gender identity and expression and sex characteristics [“SOGIESC”].

### **RECOMMENDATIONS:**

1. Amend the Penal Code, particularly Sections 365, 365A to decriminalize consensual same-sex conduct and displays of affection.
2. Review the application of Section 399 of the Penal Code and the Vagrants Ordinance, to clarify that it should not be used to harass transgender persons or persons using non-conventional gender expressions or persons of different sexual orientations.

### **NON-DISCRIMINATION**

The Constitution of Sri Lanka does not explicitly prohibit discrimination on the basis of SOGIESC and does not permit the judicial review of legislation.<sup>1</sup> It therefore does not provide recourse to any person seeking legal redress for the violation of their rights on the basis of their SOGIESC.

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<sup>1</sup> Article 16 (1) of the Constitution of Sri Lanka states, “All existing written law and unwritten law shall be valid and operative notwithstanding any inconsistency with the preceding provisions of this Chapter”.

Persons of different sexual orientations and gender identities face different forms of discrimination and violence. Lesbian, bisexual and transgender women, in particular, suffer unique forms of violence and persecution as a result of the intersection between their gender identity and sexual orientation. The government has failed to recognize these intersecting forms of discrimination, leading to the adoption and implementation of policies and programs which fail to address intersectional discrimination.

#### RECOMMENDATIONS:

3. Expand the non-discrimination clause under Article 12(2) of the Constitution, that explicitly prohibits discrimination on the grounds of race, religion, language, caste, sex, political opinion, and place of birth, to include SOGIESC.
4. Recognise and eliminate intersecting forms of discrimination, including adopting an intersectional approach in the National Human Rights Action Plan, any human rights educational programmes, and the National Plan of Action to address Sexual and Gender-based Violence.
5. Adopt comprehensive anti-discrimination legislation enshrining the principles of equality.
6. Ensure systematic collection and analysis of data on all forms of discrimination and violence against LGBTIQ persons, disaggregated by age, ethnic group, region and relationship between the victim and the perpetrator.
7. Repeal Articles 16(1) and 80(3) of the Constitution and introduce post-enactment judicial review of all legislation that may be inconsistent with the Constitution, to ensure that such legislation can be reviewed and its validity pronounced upon by an independent judiciary.
8. Enable the participation of LGBTIQ persons in policy making efforts where civil society is being consulted.
9. Reinstate and implement the commitment to decriminalise same-sex sexual conduct and expressions of affection in the National Human Rights Action Plan, initiate public awareness efforts to educate law enforcement, teachers, health care workers, public employees and the general public and call for an end to attacks, abuse and discrimination based on SOGIESC.

#### **LEGAL GENDER RECOGNITION**

Even though a system to issue a Gender Recognition Certificate was introduced in June 2016 by the Ministry of Health, Nutrition and Indigenous Medicine for transgender individuals undergoing 'surgical and hormonal treatment' via a circular enabling them to change their identity documents, no permanent changes have been made to any law pertaining to the recognition of persons under the law. This requirement also essentially forces transgender persons to undergo procedures that they may not want in order to achieve document changes.

#### RECOMMENDATION:

10. Introduce legislation that allows for the legal recognition of the gender of transgender and intersex people through a process which is quick, transparent, accessible and based on self-determination.

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